

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 99-MK-2086

JULIE FARRAR-KUHN and CARRIE ANN LUCAS, for themselves and all others similarly situated,

Plaintiffs,

v.

CONOCO INC.,

Defendant.

CONSENT DECREE

1. DEFINITIONS

In addition to terms defined elsewhere in the Consent Decree, the following terms shall have the meanings set forth below.

- 1.1 **Accessibility Enhancements.** Means the modifications to Elements set forth on Exhibit 3 of this Consent Decree required by Paragraphs 8 and 9 hereof. Accessibility Enhancements are distinguished from Alterations.
- 1.2 **ADA.** Refers to the Americans with Disabilities Act, 42 U. S. C. § 12101 *et seq.*
- 1.3 **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 are specifically excepted from and do not constitute Alterations.
- 1.4 **Alternative Methods.** Refers to Readily Achievable methods other than barrier removal by which a public accommodation can make its goods, services, facilities, privileges, advantages, or accommodations available to persons with Mobility Disabilities, subject to the terms set out in 28 C.F.R. § 36.305.
- 1.5 **Breakplace Store.** Means a Corporate Store operated using the *breakplace* logo.
- 1.6 **CADA.** Refers to the public accommodations provisions of the Colorado Anti-Discrimination Act, C.R.S. §§ 24-34-601 *et seq.*

- 1.7 **Class Counsel.** Means Amy F. Robertson and Timothy P. Fox of the law firm of Fox & Robertson, P.C. and Kevin Williams of the Colorado Cross-Disability Coalition, and any attorneys practicing with those attorneys, or any attorney who may be substituted for one of these attorneys upon motion to the Court.
- 1.8 **Class Member.** Means a member of the Settlement Class.
- 1.9 **Conditioned Permit.** Means a permit required to complete an Accessibility Enhancement that contains extraordinary, unusual or unexpected conditions.
- 1.10 **Conoco.** Means Conoco Inc., the defendant herein.
- 1.11 **Consent Decree.** Means this document and the exhibits attached to this document.
- 1.12 **Corporate Store.** Means a gas station/convenience store, including Breakplace Stores, owned by Conoco anywhere in the United States of America or the District of Columbia. The term includes the site, all buildings on the site, and all Elements on the site.
- 1.13 **CRIND.** Means a self-service credit card reader in a fuel dispenser.
- 1.14 **Defense.** Means any of the reasons set forth in Paragraphs 8.2, 8.3, 8.4, 8.5, 8.6, 9.2, 9.3, 9.4, 9.5 and 9.6 for which Conoco is permitted not to undertake an Accessibility Enhancement that would otherwise be called for by this Consent Decree.
- 1.15 **Dispute Resolution.** Means the process described in Paragraph 21 hereof.
- 1.16 **Element.** Means an architectural or mechanical component of a building, facility, space, or site, *e.g.*, telephone, curb ramp, door, drinking fountain, seating, or water closet. Element as used herein includes those items listed in Exhibit 3. Inclusion of an Element in this Consent Decree or any of its exhibits does not constitute an admission by Conoco that the Element is an "accessible element" as that term is defined in Standards § 3.5. Conoco expressly does not waive the position that only elements specified in Standards §§ 4.1.2 or 4.1.3 are "accessible elements."
- 1.17 **Enhancement Report.** Means the report to be created for each Corporate Store following the survey procedure described in Exhibit 5 using the proprietary software of the Independent Expert, describing the Accessibility Enhancements required by this Consent Decree as a result of a survey of the Corporate Store pursuant to Paragraphs 7.2, 8.1 or 9.1. The Enhancement Report prepared as a result of the survey will state the Accessibility Enhancements Conoco plans to perform, the Accessibility Enhancements as to which Conoco asserts a Defense,

and, as to the last category, the Alternative Methods that Conoco plans to undertake.

- 1.18 **Existing Corporate Store.** Means any Corporate Store that was designed and constructed for first occupancy prior to January 26, 1993.
- 1.19 **Final Approval.** Means approval of this Consent Decree by a United States District Judge. If any objectors appeal the district judge's approval, "Final Approval" means that date that all possible appeals have been dismissed and the time for any further appeal has expired.
- 1.20 **Independent Expert.** Means William E. Endelman of Endelman & Associates, or if he becomes unavailable, a substitute expert agreed upon by the Parties.
- 1.21 **Mobility Disability.** Means a disability, as that term is defined in 42 U.S.C. § 12102, that necessitates the use of a wheelchair or scooter for mobility.
- 1.22 **Monitoring.** Means the activities undertaken by the Independent Expert following Final Approval of this Consent Decree pursuant to Paragraph 13 hereof.
- 1.23 **Named Plaintiffs.** Refers to Julie Farrar-Kuhn ("Farrar-Kuhn") and Carrie Ann Lucas ("Lucas").
- 1.24 **New Corporate Store.** Means a Corporate Store designed and constructed for first occupancy on or after January 26, 1993.
- 1.25 **Notice.** Means the notice attached as Exhibit 13 hereto.
- 1.26 **Party or Parties.** Means Named Plaintiffs and/or Conoco.
- 1.27 **Pilot Program.** Means the program described in Paragraph 7.
- 1.28 **Preliminary Approval.** Means the initial approval by a United States District Judge of the terms of this Consent Decree, which shall occur prior to any Notice being provided in accordance with Paragraph 25 of this Consent Decree.
- 1.29 **Readily Achievable.** Means "easily accomplishable and able to be carried out without much difficulty or expense." [Reference: 28 C.F.R. § 36.104].
- 1.30 **Settlement Class.** Means the class of all persons with disabilities who use wheelchairs or scooters for mobility who, within four years of the filing of the Complaint in the Lawsuit have been denied, or are currently being denied, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any Corporate Store.

1.31 **Significant Loss Of Selling Or Serving Space.** Means rearrangement or relocation of equipment or display racks resulting in the loss of the applicable percentage shown below of the space on the sales floor devoted to the display of merchandise, including cooler shelving, non-perishable shelving or hot-to-go counter or cabinet space, as follows:

Corporate Stores under 2000 total square feet:	1%
Corporate Stores of 2000-3000 total square feet:	3%
Corporate Stores of over 3000 total square feet:	5%

provided that this Defense does not apply until Conoco has exhausted all good faith efforts to achieve the Accessibility Enhancement in question by displaying merchandise in alternative fashions. [Reference: 28 C.F.R. § 36.304(f)].

1.32 **Significant Risk.** Means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services. [Reference: 42 U.S.C. § 12182(B)(3)].

1.33 **Standards.** Refers to the Standards for Accessible Design, 28 C.F.R. Part 36, Appendix A, July 1, 1994 version.

1.34 **Structurally Impracticable or Structural Impracticability.** An Accessibility Enhancement will be considered structurally impracticable in those rare circumstances where full compliance has little likelihood of being accomplished because the unique characteristics of terrain prevent the incorporation of an accessibility feature. [Reference: 28 C.F.R. § 36.401(c)].

1.35 **Subsequently Acquired Corporate Store.** Means a Corporate Store that Conoco acquires after Final Approval of this Consent Decree. Any store that is owned by the corporate entity surviving after the merger of Conoco and Phillips Petroleum Company only by reason of such merger shall not be considered a Subsequently Acquired Corporate Store.

1.36 **Subsequently Relinquished Corporate Store.** Means a Corporate Store that ceases to be a Corporate Store after Final Approval of this Consent Decree. Any Corporate Store presently owned by Conoco which, as a result of the pending merger between Conoco and Phillips Petroleum Company, is owned by the corporate entity surviving after that merger is subject to the terms of this Consent Decree and is not a Subsequently Relinquished Corporate Store by virtue of the merger.

