I. INTRODUCTION

The United States brings this action to enforce the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619 ("FHA" or "the Act"). The uncontested facts in this case demonstrate that Shanrie Company, Inc., Dan Sheils (the "Shanrie Defendants"), Netemeyer Engineering Associates ("Netemeyer"), and Thouvenot Wade & Moerchen, Inc. ("TWM"), (collectively "Defendants"), failed to design and construct Applegate Apartments ("Applegate") in Swansea, Illinois so as to be accessible to persons with disabilities,[1] as required by the Act. 42 U.S.C. § 3604(f)(3)(C). Accordingly, the United States should be granted summary judgment against all Defendants as to liability, and Defendants should be ordered to promptly submit a remedial plan to cure the violations.[2]

II. FACTS

A. The Initial Design and Construction of Applegate Apartments

Defendants began designing and constructing Applegate in Swansea, Illinois in 2001. 2/2/06 Sheils Dep. at 55-56, 60-61, 80 (Exh. 1) . Defendant Shanrie built Applegate and has owned the property since construction began. Shanrie Answer ¶ 7 (Document 14). Dan Sheils, Shanrie's president, has been personally responsible for directing all aspects of the design and construction of Applegate. See, e.g., Exh. 1 at 63-67, 117-25, 132-34, 139-50, 169. TWM was the site engineer for Applegate and prepared site plans for the project. Exh. 1 at 61-67; 2/7/06

[1]Although the Act refers to the protected class as persons with "handicaps," the term "disabilities" is synonymous and generally preferred. See Bragdon v. Abbott, 524 U.S. 624, 631 (1998).

[2]The United States' damages claims will be tried to a jury.

Maller Dep. at 38-84 (Exh. 2); Hecker Decl. at ¶¶ 23-26 (Exh. 3). Netemeyer prepared architectural plans for Applegate. 2/3/06 Netemeyer Dep. at 59-70 (Exh. 4); Exh. 1 at 150-72; Exh 3 at ¶¶ 23, 27-30.

Throughout the initial design of Applegate, Sheils consistently was advised to make Applegate accessible to persons with disabilities. Specifically, on or about October 26, 2001, Netemeyer submitted design plans for Sheils' review that provided for handicap accessible ramps leading to the ground floor units. Exh. 1 at 139-146; Exh. 4 at 58-70. Theresa Rutz, the draftsperson who prepared the design plans, testified that she had included the ramps because she determined that they were required by federal law. 3/28/06 Rutz Dep. at 24-31 (Exh. 5). Sheils, however, directed Netemeyer to remove the ramps and Netemeyer revised the plans to indicate that the "site plan [was] to provide accessible route to 2% of units for rear entry (but not less than 1) - by others" for submission to the Village of Swansea. Exh. 4 at 58-70 and Submission to the Village of Swansea (Exh 6) at TWM0045. Once TWM obtained a copy of the architectural plans sealed by Netemeyer, TWM objected to the lack of accessible routes for persons with disabilities. 2/6/06 Joost Dep. at 66-74 (Exh. 7). The Shanrie Defendants claimed that they would provide access around the back of the building through the back patio if someone needed it.[3] Exh. 7 at 66-68, 86-88, 93-98. Defendant TWM objected to this plan, saying it believed federal law required that there be an accessible route to the front doors and prepared a contemporaneous memo documenting its concerns. Exh. 7 at 69-74, 86-88; see also 11/5/01 Memo (Exh. 8). Yet when Sheils insisted on proceeding without the ramp, TWM

[3]The Shanrie Defendants have never done so however, and Mr. Sheils now states that doing so "would look terrible." Exh. 1 at 205-06.

acquiesced and included a note on the site plans indicating that the buildings would be constructed to allow for the addition of accessible ramps to the rear of the ground floor units on request of prospective tenants with a disability.[4] Exh. 7 at 91-99. TWM then presented the plans, including the site plans it had prepared and the architectural plans that Netemeyer had sealed, for approval to the Village. Exh. 7 at 63-65, 86-91 and Exh. 6.

Construction on the first building was completed in the fall of 2002 and the certificate of occupancy was issued in October 2002. Exh. 1 at 199-01. As of September 30, 2004, Applegate consisted of five apartment buildings with 20 ground floor units. Exh. 1 at 193-94, 202-03. None of those units had accessible entries; all required a person to descend steps to get into the apartments. Exh. 1 at 158-59. Building 6 was completed in the fall of 2005. Exh. 1 at 60, 202-03. Building 7 is under construction. Exh. 1 at 60, 201-02. Defendants state that they intend to build an eighth building at the complex but construction of that building has not yet begun. Exh.

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[4]The site plans indicate:

> ADA ACCESSIBILITY NOTE
>
> Sufficient clearance shall be retained between buildings to allow for the possible construction of a handicapped accessible ramp at a future date. Any subsurface utilities installed between buildings shall allow for possible excavation for the construction of a sidewalk ramp between said buildings. The Illinois Accessibility Code requires that a minimum number of dwelling units be adaptable to those with disabilities. Should an initial applicant be handicapped and desire to lease one of these units, it must be made accessible to them. The architect and the owner have indicated that the accessible route to any such unit shall be by sidewalk ramp, at grade, to the rear door of the unit. In order to do so, if a ramp is required, it would be constructed between two adjoining buildings, thereby allowing the potential for accessibility to the rear of both. Said ramp shall be designed at that time in accordance with the Federal and State laws, and grades adjusted accordingly.

Exh. 6 at TWM0032.

1 at 60.

