

**SETTLEMENT AGREEMENT UNDER THE AMERICANS WITH DISABILITIES ACT
BY THE UNITED STATES OF AMERICA AND THE SPA FITNESS CENTER, INC.**

COMPLAINT DJ 202-55-12

Background

1. This matter was initiated on November 24, 1992, by a complaint filed with the United States Department of Justice against The Spa Fitness Center, Inc. ("Respondent"), owner of a health club facility located at 752 4th Street, S.W., Hickory, North Carolina 28601. The complaint was investigated by the Public Access Section of the Civil Rights Division of the United States Department of Justice (the "Department"), under the authority granted by section 308(b) of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12188. The complaint included allegations that Respondent refused to allow a person who uses a wheelchair to use the facility's pool, sauna, steam room, and showers. The Department subsequently expanded its investigation to include the design, construction, and operations of The Life Enhancement Center (the "Center"), a recently designed and constructed health club, owned and operated by Respondent, and which is located at 920 2nd Avenue, N.W., Hickory, North Carolina 28601.

Intention of the Parties to Effect Settlement

2. The parties to this agreement are the United States of America and Respondent.

3. In order to avoid costly litigation, the parties hereby agree as follows:

Jurisdiction

4. Title III of the ADA applies to Respondent, because it owns and operates a place of public accommodation and is, therefore, a public accommodation as defined in section 301(7) of the ADA and section 36.104 of the regulation promulgated under title III of the ADA (the "Regulation"). 28. C.F.R. § 36.104.

5. The subjects of this settlement agreement are: (a) the elimination of eligibility criteria (section 302(b)(2)(A)(i) of the ADA and section 36.301 of the Regulation); (b) the modification of policies, practices, or procedures (section 302(b)(2)(A)(ii) of the ADA and section 36.302 of the Regulation); and the new construction of a place of public accommodation (section 303(a) of the ADA, section 36.401 of the Regulation, and the ADA Standards for Accessible Design ("Standards"), Appendix A to the Regulation).

Statement of Facts

6. Respondent is incorporated under the laws of the State of North Carolina and is wholly owned by James Stewart and Byron Yarbrough.

7. From 1980 continuously through November 1993, Respondent owned and operated a health club called The Spa Fitness Center ("The Spa"), at leased space located at 752 4th Street, S.W., Hickory, North Carolina.

8. In March 1992, Respondent banned an individual who uses a wheelchair for mobility from The Spa's pool, jacuzzi, steam room, sauna, and showers.

9. In November 1992, Respondent began to design the Center. Respondent's last application for building permit or permit extension for the Center was certified to be complete by the City of Hickory in March 1993, and the first certificate of occupancy for the Center was issued on December 8, 1993. Therefore Respondent's design and construction of the Center are subject to the requirements for new construction under section 303 of the ADA and section 36.401 of the Regulation.

10. Respondent began construction of the Center in September 1993.

11. In November 1993, Respondent's ended its lease and operation of the Spa and first opened the Center for business.

12. The Center consists of exercise rooms, a pool, jacuzzi, sauna, steam room, nursery, lounge, dressing/locker rooms, restrooms and showers. Certain areas of the Center were not constructed in accordance with the ADA Standards for new construction.

13. When the Center opened, Respondent continued to ban the same individual, referred to in paragraph 8 of this agreement, who had been banned from the Spa's pool, jacuzzi, sauna, steam room, and showers, from those areas in the Center.

14. In December 1993, Respondent began to allow the individual referred to in paragraphs 8 and 13 of this agreement into the pool, jacuzzi, sauna, steam room, and showers, but required that individual to wear a helmet and a life jacket in the pool, and a helmet at all times while he was in the Center, unless he remained in his wheelchair. Respondent did not place these requirements on any other members of the Center.

15. The parties agree that the policies currently or previously used by Respondent, as described in paragraphs 8, 13, and 14 of this agreement, violate title III of the ADA, because those policies impose eligibility criteria that tend to screen out persons with disabilities from Respondent's goods, services, facilities, privileges, advantages, or accommodations, and because those

policies were not and are not necessary to the provision of those goods, services, facilities, privileges, advantages, or accommodations, in violation of section 302(b)(2)(A)(i) of the ADA and section 36.301 of the Regulation.

16. The parties agree that Respondent's failure to reasonably modify the policies listed in paragraph 8, 13, and 14 of this agreement also violates section 302(b)(2)(A)(ii) of the ADA and 36.302 of the Regulation, because reasonable modification of those policies is necessary for individuals with disabilities to be afforded Respondent's goods, services, facilities, privileges, advantages, or accommodations, and because the reasonable modifications of those policies would not fundamentally alter the nature of Respondent's goods, services, facilities, privileges, advantages, or accommodations. The parties also agree that the modifications Respondent will undertake pursuant to paragraphs 19 and 20 of this agreement are reasonable.