1.37 **Technically Infeasible or Technical Infeasibility.** With respect to an Alteration, means something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing

physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for Alterations or new construction and which are necessary to provide accessibility. [Reference: Standards § 4.1.6(1)(j)].

- 1.38 **To The Maximum Extent Feasible.** Means that (a) where an Accessibility Enhancement is Virtually Impossible, Conoco shall carry out the Enhancement “to the maximum extent feasible,” giving that phrase the meaning set forth in 28 C.F.R. § 36.402(c); or (b) where an Alteration is planned, has the meaning set forth in 28 C.F.R. § 36.402(c).
- 1.39 **Virtually Impossible or Virtual Impossibility.** Has the meaning ascribed in 28 C.F.R. § 36.402(c).

2. INTRODUCTION

- 2.1 **Parties to this Consent Decree.** This Consent Decree is entered into by and between Conoco and the Named Plaintiffs, on behalf of themselves individually and the Settlement Class.
- 2.2 **Number of Corporate Stores.** Conoco owns 124 Corporate Stores.
- 2.3 **Disability.** Farrar-Kuhn and Lucas each uses a wheelchair for mobility and each is a person with a Mobility Disability. Farrar-Kuhn and Lucas each owns an automobile and each has frequented a number of Corporate Stores within the four years prior to the filing of this lawsuit, up to and including the present date.
- 2.4 **The Lawsuit.** The Named Plaintiffs have brought suit in the United States District Court for the District of Colorado, Civil Action No. 99-MK-2086 (the “Lawsuit”), in which they allege that Conoco violated Title III of the ADA at all of its Corporate Stores, and the public accommodations provisions of the CADA at its Corporate Stores in Colorado. Conoco answered the second amended complaint and denied that it had violated the ADA or the CADA. In February 2000, Conoco and Named Plaintiffs and their respective counsel began negotiations regarding accessibility at Corporate Stores. The Parties and their counsel have negotiated in good faith concerning accessibility issues, and their negotiations have resulted in this Consent Decree. Conoco has denied and continues to deny liability for all claims, as further described in Paragraph 3. The Parties and their counsel have agreed to this Consent Decree to avoid the uncertainties and costs of further or future litigation.
- 2.5 **Class Certification.** On August 22, 2000, the Court certified the Lawsuit as a class action and approved the Named Plaintiffs to represent a class of “[a]ll persons with disabilities who use wheelchairs or scooters for mobility who, within four years of the filing of the Complaint in this case, have been denied, or are

currently being denied, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any service station or convenience store that is owned by Conoco Inc.”

- 2.6 **Intent of the Parties.** The Parties now wish to effect a complete resolution and settlement of all claims, disputes and controversies relating to the allegations made by Named Plaintiffs and to resolve their differences and disputes by settling the Lawsuit.
- 2.7 **No Third Party Beneficiaries.** Individual members of the Settlement Class are not third party beneficiaries of this Consent Decree, and they shall have no right to bring any action for any alleged violation of this Consent Decree. Only Class Counsel shall have the authority to enforce this Consent Decree.
- 2.8 **Incorporation of 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.
- 2.9 **Force Majeure.** Failure of Conoco 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 acts of God, fires, accidents, earthquakes, explosions, floods, wars, labor disputes or shortages, riots, sabotage, or any similar circumstances beyond Conoco’s reasonable control.
- 2.10 **Successors and Assigns.** This Consent Decree and all Exhibits are binding on all successors and assigns of Named Plaintiffs, the Settlement Class members, Conoco and Class Counsel.

3. NO ADMISSION OF LIABILITY

By agreeing to and voluntarily entering in to this Consent Decree, there is no admission or concession by Conoco, express or implied, that Conoco has in any way violated the ADA or the CADA, or any other federal, state, or local law, regulation, order, or rule. Conoco denies and continues to deny that it has violated any such laws pertaining to access for persons with Mobility Disabilities at any Corporate Store or otherwise. Conoco denies and continues to deny any and all liability to Named Plaintiffs or the Settlement Class for any such claims and for claims for monetary damages. This Consent Decree, any statements or negotiations made in connection with the Consent Decree, and any actions taken by any Party under this Decree, may not be offered or be admissible in evidence or in any other manner against that Party in any action or proceeding for any purpose, except in any action or proceeding brought to enforce the terms of this Consent Decree by or against Named Plaintiffs, the Settlement Class, or Conoco, or by Conoco in defense of any claims brought by Named Plaintiffs or the Settlement Class.

4. CONDITIONS PRECEDENT

This Consent Decree shall be conditioned upon and shall be effective only upon, the occurrence of all of the following events:

- 4.1 **Preliminary Approval.** Class Counsel and Conoco move jointly by stipulation for an Order Granting Preliminary Approval of this Consent Decree and Issuance of Notice in accordance with Paragraph 24 of this Consent Decree and such motion is granted by the Court.
- 4.2 **Notice.** Notice is provided to the Settlement Class in accordance with Paragraph 25 of this Consent Decree.
- 4.3 **Fairness Hearing.** A Fairness Hearing is held in accordance with Paragraph 24.3 of this Consent Decree.
- 4.4 **Jurisdiction.** A determination is made by the Court that it has personal jurisdiction and subject matter jurisdiction over the Parties and the claims raised in the Second Amended Class Action Complaint and that venue is proper in the United States District Court for the District of Colorado.
- 4.5 **Final Approval.** The Court grants Final Approval of this Consent Decree and enters Judgment in accordance with the terms set forth herein after a Fairness Hearing has been conducted. The Judgment shall finally resolve all issues raised in this proceeding.

5. TERM OF CONSENT DECREE

Except as otherwise set forth in this Consent Decree, the term of this Consent Decree shall be five (5) years from the date of Final Approval of the Consent Decree.

6. LISTS OF CORPORATE STORES

- 6.1 **Existing Corporate Stores.** A current list of Existing Corporate Stores is attached as Exhibit 1. An updated list will be provided annually to Class Counsel in accordance with the terms of this Consent Decree.
- 6.2 **New Corporate Stores.** A current list of New Corporate Stores is attached as Exhibit 2. An updated list will be provided annually to Class Counsel in accordance with the terms of this Consent Decree.
- 6.3 **Altered Corporate Stores.** Once a year Conoco will supply a list of Corporate Stores to which Alterations in excess of \$200,000 per Store are made after Final Approval of this Consent Decree.