B. The HUD Complaint

On September 29, 2004, Metropolitan St. Louis Equal Housing Opportunity Council ("EHOC") filed a complaint with the Department of Housing and Urban Development ("HUD") alleging that the design and construction of Applegate Apartments violated the Fair Housing Act. Mr. Sheils received notice of the complaint in approximately October 2004. Exh. 1 at 220-21. Thereafter, Sheils modified building 6, then under construction, to provide a ramp to the ground floor units. Exh. 1 at 174-75. That building was completed and occupied in 2005. Exh. 1 at 60, 202-03. Sheils did not create an accessible route to buildings one through five. Exh. 1 at 158-59, 174-75.

C. Site Impracticability Analyses

Prior to beginning construction, Defendants substantially regraded and flattened the Applegate site. Hilberry Decl. at ¶ 22 (Exh. 9). They then dug a trench in order to sink the ground floor below the parking lot grade. Exh. 9 at ¶ 22. Defendants admit that they never considered whether the site was impracticable during the design of the complex in 2001 or during the construction of the first five buildings. Exh. 1 at 226. However, in the fall of 2004, after being informed of EHOC's HUD complaint, Mr. Sheils contacted Ms. Maller, the TWM site engineer for Applegate and requested that she examine the site plans that she had prepared three years before to determine whether Applegate might be partially exempt from the design and construction requirements because of site impracticality. Exh. 1 at 220-35; Exh. 2 at 105-17. Ms. Maller told Mr. Sheils that she did not believe such an analysis would make any difference because he had already regraded the site and made an accessible route practical. Exh. 2 at 116-

17. Nevertheless, she prepared what she termed a "handicap exhibit" that she added to Sheet 3 of TWM's previously existing site plans in which she included a note stating that 74 percent of the preexisting site had been sloped at greater than 10 percent and that therefore at least 26 percent of the ground floor units had to be accessible. Exh. 2 at 110-17. There was no information on Sheet 3 showing how Ms. Maller had made those calculations.

Ms. Maller testified later, however, that her calculations on sheet 3 regarding the percentage of buildable area that was sloped greater than 10 percent were not correct. Exh. 2 at 113-15; 3/29/06 Maller Dep. at 23-28 (Exh. 10). She further testified that because Mr. Sheils had already regraded the site, she did not think the site impracticability defense was applicable. Exh. 2 at 116-17. She also testified that in her opinion, TWM's plans were not in compliance with the FHA. Exh. 2 at 138. On March 23, 2006, she submitted a new analysis in which she concluded that at least 37.36% of the ground floor units (or 12 total units) at Applegate had to be accessible. When questioned about certain assumptions, however, she admitted that she did not know if her analysis was correct. Exh. 10 at 64-67, 95-97.

III. ARGUMENT

A. Summary Judgment Standard

Summary judgment *must* be granted where the evidence of record shows "that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Summary judgment "is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1). Where, as here,

uncontested evidence shows that defendants failed to comply with the design and construction requirements of the Act, courts have not hesitated to grant summary judgment for plaintiffs on liability.[5] This Court should do the same.

B. The Act's Design and Construction Requirements for Persons with Disabilities

In 1988, Congress amended the Fair Housing Act to require that certain units in multifamily dwellings (e.g., condominiums and apartments) built for use and occupancy after March 13, 1991 contain basic features of accessibility for persons with disabilities. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988), codified at 42 U.S.C. §§ 3601-3619. Specifically, the Act prohibits discrimination on the basis of disability by making the following unlawful:

> To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap. . . [or]
>
> To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap. . . .

42 U.S.C. §§ 3604(f)(1) & (2).

The Act defines such discrimination to include the following:

> (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of

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[5]See, e.g., Memphis Center for Indep. Living & United States v. Richard & Milton Grant Co., No., 01-2069, slip. op. (W.D. Tenn. April 27, 2004) ("Grant I") (Exh. 11); United States v. Hallmark Homes, Inc., No. 01-432, 2003 WL 23219807 at **7-8 (D. Idaho Sept. 29, 2003); United States v. Quality Built Constr., Inc., 309 F. Supp. 2d 756, 767 and 309 F. Supp. 2d 767, 779 (E.D.N.C. 2003); United States v. Taigen & Sons, Inc., 303 F. Supp. 2d 1129, 1134-35 (D. Idaho 2003); Montana Fair Hous., Inc. v. American Capital Dev., Inc. 81 F. Supp. 2d 1057, 1069 (D. Mont. 1999); Baltimore Neighborhoods, Inc. v. Rommel Builders, Inc. 40 F. Supp. 2d 700, 713-14 (D. Md. 1999); Baltimore Neighborhoods, Inc. v. Sterling Homes Corp., No. 96-915, 1999 WL 1068458 at *8 (D. Md. March 25, 1999).

> enactment of the Fair Housing Amendments Act of 1988 [i.e. March 13, 1991], a failure to design and construct those dwelling[s] in such a manner that --
>
> (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
>
> (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
>
> (iii) all premises within such dwellings contain the following features of adaptive design:
>
> (I) an accessible route into and through the dwelling;
>
> (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
>
> (III) reinforcements in bathroom walls to allow later installation of grab bars; and
>
> (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

42 U.S.C. § 3604(f)(3)(C). The House Judiciary Committee explained that these accessibility requirements were "essential for equal access and to avoid future de facto exclusion of persons with handicaps." H.R. Rep. No. 711, 100th Cong., 2d Sess., "House Report" at 2188. As the Committee noted:

> [P]ersons with mobility impairments need to be able to get into and around a dwelling unit (or else they are in effect excluded because of their handicap) . . . .
>
> . . .
>
> A person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and by too narrow doorways as by a posted sign saying "No Handicapped People Allowed."