17. The parties agree that none of the architectural modifications described in paragraph 18 of this agreement are structurally impracticable for Respondent to perform.

Actions to be Taken by Respondent

18. Respondent agrees to make all of the following architectural modifications by June 15, 1994:

- a. Respondent agrees to replace the doorknobs on both sides of the door to the nursery and both sides of the door to the nursery restroom with lever-type accessible hardware that complies with section 4.13.9 of the Standards.
- b. In the nursery restroom:
 - 1) Respondent agrees to install grab bars that comply with all relevant aspects of the Standards, including sections 4.16.4 and 4.26 and Figures 29 and 39 of the Standards;
 - 2) Respondent agrees to re-mount the mirror so that the bottom edge of the reflecting surface is no higher than 40 inches above the finish floor, in accordance with Figure 31 and section 4.19.6 of the Standards;
 - 3) Respondent agrees to remove the vanity from under the lavatory to provide knee clearance that complies with section 4.19.2 and Figure 31 of the Standards;

- 4) Respondent agrees to insulate any pipes exposed as a result of the removal of the vanity, described in paragraph 3), above, in accordance with section 4.19.4 of the Standards.
- c. Respondent agrees to install a water fountain or water cooler accessible to persons who have trouble bending or stooping, in compliance with sections 4.1.3(10)(a), 4.15.3, and 4.15.4 of the Standards.
- d. Respondent agrees to modify one shower stall in the men's dressing/shower room and one shower stall in the women's dressing/shower room to be accessible, in accordance with section 4.21 of the Standards. This may be accomplished by installing shower curtains or other privacy screens at the free-standing "express showers" in the men's and women's shower rooms.
- e. Respondent agrees to modify at least one stall in each restroom to comply with the requirements for standard accessible stalls in accordance with section 4.17 and Figure 30(a) of the Standards.
- f. Respondent agrees to lower at least one lavatory in each restroom, so that the rim or counter surface is mounted no higher than 34 inches above the finish floor, in accordance with the Standards section 4.19.
- g. If Respondent continues to provide private dressing areas, Respondent agrees to modify at least one private dressing area in the men's dressing/locker room and one private dressing area in the women's dressing/locker room, to meet the clear floor space and all other relevant requirements of the Standards section 4.35.

19. Respondent agrees to eliminate any unnecessary eligibility criteria and modify its policies in the following ways:

- a. Respondent will permit persons with disabilities, including persons who use wheelchairs, to use all areas of the facility open to members, including the pool, jacuzzi, sauna, steam room, and showers;
- b. Respondent will not require persons with disabilities, including persons who use wheelchairs, to use any additional apparel or equipment such as helmets, life vests, etc., that are not required to be used by persons without disabilities, nor will Respondent require any person with a disability to

remain in a wheelchair while using Respondent's facilities.

20. The changes in policy described in paragraph 19 of this agreement shall be effected immediately upon execution of this agreement.

21. Respondent may require all members to sign a release of liability that has been approved by the Department. Respondent may not limit this release requirement or any of its provisions to persons with disabilities, nor may it in any other way discriminate on the basis of disability in utilizing such releases.

Implementation and Enforcement of the Settlement Agreement

22. The Department is authorized, pursuant to section 308(b)(1)(B) of the Act, 42 U.S.C. § 12188(b)(1)(B), to bring a civil action enforcing the ADA in any situation where a pattern or practice of discrimination is believed to exist or a matter of general public importance is raised. In consideration of the terms of this agreement set forth above, the Department agrees to refrain from further investigation of this matter.

23. In the event that Respondent fails to comply in a timely fashion with any requirement of this agreement, all terms of this agreement shall become enforceable in Federal district court, and the Department is authorized to seek civil penalties for any violation of this agreement, pursuant to 42 U.S.C. § 12188(b)(2)(C).

24. Failure by the Department to enforce this entire agreement with regard to any deadline herein shall not be construed as a waiver of its right to do so with regard to future deadlines and provisions of this agreement.

25. The Department may review compliance with this agreement at any time. If the Department believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in Federal district court.

26. This document is a public agreement. A copy of this document or any information contained herein may be made available to any person. Respondent or the Department shall provide a copy of this agreement to any person upon request.

27. This agreement shall become effective as of the date of the last signature below. This agreement shall be binding on all of Respondent's successors in interest, and Respondent has a duty to so notify all such successors in interest.

28. This agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party

or agents of either party, that is not contained in this written agreement or the attached plans, shall be enforceable. This agreement is limited to the facts set forth herein and it does not purport to remedy any other potential violations of the ADA or any other Federal law. This agreement does not affect Respondent's continuing responsibility to comply with all aspects of the ADA.

29. A signor of this document in a representative capacity for a partnership, corporation, or other such entity, represents that he or she is authorized to bind such partnership, corporation or other entity to this agreement.

For The Spa Fitness Center,
Inc:

For the United States:

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