7. SURVEY/DISPOSITION/ACCESSIBILITY ENHANCEMENT INITIATION PROCESS (PILOT PROGRAM)

- 7.1 **Selection of Stores.** Within one month after Final Approval of this Consent Decree, the Parties will select and confirm in writing a sampling of up to six Corporate Stores in the Denver Metropolitan Area (City and County of Denver and Arapahoe, Boulder, Douglas and Jefferson Counties) for inclusion in a Pilot Program to demonstrate the intent of the Consent Decree. The six Corporate Stores will be selected from both New and Existing Corporate Stores and will reflect the variety of types of Corporate Stores to be affected by the Consent Decree. Class Counsel will select the first three and Conoco will select the second three. Conoco and Class Counsel may agree to adjust the selections as may be necessary to create appropriate sampling.
- 7.2 **Survey by Independent Expert.** Within two months of Final Approval, the Independent Expert will survey the Pilot Program Corporate Stores utilizing the procedure described in Exhibit 5. The Independent Expert will provide to Conoco and Class Counsel copies of the completed Enhancement Reports for those Corporate Stores. The Parties agree to instruct the Independent Expert to evaluate compliance at New Corporate Stores in light of the provision of Standards § 3.2 and at Existing Corporate Stores in light of the acceptable measurements on Exhibit 4.
- 7.3 **Alternative Methods.** Where the Independent Expert determines that a Defense applies and Conoco is not required to complete an Accessibility Enhancement that, but for the Defense, would be required, Conoco shall state the Alternative Method that it proposes to use, pursuant to Paragraph 8.7 or 9.7, as applicable, to provide access for Class Members. Conoco will comply with this Paragraph by supplying the Alternative Methods called for by each Enhancement Report created by the Independent Expert pursuant to Paragraph 7.2 and providing such information to Class Counsel within one month of receipt of the materials specified in Paragraph 7.2.
- 7.4 **Joint Survey by Class Counsel and Conoco and Meet and Confer.** Within two months of receipt by Conoco and Class Counsel of the materials specified in Paragraph 7.2, Class Counsel, Conoco and the Independent Expert shall jointly survey the Pilot Program Stores and the Parties shall discuss the findings and recommended Accessibility Enhancements and Defenses of the Independent Expert and agree upon the recommendations to enable Conoco to go forward with appropriate Accessibility Enhancements at the remaining Corporate Stores. Either Party shall have the right to suggest modifications or amendments to the findings and recommendations of the Independent Expert. If the Parties agree to a modification or amendment of a finding or recommendation of the Independent Expert, the Parties' agreed modification or amendment shall be substituted for the finding or recommendation of the Independent Expert. In the absence of

agreement by both Parties to a substitution, the finding or recommendation of the Independent Expert shall control.

- 7.5 **Completion of Accessibility Enhancements.** Within three months of the Parties' agreement on the specifics of the Accessibility Enhancements to be carried forward from the Pilot Program as provided in Paragraph 7.4, Conoco will complete the Accessibility Enhancements at the six Pilot Program Corporate Stores identified as necessary by the Pilot Program and as agreed to by the Parties, and will notify the Independent Expert and Class Counsel of completion using the Notification Form in Exhibit 6.
- 7.6 **Inspection of Completed Accessibility Enhancements.** Within two months of the Independent Expert's and Class Counsel's receipt of notification as provided in Paragraph 7.5, the Independent Expert shall inspect the six Pilot Program Corporate Stores. Within one month of completion of these inspections, the Independent Expert shall provide both Conoco and Class Counsel with specific written comments for any inspected Corporate Store he deems not to meet the Pilot Program findings and recommendations. For those Corporate Stores deemed to meet the Pilot Program findings and recommendations, the Independent Expert will report in writing within the same time frame using the Certification Form in Exhibit 7.
- 7.7 **Joint Inspection by Class Counsel and Conoco and Meet and Confer.** Within two months of receipt by Conoco and Class Counsel of the materials specified in Paragraph 7.6, Class Counsel, Conoco and the Independent Expert shall jointly inspect the Pilot Program Corporate Stores and, if either Party disagrees with the conclusions of the Independent Expert, the Parties shall meet and confer in an effort to resolve their disagreement. Every effort shall be made by both Parties to conduct the "meet and confer" session at the same time as the Parties' joint survey of the Pilot Program Corporate Stores. Either Party shall have the right to suggest modifications or amendments to the conclusions of the Independent Expert. If the Parties agree to a modification or amendment of a conclusion of the Independent Expert, the Parties' agreed modification or amendment shall be substituted for the conclusion of the Independent Expert. In the absence of agreement by both Parties to a substitution, the conclusion of the Independent Expert shall control.
- 7.8 **Response to Comments and Reinspection.** Within two months of completion of the joint inspection of the Pilot Program Corporate Stores or the completion of any meet and confer, whichever is later, that results in a finding that an Accessibility Enhancement was not completed in accordance with the Pilot Program findings and recommendations, Conoco shall modify or redo the Accessibility Enhancement to bring it into accord. Conoco will notify the Independent Expert and Class Counsel of completion of the modified or redone Accessibility Enhancement within fourteen (14) days of completion. Within one month of notification the Independent Expert shall reinspect the modified or

redone Accessibility Enhancement and shall provide Conoco and Class Counsel with written certification of acceptance. Should the Accessibility Enhancement still be out of accord, the Independent Expert shall so notify Conoco. The provisions of this paragraph shall apply to such modification.

- 7.9 **Acceptable Guidelines.** Conoco and the Named Plaintiffs agree that the results of this process will represent acceptable guidelines by which to evaluate the completion of Enhancement Reports and Accessibility Enhancements for the remaining Corporate Stores covered by this Consent Decree.

8. ACCESSIBILITY ENHANCEMENTS AT NEW CORPORATE STORES

- 8.1 **Accessibility Enhancements.** Except as provided in Paragraphs 8.2, 8.3, 8.4, 8.5, and 8.6, Conoco shall undertake Accessibility Enhancements at New Corporate Stores to Elements listed on Exhibit 3 within the time frames specified in Paragraph 10. The Parties agree that any Element not listed on Exhibit 3 is not a barrier to accessibility for persons with Mobility Disabilities at Conoco Corporate Stores. Prior to commencing any Accessibility Enhancements, Conoco shall survey each Corporate Store using the procedure described in Exhibit 5 using the proprietary software of the Independent Expert and shall prepare a Enhancement Report for each Corporate Store.
- 8.2 **Dimensional Tolerances.** This Consent Decree does not require Conoco to undertake an Accessibility Enhancement described in Exhibit 3 at a New Corporate Store if the existing conditions comply with the Standards subject to conventional building industry tolerances for field conditions.
- 8.3 **Legitimate Threat to Human Safety or the Environment.** This Consent Decree does not require Conoco to undertake any Accessibility Enhancement described in Exhibit 3 at a New Corporate Store that it believes constitutes a legitimate threat to human safety or the environment. Threats to safety and the environment must be based on actual risks and not on mere speculation, stereotypes, or generalizations. [Reference: 28 C.F.R. § 36.301].
- 8.4 **Structurally Impracticable.** Conoco shall not be required to undertake any Accessibility Enhancement at New Corporate Stores if the Accessibility Enhancement is Structurally Impracticable.
- 8.5 **Concrete.** Conoco shall not be required to regrade existing concrete area slopes or surfaces (not including curb ramps, ramps and sidewalks that are adjacent to accessible entryways to stores, as described in Exhibit 3). If a vertical level change of greater than one inch develops in the surface of any accessible or van-accessible parking space access aisle at a New or Existing Corporate Store, Conoco must repair or relocate the parking space access aisle, at its option.

- 8.6 **Elements Not Controlled By Conoco.** This Consent Decree does not require Conoco to initiate any Accessibility Enhancement to any Element at any New Corporate Store where the Element is not within the direct control of Conoco.
- 8.7 **Alternative Methods.** Whenever Conoco determines that it cannot complete one or more Accessibility Enhancements, for whatever reason, Conoco will undertake Alternative Methods to provide accessibility to and usability of the Element affected.
- 8.8 **Effect of Amendments to the Standards.** Should the Standards be amended at any time after Final Approval of this Consent Decree, if such amendment results in an accessibility standard that is less than provided in this Consent Decree, from the effective date of the amendment forward, Conoco shall be required only to meet the lesser of the requirements of this Consent Decree or the Standards as amended. If such amendment results in an accessibility standard that is greater than provided in this Consent Decree, Conoco shall be required only to meet the requirements of this Consent Decree for any Corporate Store in existence as of the effective date of the amendment, and agrees to meet the Standards as amended for any Corporate Store designed and constructed for first occupancy after the effective date of the amendment, and to comply with the Standards as amended for all Alterations. Nothing in this Consent Decree shall limit the right of Conoco to undertake Accessibility Enhancements, or to build or Alter Corporate Stores exceeding the requirements of this Consent Decree.