Id. at 2179, 2186.

At the time that Congress passed the Act, the American National Standards Institute (ANSI),[6] had published a series of detailed, peer-reviewed standards for ensuring that dwellings were accessible to people with disabilities. See "American National Standard for Buildings and

[6]ANSI is a private, non-profit organization, founded in 1918, that promotes and facilitates the development of voluntary standards in a variety of fields and industries. See www.ANSI.org.

Facilities – Providing Accessibility and Usability for Physically Handicapped People," ANSI A117.1 (1986) (Exh. 12). The Act references these standards and makes compliance with them a safe harbor for compliance with the Act:

> Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

42 U.S.C. § 3604(f)(4); see also 56 Fed. Reg. 9472, 9473 (Mar. 6, 1991).

In addition, the Act authorizes the Secretary of HUD to provide technical assistance to implement the Act's accessibility requirements. 42 U.S.C. § 3604(f)(5)(C). Pursuant to this authority, HUD has issued the Fair Housing Accessibility Guidelines ("Guidelines"), published in 56 Fed. Reg. at 9472-9515 (Mar. 6, 1991) (Exh. 13). The Guidelines "provide technical guidance on designing dwelling units as required by the Fair Housing Amendments Act of 1988." Id. at 9499. The Guidelines were issued after notice and comment, and were developed in consultation with builders, architects, industry representatives, and accessibility experts. Id. at 9475. HUD has also issued explanatory questions and answers about the Guidelines. 24 C.F.R. ch. I, subch. A, app. IV. Further, in August 1996, HUD published the Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of the Fair Housing Act ("Design Manual"). The Design Manual was revised in April 1998. The technical specifications set forth in the Guidelines and Design Manual are generally more lenient and provide for a lesser degree of accessibility than the ANSI requirements. See Exh. 3 at ¶ 6.

While HUD has not made any one accessibility standard mandatory, it has made clear that the Guidelines are intended to describe "minimum standards of compliance with the specific accessibility requirements of the Act." 56 Fed. Reg. at 9476. Accordingly, if an architect or a

builder does not comply with either the more stringent ANSI standards or the Guidelines, he or she must "seek alternative ways to demonstrate that they have met the requirements of" the Act. 56 Fed. Reg. at 9499; see also 65 Fed. Reg. 15740, 15756-57 (March 23, 2000) ("The respondents to the complaint have an opportunity to demonstrate that the requirements of the Act have been met even if the standards in the Guidelines, the Design Manual, or ANSI A.117.1-1986 have not been met."); see also Memphis Center for Indep. Living & United States v. Richard & Milton Grant Co., No. 01-2069, slip op. at 7 (W.D. Tenn. June 29, 2004) ("Grant II") (Exh. 14) ("If a construction feature does not comply with the Guidelines, then the housing provider defending an FHA violation has the burden of showing that the feature is nonetheless accessible.") (citation omitted).

Here, the undisputed evidence shows that Applegate does not comply with ANSI or the Guidelines and the Defendants cannot point to any other accessibility standards with which it complies. Therefore, Applegate violates the Act.

C. The Act's Accessibility Requirements Cover the Dwellings at Applegate

As discussed above, the accessibility requirements of the Act apply to "covered multifamily dwellings [designed and constructed] for first occupancy" after March 13, 1991. 42 U.S.C. § 3604(f)(3)(C). The term "covered multifamily dwellings" is defined as (a) buildings consisting of 4 or more units if such buildings have one or more elevators; and (b) ground floor units in other buildings consisting of 4 or more units. 42 U.S.C. §3604(f)(7); see also 24 C.F.R. 100.205(d). Applegate is currently comprised of six non-elevator three-story buildings, with each building containing twelve units. Therefore the 24 ground-floor units of these six buildings are "covered multifamily dwellings" as defined by the Act. In addition, two other buildings are planned for the first phase of the development, one of which is under construction, and these eight ground floor units will also be "covered multifamily dwellings."

Furthermore, Defendants admit that all of Applegate was designed and constructed for first occupancy after March 13, 1991. Exh. 1 at 55-56, 60-61, 80-81. Therefore, it is undisputed that the public and common use areas as well as the covered multifamily dwellings – i.e., the ground floor units in each of the buildings at Applegate – are subject to the accessibility requirements of the Act.

D. Applegate Was Not Designed and Constructed in Compliance with the Act

1. The Public and Common Use Areas Are Not Readily Accessible To and Usable By Persons With Disabilities

The Act defines discrimination to include "a failure to design and construct [covered dwellings] in such a manner that . . . the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons." 42 U.S.C. § 3604(f)(3)(C)(i); 24 C.F.R. § 100.205(c)(1). The Guidelines reference specific portions of ANSI A117.1 (1986) that should be followed to make the public and common use areas readily accessible to and usable by persons with disabilities. Guidelines, 56 Fed. Reg. at 9505. However, as discussed below, the public and common use areas at Applegate are not accessible to and usable by persons with disabilities. Exh. 3 at ¶¶ 13, 19; Exh. 9 at ¶¶ 11-18.

a. There Are No Lack of Accessible Routes to the Ground Floor Breeze Ways[7] and Unit Entrances

The ground floor units at each Applegate building share a common breeze way leading to all four of the covered units in that building. This breeze way is a common and public use area and must be accessible. Guidelines, 56 Fed. Reg. at 9504-05; United States v. Edward Rose &

[7]The breeze ways at Appleate are open-air hallways that lead to the front doors of each of the four covered ground floor units at each building. The breeze ways can only be accessed by stairs at the first five buildings.