9. ACCESSIBILITY ENHANCEMENTS AT EXISTING CORPORATE STORES

- 9.1 **Accessibility Enhancements.** Except as provided in Paragraphs 9.2, 9.3, 9.4, 9.5, and 9.6, Conoco shall undertake Accessibility Enhancements at Existing Corporate Stores to Elements listed on Exhibit 3 within the time frames specified in Paragraph 11. The Parties agree that any Element not listed on Exhibit 3 is not a barrier to accessibility for persons with Mobility Disabilities at Conoco Corporate Stores. Prior to commencing any Accessibility Enhancements, Conoco shall survey each Corporate Store using the procedure described in Exhibit 5 using the proprietary software of the Independent Expert and shall prepare an Enhancement Report for each Corporate Store.
- 9.2 **Acceptable Measurements.** This Consent Decree does not require Conoco to undertake any Accessibility Enhancement described in Exhibit 3 at an Existing Corporate Store if the existing conditions comply with the measurements set forth in Exhibit 4.
- 9.3 **Technically Infeasible, To The Maximum Extent Feasible, Significant Risk, and Significant Loss of Selling or Serving Space.** In Existing Corporate Stores, Conoco shall not be required to undertake any Accessibility Enhancement even if the existing Element falls outside the acceptable measurement for that Element

shown on Exhibit 4 if the Accessibility Enhancement is Technically Infeasible; or if the enhancement is Virtually Impossible, then only To The Maximum Extent Feasible; or if completion would involve a Significant Risk or a Significant Loss of Selling or Serving Space.

- 9.4 **Legitimate Threat to Human Safety or the Environment.** This Consent Decree does not require Conoco to undertake any Accessibility Enhancement described in Exhibit 3 at an Existing Corporate Store that it believes constitutes a legitimate threat to human safety or the environment. Threats to safety and the environment must be based on actual risks and not on mere speculation, stereotypes, or generalizations. [Reference: 28 C.F.R. § 36.301].
- 9.5 **Measures That Are Not Readily Achievable.** The Parties agree that the following measures, if required to complete an Accessibility Enhancement called for pursuant to Paragraph 10.1, will render such Accessibility Enhancement under the circumstances of this case, not Readily Achievable. As such, any Accessibility Enhancement that requires any one of such measures shall be excepted from Paragraph 11.1:
- 9.5.1 Structural. Modifying an essential element of the structural frame of a building, including the foundation; load-bearing or shear walls; plumbing chase walls; partition walls if embedded therein are mechanical, electrical (other than simple outlets or switches), or plumbing fixtures; column steel, concrete or heavy timber beams; or trusses;
- 9.5.2 Electrical. Relocating primary electrical service, for example, a meter, transformer or main breaker panel;
- 9.5.3 Seismic. Modification of seismic bracing elements;
- 9.5.4 Fuel Supply. Relocating fuel supply, storage or distribution piping;
- 9.5.5 Security Areas. Removing or relocating any part of raised flooring areas and/or relocating security shield partitions;
- 9.5.6 Coolers. Modifying or relocating built-in coolers and freezers; or
- 9.5.7 Concrete. Regrading existing concrete area slopes or surfaces (not including curb ramps, ramps and sidewalks adjacent to accessible entryways to stores, as described in Exhibit 3). If a vertical level change of greater than one inch develops in the surface of any accessible or van-accessible parking space access aisle at a New or Existing Corporate Store, Conoco must repair or relocate the parking space access aisle, at its option.

- 9.6 **Elements Not Controlled By Conoco.** This Consent Decree does not require Conoco to initiate any Accessibility Enhancement to any Element at any Corporate Store not within the direct control of Conoco.
- 9.7 **Alternative Methods.** Whenever Conoco determines that it cannot complete one or more Accessibility Enhancements, for whatever reason, Conoco will undertake Alternative Methods to provide accessibility to and usability of the Element affected.
- 9.8 **Effect of Amendments to the Standards.** Should the Standards be amended at any time after Final Approval of this Consent Decree, if such amendment results in an accessibility standard that is less than provided in this Consent Decree, from the effective date of the amendment forward, Conoco shall be required only to meet the lesser of the requirements of this Consent Decree or the Standards as amended. If such amendment results in an accessibility standard that is greater than provided in this Consent Decree, Conoco shall be required only to meet the requirements of this Consent Decree for any Corporate Store in existence as of the effective date of the amendment, and agrees to meet the Standards as amended for any Corporate Store designed and constructed for first occupancy after the effective date of the amendment, and to comply with the Standards as amended for all Alterations. Nothing in this Consent Decree shall limit the right of Conoco to undertake Accessibility Enhancements, or to build or alter Corporate Stores exceeding the requirements of this Consent Decree.

10. SCHEDULE FOR ACCESSIBILITY ENHANCEMENTS AT REMAINING NEW CORPORATE STORES AFTER COMPLETION OF PILOT PROGRAM

Conoco will divide the remaining New Corporate Stores into four approximately equal groups and will complete any Accessibility Enhancements identified as necessary by the Pilot Program for the first fourth within nine (9) months after completion of the Pilot Program; for the second fourth within eighteen (18) months after completion of the Pilot Program; for the third fourth, within twenty-seven (27) months after completion of the Pilot Program; and for the fourth fourth, within thirty-six (36) months after completion of the Pilot Program.

11. SCHEDULE FOR ACCESSIBILITY ENHANCEMENTS AT REMAINING EXISTING CORPORATE STORES AFTER COMPLETION OF PILOT PROGRAM

Conoco will divide the remaining Existing Corporate Stores into four approximately equal groups and will complete any Accessibility Enhancements identified as necessary by the Pilot Program for the first fourth within nine (9) months after completion of the Pilot Program; for the second fourth within eighteen (18) months after completion of the Pilot Program; for the third fourth, within twenty-seven (27) months after completion of the Pilot Program; and for the fourth fourth, within thirty-six (36) months after completion of the Pilot Program.

12. PERMITS

- 12.1 **Permit Requirement.** Conoco may be required to obtain building or other permits for some of the Accessibility Enhancements at both New and Existing Corporate Stores. Conoco will use its best efforts to obtain such permits, including drafting permit applications in good faith to enhance the possibility of approval.
- 12.2 **Conditioned Permit or Permit Denial.** If a Conditioned Permit is issued or a permit is denied outright, Conoco will notify Class Counsel of the conditions or denial so that Class Counsel may consider attempting to have the conditions modified or overturn the denial on behalf of the Class. Class Counsel shall initiate any action – including, but not limited to, consultation with building officials, administrative remedies, or court action -- to have the conditions modified or to overturn the denial within two months of receipt of notification by Conoco. Conoco will evaluate in good faith on a case-by-case basis what position it will take regarding Class Counsel’s pursuit of a permit, that is, whether to support, oppose, or remain neutral on the issue. Conoco will only oppose such permit if it can demonstrate that the action for which a permit is sought is a legitimate threat to human safety or the environment based on actual risks and not on mere speculation, stereotypes, or generalizations. Regardless of the position it takes, Conoco will not be responsible for Class Counsel’s fees in pursuing the permitting agency. If Class Counsel or any other individual succeeds in modifying a Conditioned Permit or in overturning the denial of a permit, Conoco will undertake the Accessibility Enhancement at issue within four months after receipt of the permit, subject to any remaining conditions in the permit as approved.

13. VERIFICATION AND MONITORING BY INDEPENDENT EXPERT AT REMAINING CORPORATE STORES OF COMPLIANCE WITH THIS CONSENT DECREE INCLUDING PILOT PROGRAM FINDINGS

- 13.1 **Random Sample.** The Independent Expert may inspect a random sample of the remaining Corporate Stores covered by this Consent Decree as follows, to determine compliance with the findings of the Pilot Program.
- 13.1.1 **Notification.** Within one month of completion of Accessibility Enhancements at each one-fourth of the remaining New and Existing Corporate Stores as provided in Paragraphs 8 and 9, Conoco will notify the Independent Expert and Class Counsel in writing of the Corporate Stores at which Enhancements have been completed.
- 13.1.2 **Provision of Data.** At the time of the notification referred to in Paragraph 13.1.1, Conoco will provide the Independent Expert and Class

Counsel with a copy of the Enhancement Report and any other supporting documentation for all Corporate Stores included in the notification.

13.1.3 Selection of Stores. The Independent Expert may select a random sample of up to ten percent (10%) of the Corporate Stores in each group, but in any event no less than two stores in each group, for inspection. In calculating the number of stores in each group to be inspected, any fractions will be rounded up to the next highest number.

13.1.4 Additional Inspections. If the Independent Expert should determine at any Corporate Store inspected pursuant to this Paragraph that 10% or more of the Major Accessibility Enhancements, or 25% or more of the Minor Accessibility Enhancements, required at that Store as a result of the Pilot Program either have not been done or have been done out of compliance with the Pilot Program (hereafter referred to as “Failed”), the Independent Expert will be allowed to inspect another five percent (5%), but no less than one, of the Corporate Stores in the group containing the Corporate Store that Failed.

13.1.5 Inspection of Subsequently Acquired Corporate Stores. In the remaining years of this Consent Decree, Conoco will provide a list once a year to the Independent Expert and to Class Counsel of all Subsequently Acquired Corporate Stores for which the deadline provided in Paragraph 19 for completing Accessibility Enhancements has fallen during that year. The list will be provided within two months of the close of Conoco’s fiscal year. The Independent Expert may inspect a random sample of up to 2% but not less than one of the Subsequently Acquired Corporate Stores on each annual list.

13.2 **Inspection Procedures**. The Independent Expert shall follow the procedures set out in this paragraph 13.2 and subparts in conducting inspections.

13.2.1 Date of Inspection. At least fourteen (14) days prior to initiation of inspections of the Corporate Stores in each group and on any list of Subsequently Acquired Corporate Stores, the Independent Expert shall provide Conoco with a list of the specific Corporate Stores to be inspected and the date on which each inspection will occur.

13.2.2 Timing of Inspections. The Independent Expert will complete all inspections for each group within six (6) months of receipt of the materials specified in Paragraph 13.1.2, and for Subsequently Acquired Corporate Stores, within six (6) months of receipt of the annual list of Subsequently Acquired Corporate Stores. Failure to inspect a selected Corporate Store within the time frame provided herein will constitute full acceptance of

that Corporate Store by the Named Plaintiffs, the Settlement Class, and Class Counsel.

13.2.3 Instructions to Independent Expert. The Parties agree to instruct the Independent Expert to evaluate compliance at New Corporate Stores in light of the provision of Standards § 3.2 and at Existing Corporate Stores in light of the acceptable measurements on Exhibit 4.

13.2.4 Inspection Findings. Within two months of expiration of the inspection time periods in Paragraph 13.2.2, the Independent Expert shall provide both Conoco and Class Counsel with specific written comments for any inspected Corporate Store where he deems one or more Accessibility Enhancements not to be in accord with the findings and recommendations of the Pilot Program. For those Corporate Stores deemed to be in accord, the Independent Expert will certify his conclusion in writing within the same time frame.

13.2.5 Response. Within three months after receipt of the Independent Expert inspection comments for each Survey Group, Conoco will respond in writing to the Independent Expert and to Class Counsel as to its position on each comment.

13.2.6 Disputes. Disputes concerning the reports of the Independent Expert or steps Conoco must take in response thereto will be subject to the Dispute Resolution Procedure set forth in Paragraph 21.

13.2.7 Opportunity to Reinspect. If any Accessibility Enhancement required by the Pilot Program to be made at the remaining Corporate Stores is found upon inspection by the Independent Expert not to have been done at a particular store, or to have been done out of compliance with the Pilot Program, and Conoco either agrees voluntarily to do or redo the Accessibility Enhancement or is ordered as a result of the Dispute Resolution process to do or redo the Accessibility Enhancement, the Independent Expert may reinspect the corrected work. Any reinspection will be conducted pursuant to this Paragraph 13.

13.3 **Costs for Inspections By Independent Expert**. Conoco agrees to pay the reasonable fees and expenses of the Independent Expert as follows:

13.3.1 The Independent Expert will be reimbursed a flat fee of \$1,000 per Corporate Store for each visit to the store required under this Consent Decree, including visits associated with the Pilot Program described in Paragraph 7 and visits associated with monitoring pursuant to Paragraph 13. For purposes of this subparagraph, “visit” shall encompass all work to be completed associated with that visit, including but not limited to time

spent traveling to and from the Independent Expert's home base in Seattle, Washington (or such other place as may be established during the term of this Consent Decree) and the location of the Corporate Store; all time spent surveying the Corporate Store; all time spent inspecting Accessibility Enhancements completed at the Corporate Store; and all time spent preparing and distributing reports for that Corporate Store).

13.3.2 The Independent Expert will be reimbursed for time spent speaking with Class Counsel and Conoco other than during his visits to Corporate Stores at his ordinary hourly rate.

13.3.3 The Independent Expert will be reimbursed for reasonable, documented expenses of travel, lodging and meals related to site surveys, inspections, and meet and confer sessions.

13.3.4 There shall not be any ex parte communication between the Independent Expert and any Party or counsel to any Party.

14. CONOCO'S SELF-VERIFICATION AND MONITORING OF COMPLIANCE

14.1 **Accessibility Maintenance Checklist.** Within three months of Final Approval, Conoco will develop a Periodic Accessibility Maintenance Checklist for use by store and quality assurance personnel at Corporate Stores to help assure compliance with the Consent Decree. Conoco will begin using the Periodic Accessibility Maintenance Checklist within one month after it is developed. Quality assurance personnel will use the Periodic Accessibility Maintenance Checklist during regular quality assurance inspections. The Periodic Accessibility Maintenance Checklist will also be included in appropriate Health, Safety and Environmental Manuals. The Periodic Accessibility Maintenance Checklist will include at least the items listed in Exhibit 8 hereto. Conoco will send a copy of the Periodic Accessibility Maintenance Checklist to Class Counsel within one month after it is developed and, if it is amended within the term of this Consent Decree, will send such amendments to Class Counsel within thirty (30) of the time they are made.

14.2 **Daily Checklist.** Within three months of Final Approval, Conoco will develop a Daily Accessibility Maintenance Checklist for use by store personnel at Corporate Stores to help assure maintenance of accessibility in terms of access into the store and access within the store. The Daily Accessibility Maintenance Checklist will include at least the items listed in Exhibit 9 hereto. Conoco will send a copy of the Daily Accessibility Maintenance Checklist to Class Counsel within one month after it is developed and, if it is amended within the term of this Consent Decree, will send such amendments to Class Counsel within one month of the time they are made.