Sons, 384 F.3d 258, 261-63 (6th Cir. 2004). The breeze ways at the first five buildings are not accessible, however, because the only way to reach the breeze way is by a flight of stairs. Exh. 1 at 158-59; Exh. 3 at ¶ 13. There is a ramp to the breeze way at building 6. However, the bottom portion of that ramp slopes at 10.8%, above the maximum 8.3% slope permitted by the Guidelines and ANSI, making the common use area at building 6 inaccessible also. Guidelines, 56 Fed. Reg. at 9504-05; ANSI A117.1 (1986) 4.8; Exh. 1 at 178-80; Exh. 3 at ¶ 19; 3/10/06 Wales Dep. at 133-34 (Exh. 15). In addition, the route to the breeze way from the only accessible parking space is inaccessible because the walkway leading from the accessible parking space to the entrance at building 5 has a running slope of 12.9%, far in excess of the 5% maximum running slope allowed by ANSI A117.1 (1986) 4.3.7.[8] Exh. 9 at ¶ 18. These routes violate the Act. See Edward Rose & Sons, 384 F.3d at 261-63; Quality Built, 309 F. Supp. 2d at 762-63 and 309 F. Supp. 2d at 773-75; Balachowski v. Boidy, No. 95-6340, 2000 WL 1365391 at *2 (N.D. Ill. Sept. 20, 2000); Rommel Builders, 40 F. Supp. 2d at 713-14; Sterling Homes, 1999 WL 1068458 at **4-5.[9]

b. There Are No Accessible Routes to the Mailboxes and Dumpsters

[8]The only accessible parking space at Applegate is located in front of building 5.

[9]As detailed in Mr. Hecker's declaration, when Mr. Hecker initially surveyed the site in November 2004, he found that the porch lights at the then-completed first five buildings protruded greater than 4 inches into the walkway, that there was no cane detectable barrier on the underside of the exposed stairs, and that the front door hardware was knob-style rather than the required lever-style. Guidelines, 56 Fed. Reg. at 9504-06; Exh. 3 at ¶¶ 13, 22. These are also violations of the Act. See Quality Built, 309 F. Supp. 2d at 762-63 and 309 F. Supp. 2d at 773-75; Sterling Homes, 1999 WL 1068458 at *5. The Shanrie Defendants subsequently fixed these violations. Exh. 1 at 169-70, 174-75; Exh. 3 at ¶ 22. Even though these violations have been fixed, the United States requests that the Court issue a finding of liability on these violations.

All of the resident mailboxes at Applegate are located in a grassy area and can only be accessed by traveling into the driveway. Exh. 1 at 172-74; Exh. 3 at ¶ 13; Exh. 9 at ¶ 16. In addition, the dumpster is located in the parking area/vehicular driveway and can only be accessed by traveling into the driveway. Exh. 1 at 172-74; Exh. 3 at ¶ 13; Exh. 9 at ¶ 17. This is not a safe route, which therefore renders the mailboxes and dumpster inaccessible to persons using wheelchairs, in violation of the Act. Guidelines, 56 Fed. Reg. at 9504-05; Exh. 3 at ¶ 13; Exh. 9 at ¶¶ 16-17; see Quality Built, 309 F. Supp. 2d at 762-63 and 309 F. Supp. 2d at 774-75; Sterling Homes, 1999 WL 1068458 at *4.

2. The Doors for Passage Into and Within the Covered Units at Applegate Are Not Sufficiently Wide To Allow Passage By a Person Using a Wheelchair

The Act requires that "all the doors designed to allow passage into and within all premises within such dwellings [must be] sufficiently wide to allow passage by handicapped persons in wheelchairs." 42 U.S.C. §3604(f)(3)(C)(ii); 24 C.F.R. §100.205(c)(2). The Guidelines require that doors have a clear width of 31 5/8", which is the width provided by a 34" door opened to 90 degrees. Guidelines, 56 Fed. Reg. at 9506. Failure to provide doors that meet these specifications violates the Act. Grant I, slip op. at 19-20, Exh. 11; Quality Built, 309 F. Supp. 2d at 763-64 and 309 F. Supp. 2d at 775-76; Rommel Builders, 40 F. Supp. 2d at 713-14; Sterling Homes, 1999 WL 1068458 at *4; HUD v. Perland Corp., No. 05-96-1517-8, 1998 WL 142159 at **5, 7 (H.U.D.A.L.J. March 30, 1998).

In the ground floor units in buildings 1 though 5, the doors to both bedrooms (measured at 28"), the master bathrooms (measured at 26"), the walk-in closets (measured at 26" and 28")

and the sliding glass patio door (measured at 30 3/4") are all far less than the required 31 5/8".[10] In building 6, the master bedroom bathroom door (measured at 26") is also far less than the required 31 5/8". The Defendants have admitted that all of these doors were designed and built to provide less than the required 31 5/8" inches. Exh. 1 at 159-69. The Defendants' expert also testified that all of these doors are not wide enough to allow passage by persons in wheelchairs. Exh. 15 at 168-71.