- 14.3 **Mystery Shopper.** Within three (3) months of Final Approval, Conoco will include on the form used in its “Mystery Shopper” program (“Mystery Shopper Form”) items relating to accessibility that will be checked on each Mystery Shopper visit. The portion of the form relating to accessibility items will be provided to the Class Representatives to allow the Parties to evaluate trends and identify possible areas of concern for discussion.
- 14.3.1 Included Items. The portion of the Mystery Shopper Form relating to accessibility will address at least the items listed in Exhibit 10 hereto.
- 14.3.2 Submission of Form to Class Counsel. Conoco will send a copy of the Mystery Shopper Form to Class Counsel within one month after the accessibility items are added and, if it is amended within the term of this Consent Decree, will send such amendments to Class Counsel within one month of the time they are made.
- 14.3.3 Third Party Services. Conoco will encourage every third party service with which it contracts to provide Mystery Shopper services to use individuals with Mobility Disabilities who use wheelchairs or scooters for mobility as mystery shoppers, but Conoco shall not be responsible for ensuring that such individuals are used.
- 14.3.4 Change of Method. Should Conoco change the method by which it evaluates customer satisfaction, it will ensure that any such method addresses the items listed in Exhibit 10.
- 14.3.5 Provision of Data. Every six months during the term of this Consent Decree, Conoco will send to Class Counsel the results of its Mystery Shopper program that relate to accessibility items for the prior six months, including but not limited to copies of Mystery Shopper Forms completed during that period.
- 14.3.6 Response to Data. Every six months during the term of this Consent Decree, Conoco will send to Class Counsel the results of its Mystery Shopper program that relate to the items listed on Exhibit 10 hereto. If the Mystery Shopper forms for any six month period reflect accessibility concerns for persons with Mobility Disabilities that reflect non-compliance with a specific term of this Consent Decree, arising from similar circumstances at the same Corporate Store on three or more visits during that six month period, Class Counsel may notify Conoco in writing of any concerns within two months of receipt of the Forms. Conoco shall undertake whatever corrective action it deems reasonably appropriate in response to Class Counsel’s stated concerns. Conoco shall notify Class Counsel of the corrective action taken but Conoco shall not be required to reveal the name or other personal identifying information of any person or

persons involved in corrective action. If after corrective action by Conoco two or more subsequent Mystery Shopper Forms completed during the next six month period following corrective action, reflect accessibility concerns for persons with Mobility Disabilities of the same sort at the same location, where such concerns reflect non-compliance with a specific term of this Consent Decree, the matter may be submitted to Dispute Resolution as provided in Paragraph 21.

15. CUSTOMER COMMENT LINE AND COMMENT CARDS

- 15.1 **Post Sign.** Within three months of Final Approval of this Consent Decree, Conoco shall post at each Corporate Store, both inside and outside the store, a readily observable sign containing a toll free or local telephone number where customers may call to comment upon the accessibility features or services provided to persons with Mobility Disabilities at Corporate Stores. The sign shall be substantially in the form attached as Exhibit 11 to this Consent Decree and shall include reference to the availability of a Customer Comment Card.
- 15.2 **Customer Comment Card.** Within three months of Final Approval of this Consent Decree, Conoco shall send to all Corporate Stores Customer Comment Cards in substantially the form of Exhibit 12 hereto. Customer Comment Cards shall contain, on one-third of the reverse side, the address of the Conoco office or employee responsible for logging customer comments and shall be postage-prepaid for mailing to that address within the United States.
- 15.2.1 Card to Customer. All Corporate Stores shall provide a Comment Card to any customer who requests one. Conoco personnel shall provide assistance in filling out a Comment Card to any customer who requests it.
- 15.2.2 Cards to Conoco Personnel. Whenever Conoco receives a Customer Comment Card regarding accessibility features or service to persons with Mobility Disabilities at Corporate Stores, Conoco shall deliver the Comment Card to the appropriate Conoco personnel.
- 15.3 **Compliance Investigation.** Whenever Conoco receives a call on its toll-free Customer Comment Line or receives a Customer Comment Card regarding accessibility features or service to persons with Mobility Disabilities at Corporate Stores, it shall investigate the matter within one month of receipt of the call or the Comment Card. If Conoco's investigation indicates that the Corporate Store is out of compliance with this Consent Decree, Conoco will take such steps as are necessary to bring the Corporate Store into compliance with this Consent Decree within three months of determination of non-compliance. During the term of this Consent Decree, Conoco will record the nature and disposition of each call on its toll-free Customer Comment Line and Customer Comment Card regarding

accessibility features or service to persons with Mobility Disabilities at Corporate Stores.

- 15.4 **Customer Comment Information to Class Counsel.** Once every six months during the term of this Consent Decree, Conoco will provide to Class Counsel the records required by Paragraph 15.3. Personal identifying information of the customer making the call or filling out the card will be redacted from the records before production to Class Counsel (including name, address, telephone number, credit card number, and any other information from which the identify of the customer can be determined). If the customer comment information for any six month period reflect accessibility concerns for persons with Mobility Disabilities that reflect non-compliance with a specific term of this Consent Decree, arising from similar circumstances at the same Corporate Store on three or more occasions during that six month period, Class Counsel may notify Conoco in writing of any concerns within two months of receipt of the Forms. Conoco shall undertake whatever corrective action it deems reasonably appropriate in response to Class Counsel's stated concerns. Conoco shall notify Class Counsel of the corrective action taken in general terms (for example, Conoco shall not reveal the name or other personal identifying information of any person or persons involved in corrective action). If after corrective action by Conoco customer comment information during the next six month period following corrective action, reflects accessibility concerns for persons with Mobility Disabilities of the same sort at the same location, where such concerns reflect non-compliance with a specific term of this Consent Decree, the matter may be submitted to Dispute Resolution as provided in Paragraph 21.

16. POLICIES AND TRAINING

- 16.1 **Policies.** Within six months following Final Approval of this Consent Decree, Conoco will promulgate written policies regarding the provisions of Title III of the ADA and customer services at all Corporate Stores.
- 16.2 **Personnel.** Conoco shall train all personnel who work in or have managerial responsibility for a Corporate Store to follow the requirements of this Consent Decree and to treat customers with disabilities with respect and courtesy. The Class Representatives will receive information on the training such as the amount of training and how often it is provided. If Conoco engages an outside contractor to provide training such as contemplated in this paragraph, Conoco shall provide the name of the outside contractor to Class Counsel within one month of engagement. The Class Representatives will also be given an opportunity to review the training and provide feedback before it is initially implemented. Conoco will use its best efforts to incorporate the use of video materials in the training.

- 16.3 **Materials.** Conoco shall add to or amend any training materials, manual or publication in any medium to reflect the policies and training required by this Paragraph 16.
- 16.4 **Posted Signs.** Conoco will post a sign at each Corporate Store in the cage area encouraging continuing awareness by employees of accessibility issues.

17. MAINTENANCE OF ACCESS

Conoco shall maintain access to those Elements of New and Existing Corporate Stores that are covered by this Consent Decree and its Exhibits in accordance with 28 C.F.R. § 36.211(a) and subject to 28 C.F.R. § 36.211(b) and associated Commentary. 28 C.F.R. pt. 36, app. B.

18. NEW CONSTRUCTION AND ALTERATIONS

- 18.1 **New Construction.** Any Corporate Store that is built after Final Approval of this Consent Decree shall be built and maintained in compliance with 28 C.F.R. Part 36, including Appendix A, subject to conventional building industry tolerances for field conditions.
- 18.2 **Alterations.** All Alterations performed at Corporate Stores after the date of Final Approval of this Consent Decree shall comply with 28 C.F.R. §§ 36.402 and 403, subject to conventional building industry tolerances for field conditions and subject to the defense of Technical Infeasibility and any other defenses applicable to Alterations.
- 18.2.1 The Parties agree that any Alteration activity that would void the official certification of any prefabricated or modular building shall be considered Technically Infeasible, unless Conoco knowingly elects to make modifications that would void the certification.

19. SUBSEQUENTLY ACQUIRED STORES

- 19.1 **Post-January 1993 Stores.** Any Corporate Store acquired by Conoco after Final Approval of this Consent Decree that was designed and constructed for first occupancy on or after January 26, 1993 shall be in compliance with this Consent Decree within six (6) months of acquisition; provided, however, that if Conoco should acquire more than three stores in any one month period, the time period for bringing the acquired stores into compliance shall be extended by one month for every store in excess of three that is acquired.
- 19.2 **Pre-January 1993 Stores.** Any Corporate Store acquired by Conoco after Final Approval of this Consent Decree that was designed and constructed for first occupancy before January 26, 1993 shall be subject to the provisions of this Consent Decree that apply to Existing Corporate Stores and shall be in

compliance with this Consent Decree within twelve (12) months of acquisition; provided, however, that if Conoco should acquire more than three stores in any one month period, the time period for bringing the acquired stores into compliance shall be extended by one month for every store in excess of three that is acquired.

20. SUBSEQUENTLY RELINQUISHED STORES

Any Corporate Store that is sold or closed prior to the end of the term of this Consent Decree shall cease to be subject to the terms of this Consent Decree as of the date it becomes a Subsequently Relinquished Store. Nothing herein will prohibit Conoco from selling, closing or otherwise terminating operations at any location. Once a Corporate Store becomes a Subsequently Relinquished Store, the Releases contained in Paragraph 27 no longer apply to that Store, except to the extent that the Corporate Store has been brought into compliance with the Consent Decree prior to the date of relinquishment and is maintained in compliance by the subsequent owner therewith after the date of relinquishment. The Named Plaintiffs and the Settlement Class specifically agree that Conoco shall have no responsibility whatsoever for achieving or maintaining compliance at a Relinquished Store after the date of relinquishment.

21. DISPUTE RESOLUTION

Any dispute between the Named Plaintiffs or Class Counsel and Conoco that is subject to dispute resolution pursuant to the terms of this Consent Decree will be addressed as follows:

- 21.1 **Notice.** If Class Counsel or Conoco have reason to believe that a dispute exists, prompt written notice will be provided to the other Party.
- 21.2 **Confer.** Within one month after receipt of the notice, Class Counsel and Conoco will confer by telephone or in person and attempt to resolve the dispute.
- 21.3 **Mediation.** If the confer process does not occur or does not resolve the dispute, the matter may be referred by either Class Counsel or Conoco to mediation before a neutral third party mutually agreed to by Class Counsel and Conoco.
- 21.4 **Court.** If mediation does not occur or does not resolve the dispute, the matter may be submitted by either Class Counsel or Conoco to the U.S. District Court.

22. PAYMENT TO NAMED PLAINTIFFS

- 22.1 **Farrar-Kuhn.** In settlement of Farrar-Kuhn's claims under the CADA and in recognition of the contributions of Farrar-Kuhn toward compromise in this case, Conoco shall deliver to Class Counsel within five (5) business days after Final Approval of this Consent Decree a check in the amount of Eight Thousand Dollars and No Cents (\$8,000.00) made out to Julie Farrar-Kuhn. By making this payment Conoco does not waive its position that Farrar-Kuhn is entitled to no more than \$500 under the CADA.

22.2 **Lucas.** In settlement of Lucas's claims under the CADA and in recognition of the contributions of Lucas toward compromise in this case, Conoco shall deliver to Class Counsel within five (5) business days after Final Approval of this Consent Decree a check in the amount of Eight Thousand Dollars and No Cents (\$8,000.00) made out to Carrie Ann Lucas. By making this payment Conoco does not waive its position that Lucas is entitled to no more than \$500 under the CADA.

23. ATTORNEYS' FEES AND COSTS, OTHER THAN COSTS OF THE INDEPENDENT EXPERT

23.1 **Lump Sum.** Conoco shall pay Class Counsel One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00) on or before two months after Final Approval of the Consent Decree.

23.2 **Full Satisfaction.** Such payment will be in full and complete satisfaction of any and all claims for attorneys' fees, litigation expenses, including expert fees, and costs under federal or state law that the Named Plaintiffs, the Settlement Class, or Class Counsel have against Conoco in connection with this matter, with the exception of fees and costs described in Paragraph 23.3 below.

23.3 **Attorneys' Fees for Work Performed After Final Approval.** Subject to the Exceptions set forth in the subparagraphs below, Conoco will pay Class Counsel their reasonable attorneys, fees, litigation expenses and costs (including expert costs) incurred during the Dispute Resolution process set forth in Paragraph 21 of this Consent Decree. Conoco will be responsible for payment for the services of any third party mediator used under Paragraph 21.3.

23.3.1 **First Exception.** Conoco shall not be responsible for any of Class Counsel's attorneys' fees or costs in connection with any Dispute Resolution effort that proceeds to Step 3 (Court) and the Court rules in favor of Conoco on the dispute.

23.3.2 **Second Exception.** Named Plaintiffs and Class Counsel shall be jointly responsible for Conoco's attorneys' fees and costs in connection with any Dispute Resolution effort that proceeds to Step 3 (Court) and it is determined by the court upon motion by Conoco that Named Plaintiffs' position on the matter was frivolous, using the standard for frivolous claims found in *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 421-22 (1978).

23.4 **Payment of Fees Pursuant to Paragraph 23.3.** Conoco shall pay any fees due pursuant to Paragraph 23.3 within three months of receipt from Class Counsel of an invoice therefor, subject to Conoco's right to challenge in good faith, through Dispute Resolution, the reasonableness of the fees reflected on any invoice.

Conoco shall notify Class Counsel of any dispute it may have as to the reasonableness of fees claimed within one month of receipt of an invoice to enhance the likelihood that any dispute may be resolved within three months of initial receipt of the invoice.

- 23.5 **Full Satisfaction.** The payment described in Paragraph 23.3 shall be in satisfaction of any and all work of any nature performed by Class Counsel, and any and all costs incurred after Final Approval of this Consent Decree, other than expenses of the Independent Expert pursuant to Paragraphs 7 and 13.
- 23.6 **No Further Obligation.** Except as provided in this Paragraph 23, Conoco will not be responsible for any attorneys' fees, litigation expenses (including expert fees), and costs incurred by Class Counsel.

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

- 24.1 **Preliminary Fairness Hearing.** Within ten (10) days of execution of this Consent Decree, the Parties shall jointly request a Preliminary Fairness Hearing and shall jointly move for an order granting preliminary approval to this Consent Decree.
- 24.2 **Objections.** Any member of the Settlement Class may object to the proposed Consent Decree by filing, within two months after publication of the Notice, written objections with the Clerk of the Court. Only such objecting Class Members shall have the right, if they seek it in their objection, to present objections orally at the Fairness Hearing. Responses by Conoco and Class Counsel to any timely-filed objections shall be made within seventy-five (75) days after Preliminary Approval.
- 24.3 **Fairness Hearing.** Class Counsel and Conoco shall request that a Fairness Hearing take place three months after publication of the Notice, or as soon thereafter as the Court may set the hearing.