3. There Is Not an Accessible Route Into and Through the Dwelling

The Act requires that for all covered units there be "an accessible route into and through the dwelling." 42 U.S.C. §3604(f)(3)(C)(iii)(I); 24 C.F.R. § 100.205(c)(3)(i). An accessible route is "a continuous unobstructed path connecting accessible elements and spaces . . . that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities." 24 C.F.R. § 100.201. The Guidelines provide, inter alia, that for units such as those at Applegate, all changes in level between 1/4" and 1/2" must be beveled and all changes in level above 1/2" must be ramped and thresholds at the primary entrance door must be 3/4" or less. Guidelines, 56 Fed. Reg. at 9507 (Req. 4).

The United States' expert found, and the Defendants have admitted, that the primary entry door has level changes at the interior of the thresholds of all the units in excess of the 1/4" allowed (up to 1 1/4") and the inside threshold to the patio door exceeds 3/4" (up to 2") in *all* of the units. Exh. 1 at 157-58; Exh. 3 at ¶¶ 15, 20. Thus, there is no accessible route into and

[10]The Guidelines requirement is slightly less demanding than the ANSI standard, which requires a 32 inch clear width. Guidelines, 56 Fed. Reg. at 9506. HUD made this compromise in the Guidelines so that builders could use 34 inch doors. Id.

through the dwelling units at Applegate, which violates the Act as a matter of law. See Quality Built, 309 F. Supp. 2d at 764 and 309 F. Supp. 2d at 776; Balachowski, 2000 WL 1365391 at *2.

4. There are No Reinforcements in Bathroom Walls for the Installation of Grab Bars

In all dwellings covered by the accessibility requirements, the Act requires "reinforcement in bathroom walls to allow later installation of grab bars." 42 U.S.C. § 3604(f)(3)(C)(iii)(III); 24 C.F.R. §100.205(c)(3)(iii). Defendants admit that there are no reinforcements in the walls for the later installation of grab bars in either bathroom in the ground floor units. Exh. 1 at 147-48, 172. The lack of reinforcement violates the Act. See Grant I, slip op. at 20-21, Exh. 11; Quality Built, 309 F. Supp. 2d at 765 and 309 F. Supp. 2d at 777; Balachowski, 2000 WL 1365391 at *2; Sterling Homes, 1999 WL 1068458 at *5; Baltimore Neighborhoods, Inc. v. LOB Inc., 92 F. Supp. 2d 456, 463 (D. Md. 2000); Perland, 1998 WL 142159, at **5, 7.

5. The Kitchens and Bathrooms Are Not Usable Such That A Person in a Wheelchair Can Maneuver About the Space

Finally, the Act requires covered units to include "usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space." 42 U.S.C. § 3604(f)(3)(C)(iii)(IV); 24 C.F.R. §100.205(c)(3)(iv). The Guidelines set forth technical specifications for the clear floor space and dimensions that are necessary to ensure that kitchens and bathrooms comply with the Act, including a 30" x 48" clear floor space parallel and centered on the kitchen sink and bathroom lavatory so that a person using a wheelchair can reach the faucets and a measurement of no less than 18" from the centerline of the toilet to the tub. Guidelines, 56 Fed. Reg. at 9511-9515 (Req. 7). The United States' expert found, and the

Defendants have admitted, that the kitchens and bathrooms in the units at Applegate fail to satisfy this requirement. Exh. 1 at 162-68; Exh. 3 at ¶¶ 17, 21. Specifically, the kitchens in the first five buildings do not provide a 30" x 48" centered clear floor area at the sink; it is off center by 6 inches. Exh. 1 at 162-68; Exh. 3 at ¶ 17. In addition, in the hall bathroom in the exterior units in all six buildings lack a minimum of 18" clearance from its centerline to the side wall (there is only 13 1/2" clearance) and did not provide parallel 30" x 48" clear floor space centered on the lavatory (it is off by 6"). Exh. 1 at 165-67; Exh. 3 at ¶ 17, 21. Each of the items set forth above renders the kitchens and bathrooms at Applegate inaccessible to persons with disabilities, in violation of the Act. See Grant I, slip op. at 22-23, Exh. 11; Quality Built, 309 F. Supp. 2d at 765-66 and 309 F. Supp. 2d at 777; Rommel Builders, 40 F. Supp. 2d at 713-14; Sterling Homes, 1999 WL 1068458 at **5-6; Perland, 1998 WL 142159 at **5, 7.

E. The Defendants Cannot Show That They Are Entitled to the Site Impracticability Exemption To The Act's Accessibility Requirements

Defendants do not contest that Applegate is inaccessible to persons with disabilities. See Exh. 1 at 158-59, 178-80. Three of the Defendants, however, claim that at most only 12 of the ground floor units at Applegate have to be accessible because the remainder of the complex is subject to the site impracticability defense.[11]

The Act itself does not contain any exemption based on site constraints. See 42 U.S.C. § 3604(f)(3)(C). HUD, however, determined that a "'carefully crafted and narrowly tailored'" exemption, see 56 Fed. Reg. at 9483, should be created. Accordingly, HUD's implementing

[11]Only the Shanrie Defendants and Netemeyer have asserted a site impracticability defense. TWM has not asserted a site impracticability defense although the United States believes that they may attempt to do so in response to this motion for summary judgment.

regulations require each covered dwelling to be designed and constructed to be served by an accessible building entrance on an accessible route "unless it is impractical do so because of the terrain or unusual characteristics of the site." 24 C.F.R. § 100.205(a).