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

- 25.1 **Post Notice.** Conoco shall post the Notice attached as Exhibit 13, at its own expense, at each of the following locations at each Corporate Store that has such a location within one month after Preliminary Approval of this Consent Decree, such notice to remain posted until the date of the Fairness Hearing.
- 25.1.1 Interior Cash Counter. As close as possible to an interior cash counter, facing toward the customer;
- 25.1.2 Exterior Cash Counter. As close as possible to an exterior cash counter, facing toward the customer;

25.1.3 Restroom. In a place visible to customers entering either the men's or the women's restroom, or the unisex restroom if only one restroom is provided.

25.1.4 Fuel Dispenser Island. On each fuel dispenser island in a place visible to individuals using fuel dispensers.

25.2 **Publish Notice.** Conoco shall place the Notice, at its own expense, in the following newspapers: the Houston Chronicle, the Kansas City Star, the Deseret News (Salt Lake City), Daily Oklahoman, and the Denver Post. Said notice shall be published once in each newspaper and shall be at least one-eighth of a page in size. The notice shall appear within fifteen (15) days after Preliminary Approval of the Consent Decree. Conoco shall notify Class Counsel of the day on which the Notice shall appear pursuant to this Paragraph and will send to Class Counsel a copy of the Notice as published.

25.3 **Mail Notice.** Within fifteen (15) days of Preliminary Approval, Class Counsel shall, at Conoco's expense, mail the Notice to the organizations listed in Exhibit 14.

26. JUDGMENT, FINAL APPROVAL AND DISMISSAL

26.1 **Request for Final Judgment and Final Approval.** At the time of the Fairness Hearing, Conoco and Class Counsel shall jointly request that the Court enter a Final Judgment and Order granting Final Approval of this Consent Decree.

26.2 **Dismissal with Prejudice.** This action shall be dismissed with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure, no later than one month following the expiration of the Term of this Consent Decree.

27. RELEASES

27.1 **Release of Federal Claims.** Effective on the date of Final Approval, Named Plaintiffs, on behalf of themselves and all members of the Settlement Class and their executors, successors, heirs, assigns, agents and representatives, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, unconditionally and forever do fully and finally release, acquit and discharge Conoco and its parent and subsidiary corporations and each of their present, former or future officers, directors, and shareholders and successors and assigns from the Released Federal Claims as defined in Paragraph 27.2 below.

27.2 **Released Federal Claims.** The "Released Federal Claims" are any and all past or present claims, rights, demands, charges, complaints, actions, causes of action, and liabilities of any kind, except as expressly excluded pursuant to Paragraph 29 hereof, by Named Plaintiffs or the members of the Settlement Class, including any and all such past or present claims for injunctive relief, declaratory relief, fees

or damages that are based upon the ADA that specifically relate to the accessibility for persons with Mobility Disabilities at Conoco Corporate Stores:

- 27.3 **Release of Colorado Claims.** Effective on the date of Final Approval, Named Plaintiffs, on behalf of themselves and their executors, successors, heirs, assigns, agents and representatives, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, unconditionally and forever do fully and finally release, acquit and discharge Conoco and its parent and subsidiary corporations and each of their present, former or future officers, directors, and shareholders and successors and assigns from the Released Colorado Claims as defined in Paragraph 27.4 below.
- 27.4 **Released Colorado Claims.** The “Released Colorado Claims” are any and all past or present claims, rights, demands, charges, complaints, actions, causes of action, and liabilities of any kind except as expressly excluded pursuant to Paragraph 28 hereof, by Named Plaintiffs including any and all such past or present claims for injunctive relief, declaratory relief, fees or damages that are based upon the public accommodations provisions of the CADA that specifically relate to the accessibility for persons with Mobility Disabilities at Conoco Corporate Stores:

28. CLAIMS NOT RELEASED

- 28.1 **Claims Not Released.** The Released Federal Claims and Released Colorado Claims as set forth in Paragraph 27 of this Consent Decree do not include any past or present claims of any type or nature under the ADA or the CADA against Conoco relating to Marketer Stores and/or against Marketers or any entity that owns, operates, leases or leases to a Marketer Store.
- 28.2 **Exclusions.** The Released Federal Claims and Released Colorado Claims as set forth in Paragraph 27 of this Consent Decree do not include or extend to any claims under the ADA or the CADA relating to access for or usability by persons with disabilities other than Mobility Disabilities.
- 28.3 **Future Claims.** The Released Federal Claims and Released Colorado Claims as set forth in Paragraph 27 of this Consent Decree do not include or extend to any future claims that arise from incidents and/or conduct that occurs after Final Approval of the Consent Decree. Subject to the foregoing, no Settlement Class member may bring a future claim under the ADA for acts or omissions or physical conditions that are required by or consistent with the terms of this Consent Decree.
- 28.4 **Subsequently Relinquished Stores.** The Released Federal Claims and Released Colorado Claims as set forth in Paragraph 27 of this Consent Decree do not include or extend to any Subsequently Relinquished Store after such time as it

ceases to be a Corporate Store to the extent that the Subsequently Relinquished Corporate Store has not complied with this Consent Decree as of the date of relinquishment.

28.5 **Settlement Class CADA Claims.** With the exception of the Named Plaintiffs themselves, the Settlement Class does not release any claims under the CADA or any other state law relating to discrimination on the basis of disability.

28.6 **Effect of Merger.** The Named Plaintiffs and the Settlement Class specifically do not release any claims regarding those stores identified in Paragraph 1.36 that are subject to any merger between Conoco and Phillips Petroleum Company.

29. COMMUNICATIONS TO CONOCO AND CLASS COUNSEL

All notices or communications required by this Consent Decree shall be in writing by facsimile and U.S. Mail or overnight delivery service addressed as follows:

29.1 To Counsel for Named Plaintiff and the Settlement Class.

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

with a copy to:

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

29.2 To Conoco.

P. Kathleen Lower, Esq.
Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 - 17th Street
Suite 1600
Denver, CO 80202

with a copy to:

Margret L. Sonnier, Esq.
Counsel
Conoco Inc.
600 N. Dairy Ashford
Suite ML-2110
P.O. Box 4783
Houston, TX 77079

30. MODIFICATION

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

31. SEVERABILITY

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

32. EXECUTION IN COUNTERPARTS

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

33. DUTY TO SUPPORT AND DEFEND DECREE

Named Plaintiffs, Class Counsel and Conoco each agree to abide by all of the terms of this Decree in good faith and to support it fully, and shall use their best efforts to defend this Decree from any legal challenge, whether by appeal or collateral attack.

34. ENTIRE AGREEMENT

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

Respectfully submitted,

Julie Farrar-Kuhn

Date: _____

Carrie Ann Lucas

Date: _____

APPROVED AS TO FORM:
FOX & ROBERTSON, P.C.

Amy F. Robertson

COLORADO CROSS-DISABILITY
COALITION

Kevin W. Williams

Counsel for Named Plaintiffs and the
Settlement Class

CONOCO INC.

By: _____
Its: Manager of Branded Marketing
Date: _____

APPROVED AS TO FORM:
OTTEN, JOHNSON, ROBINSON
NEFF & RAGONETTI, P.C.

P. Kathleen Lower

CONOCO INC.

Margret L. Sonnier

Counsel for Conoco Inc.