"The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility." Id. The site impracticability exemption, like any exemption to the Act, must be construed narrowly in light of the Act's broad remedial purposes. See City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 731-32 (1995); Fair Hous. Advocates Assoc. v. City of Richmond Heights, 209 F. 3d 626, 634 (6th Cir. 2000). Every court that has issued a public opinion on site impracticability exception defense has held that it was not applicable. Grant II, slip op. at 8-13, Exh. 14; see also Montana Fair Hous., 81 F. Supp. at 1066; Sterling Homes, 1999 WL 1068458 *3; Perland, 1998 WL 142159 at **8-10. The same result should occur here.

1. The Defendants Cannot Establish Site Impracticability Because It Was and Is Practical to Create an Accessible Route to All of the Ground Floor Units

The plain language of the regulations makes clear that site impracticability can be established only if "it is impractical" to design and construct the ground floor units with an accessible entrance on an accessible route. Here there is no dispute that an accessible route had been designed and constructing such an entrance has always been, and still, is practicable. As discussed above, the draftsperson designed the complex to have accessible routes. Exh. 5 at 24-31. When Sheils rejected the design and directed Netemeyer to remove the ramps, see Exh. 4 at 58-72, Sheils never claimed that providing such access was impractical. On the contrary, he assured TWM, Netemeyer, and the Village of Swansea that he was ready, willing, and able to

provide an accessible building entrance later through the back if a tenant needed it. Exh. 4 at 58-72; Exh. 7 at 66-68, 86-88, 93-98. The plans even contained a note indicating an accessible route could be provided later. See Exh. 6 at TWM0031 and TWM 0045. In addition, the Shanrie Defendants ramped the entrance to building 6 and Sheils testified that he could ramp building one through five today. 4/11/06 Sheils Dep. at 46-59 (Exh. 16). Thus, there is no dispute that it is not, and has never been, "impracticable" to create an accessible route to the ground floor units at Applegate.

2. Defendants Cannot Establish Site Impracticability Because They Regraded the Site Before Construction

Notwithstanding the above, Defendants claim site impracticability based upon the site analysis test in the HUD Guidelines.[12] The Guidelines for the site analysis test provide that site impracticability "can be established by the following steps:"

> (A) The percentage of the total buildable area of the undisturbed site with a natural grade less than 10% slope shall be calculated. The analysis of the existing slope (before grading) shall be done on a topographic survey with two foot (2') contour intervals with slope determination made between each successive interval. The accuracy of the slope analysis shall be certified by a professional licensed engineer, landscape architect, architect or surveyor.
>
> (B) To determine the practicality of providing accessibility to planned multifamily dwellings based on the topography of the existing natural terrain, the

[12]While the regulations do not set out how to meet the impracticality exemption, the Guidelines outline two tests to establish when normally covered dwelling units in non-elevator buildings may be excluded from coverage due to the impracticality of the site. Guidelines, 56 Fed. Reg. at 9503-04. The two tests are the individual building test and the site analysis test. Id.; Sterling Homes, 1999 WL 1068458 at *3. Three of the Defendants have indicated that they are employing the site analysis test to exempt the ground floor units from the Acts requirements. None of the Defendants have claimed that site impracticability can be established under the individual building test.

> minimum percentage of ground floor units to be made accessible should equal the percentage of the total buildable area (not including floodplains, wetlands, or other restricted use areas) of the undisturbed site that has an existing natural grade of less than 10% slope.
>
> (C) In addition to the percentage established in paragraph (B), all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%.

Guidelines, 56 Fed. Reg. at 9503-04. Regardless of the outcome of the site impracticability analysis, a minimum of 20% of the total ground floor units must be made accessible. Guidelines, 56 Fed. Reg. at 9503. Defendants admit that 20% of the ground floor units at Applegate have never been accessible but claim that pursuant to the site analysis test only 8 of the ground floor units need to be accessible. See Exh. 15 at 135-44.

Defendants are wrong. The site analysis test required as an initial matter that the Defendants "shall" calculate "[t]he percentage of the total buildable area of the undisturbed site with natural grade less than 10% slope." This calculation must be "based on the topography of the existing natural terrain." Guidelines, 56 Fed. Reg. at 9503-04 (emphasis added). The plain language of the test makes clear that this slope analysis must be done in the initial design phase before grading. It is only before grading that the "existing natural terrain" of "the undisturbed site" exists. Not surprisingly, HUD commentary on the site analysis test emphasizes that the calculations must be done at the initial design phase. When first explaining the site impracticability defense in detail in 1990, HUD stated that it "recognize[d] the importance of establishing criteria [for determining site impracticality] that will provide a solid basis, **during the design phase**, for a developer's decisions about providing for accessibility." 55 Fed. Reg. at

24377 (emphasis added). In describing the text that, with some changes, would be adopted as the Step A, B, C, site analysis test,[13] HUD further explained:

> The slope analysis is performed **at the early stages of the development process, in preparation for planning the use of the site.** By providing a means for the developer to estimate the number of adaptable units that will be required, the slope analysis enables the developer and the designer to make informed judgments about ultimate development costs and thus, to better assess the feasibility of development of that particular site. . . . For sites with more than one building, the second step is performed **after site plans are completed** and entails analysis of site conditions for each individual building. . . . The site plan . . . would be reviewed to ascertain the degree of slope (**at finished grade and natural contour**) between each building entrance and all specified pedestrian or vehicular arrival points. . . .
>
> While the option one guidelines do not address placement of facilities including amenities on the site, **developers are expected to make a good faith effort to ensure accessibility. The design of any project should begin with the expectation that all covered multifamily dwelling units and amenities will be accessible in accordance with the Fair Housing Act's requirements. . . .**

55 Fed. Reg. at 24378-79 (emphasis added).[14]

Further, the Design Manual published in 1996 and revised in 1998 emphasizes that the site analysis must be done at the planning stage. As the Design Manual states,

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[13] Compare 55 Fed. Reg. at 24388 (proposed) with 56 Fed. Reg. at 9503-04 (final).

[14]Defendants assert that Mr. Wales "wrote" the site analysis test for HUD when he was an employee with the Southern Building Code Congress International ("SBCCI") and that therefore his interpretation of Part C is what HUD meant. 4/19/06 Motions Hearing Tr. at 26-29 (Exh. 17). However, when Mr. Wales was asked what he submitted to HUD and whether what he recalls submitting to HUD differs from the published guidance, Mr. Wales testified that he could not recall and was unable to provide any testimony. Exh. 15 at 64-71, 96-04. Moreover, based upon the preamble to the proposed regulations, the site analysis test originated from comments received from two other entities, the National Association of Home Builders and the National Coordinating Council on Spinal Cord Injury. 55 Fed. Reg. at 24377. By contrast, it appears that the individual building test originated from the proposal that SBCCI submitted to HUD. 55 Fed. Reg. at 24378. As a result, Mr. Wales' assertion that he "wrote" the site analysis test is without merit. In any event, what HUD wrote in the Guidelines controls.

> Planning for accessibility should be an integral part of the design process in multifamily housing developments. This is particularly crucial in the early stages of planning when major decisions are being made about the overall design of the site. The location and orientation of buildings, parking areas, loading zones, and other elements have a major impact on the ease with which accessibility can be achieved in a finished development. This is especially important on sloping sites where careful initial planning can eliminate the need for major earthwork and the construction of elaborate ramps, bridges, lifts, or elevators to provide accessibility.

Design Manual at p. 1.4 (Exh. 18). As described above, HUD's interpretation of its requirements regarding site impracticability is entitled to deference. United States v. Edward Rose & Sons, 246 F. Supp. 2d 744, 751-53 (E.D. Mich. 2003) (giving deference to HUD's interpretation of the Act's design and construction requirements as set forth in the proposed regulations, the Guidelines, and the Design Manual), aff'd, 348 F.3d 258 (6th Cir. 2004); Paralyzed Veterans of America v. D.C. Arena, L.P., 117 F.3d. 579 (D.C. Cir. 1997) (giving deference to reasonable interpretation of regulation in technical assistance manual not subject to notice and comment).

Here, however, Defendants never analyzed the slopes of the "existing natural terrain" before grading the site. They substantially flattened the site before constructing the foundations and, as the United States' expert's declaration shows, the site as regraded plainly does not meet the site impracticability test. Exh. 9 at ¶¶ 19-39. By the time that the Defendants initially tried to calculate the slopes of the undisturbed site, that site no longer existed. Defendants did not make the buildings inaccessible because of the site terrain and inserted steps rather than ramps. They did so because they chose to dig a trench and sink the ground floor units.

As HUD has noted:

> it is clear from the language of the regulations, and the language of the

> Guidelines, that the site impracticality exception cannot be applied to instances in which the lack of an accessible route is due to manmade barriers, such as the failure to provide a walkway or the construction of a step.

65 Fed. Reg. 15740, 15750 (emphasis added). More recently, HUD reemphasized that developers could not claim "an exemption from the obligation to build accessible pedestrian routes by merely planning for or constructing routes with running slopes in excess of 8.33%. Such an interpretation would produce a result that is inconsistent with the requirements of the Act and Guidelines." 70 Fed. Reg. 9738, 9744 (Feb. 28, 2005).

In Grant II, the Court rejected a similar argument made by the defendants who sought to invoke the site impracticability exemption. Here, as in Grant, Defendants:

> proffer post-construction measurements to support their position that an accessible route from the arrival point to the entry door cannot be created with a slope of 8.33% or less at any of the units. To meet their burden under the site impracticality test, Defendants essentially argue that they cannot comply with the FHA because the units, as built, do not comply with the FHA requirements. . . .

slip op. at 10, Exh. 14.[15] The Grant Court rejected this "circular" argument. Id. This Court should do the same.

Indeed, allowing the Defendants to calculate impracticability long after the undisturbed site has been regraded would contradict the stated purpose of the exemption – to address instances where creating an accessible route was impracticable. Under Defendants' theory, however, if a builder flattens a hill and begins building on a flat site, it could claim site impracticability based on the hill that no longer exists. No complicated legal analysis is

[15] The Court noted that "the Grant Defendants would like the Court to consider the fact that they have constructed an approach with two steps to prove that the walk could not have been created without the steps." Grant I, slip op. at 11 n.5, Exh. 11.

necessary to conclude that this would not be a "narrowly tailored crafted" exemption for "impracticability." As Ms. Maller, a non lawyer, testified, the site is not impracticable:

> [b]ecause he had already graded the site. So he made the site practical, to me, or at least in my understanding practical. And he also installed retaining walls on the north side to adjust for changes in grade that he couldn't maintain without a retaining wall. He had already constructed and provided for the slope.

Exh. 2 at 116-17.

3. Even If Pre-Grading Measurements Were Relevant, Defendants Could Not Establish Site Impracticability

Even if it was appropriate to calculate site impracticability based on the pre-existing site, Applegate still would not qualify for site impracticability. Specifically, the United States' expert, Gina Hilberry, performed the site analysis test using the original topographical site plans prepared by TWM. According to Ms. Hilberry's analysis which is detailed in her declaration, only 23.75% of the buildable area of the previously existing site had been sloped above ten percent; 76.25% of the buildable area was sloped less than 10%. Exh. 9 at ¶ 30. As a result, even if Defendants had applied Parts A and B of the test to the undisturbed site properly, they would have concluded that at least 76.25% of the existing 24 units (19 units) must be accessible and at least 25 of the planned 32 ground floor units must be accessible. Exh. 9 at ¶¶ 31-33.

Ms. Hilberry then applied Part C of the test to the Applegate site. Exh. 9 at ¶¶ 33-39. Part C requires that units "be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%." Guidelines 56 Fed. Reg. at 9503-04. As noted previously, the original design plans for Applegate provided for accessible walkways to each ground floor unit. Sheils replaced these planned walkways with steps. As in Grant, a

developer's decision to insert steps in place of a walkway does not make the site impracticable. See Grant II, slip op. at 10 & n.4, Exh. 14. Furthermore, even the revised plans provided for provided for accessible walkways to be constructed on request. Exh. 4 at 58-70; Exh. 7 at 91-99; Exh. 6 at TWM0032, TWM0045. Thus, even if Defendants had performed the site analysis test in the design phase, they would have concluded that all 32 units at Applegate must be accessible. Exh. 9 at ¶¶ 36-39.

Ms. Maller's calculations that at most only 37.36% of the units need to be accessible is simply wrong. As an initial matter, Ms. Maller repudiated her 2004 slope analysis calculations and admitted that they were incorrect. Exh. 10 at 27-28. Mr. Wales, Defendants' expert, relied solely on Ms. Maller's incorrect 2004 calculations for his conclusion that only 26% of the total units needed to be accessible, Exh. 15 at 115-17, 135-36, and as a result, Mr. Wales' opinions are wholly unfounded. Ms. Maller new 2006 calculations are similarly unreliable. Among other things, she excluded from her analysis a significant amount of land that she determined was not part of the "buildable area." Exh. 10 at 64-68. Yet Defendants built in this area, so it clearly is buildable. Exh. 10 at 64-68. When confronted with this fact, Maller testified that she did not know whether her interpretation of the Design Manual was correct. Id. Thus, as a matter of law, Defendants have failed to establish their entitlement to the site impracticability exemption.

F. Each of the Defendants Is Liable For Violations of the Act

In determining who may be liable for a violation of the design and construction provisions of the Act, courts have held that "[w]hen a group of entities enters into the design and construction of a covered dwelling, all participants *in the process as a whole* are bound to follow" the Act. Baltimore Neighborhoods, Inc. v. Rommel Builders, Inc., 3 F. Supp. 2d 661,

665 (D. Md. 1998) (emphasis in original). Just as an owner or developer is liable under the Act for its failure to construct accessible covered dwellings, architects and engineers are liable for their failures to design covered dwellings to meet the accessibility requirements. Id. at 664-65 & n.2; see also Montana Fair Hous., 81 F. Supp. 2d at 1068-69 (holding that "'design and construct' is a broad sweep of liability [encompassing] architects, builders, and planners.") (quoting United States v. Days Inn of Am., Inc., 997 F. Supp. 1080, 1083 (C.D. Ill. 1998)); Doering v. Pontarelli Builders, Inc., No. 01-2924, 2001 WL 1464897 at *4 (N.D. Ill. Nov. 6, 2001) (denying architect's motion to dismiss); Baltimore Neighborhoods, Inc. v. Continental Landmark, Inc., No. AMD 96-616, slip op. at 3-4 & n.4 (D. Md. Oct. 20, 1997) (Exh. 19) (denying site engineering firm's motion for summary judgment); HUD technical assistance brochure: "Architects and Builders, Are You in Compliance With the Fair Housing Act?" (Exh. 20) (explaining that the Act's accessibility requirements apply to "[a]rchitects," "[b]uilders," "[b]uilding contractors," and "[s]ite engineers.").

As noted above, Shanrie is the builder and owner of Applegate. Shanrie Answer at ¶ 7. Shanrie's President, Dan Sheils, has personally directed all aspects of the construction of Applegate. Exh. 1 at 63-67, 117-25, 132-34, 139-50, 169. TWM was the site engineer for the project. Exh. 1 at 61-67; Exh. 2 at 38-84; Exh. 3 at ¶¶ 23-26. TWM admitted to preparing the site plans and presenting the project for approval to the Village of Swansea's Planning Commission. Exh. 7 at 63-74, 81-98, 174-76 and Exh 6. Mr. Joost, TWM's Director of Operations, also admitted to preparing the written submission (including the non-compliant plans) for submission to the Village and to personally presenting the non-compliant plans to the Village on November 14, 2001 even though Mr. Sheils refused to provide the necessary

accessible routes, in violation of federal law. Exh. 7 at 63-74, 81-98, 174-76. Defendant Netemeyer admitted to removing accessible routes proposed by the draftsperson at Mr. Sheils' direction and sealing the non-compliant architectural plans. Exh. 4 at 58-72; see also Exh. 3 at ¶¶ 27-28, 30. Further, the design plans sealed by Netemeyer indicate doors that are not wide enough for wheelchair access, insufficient maneuvering space in the kitchen and bathrooms and lack information on the placement of grab bars. Exh. 3 at ¶¶ 27-30. Thus, all Defendants share responsibility for designing and constructing Applegate in violation of the Act.

G. Defendants Have Engaged in a Pattern or Practice of Discrimination and/or A Denial of Rights to a Group of Persons Pursuant to 42 U.S.C. § 3614

The Act authorizes the Attorney General to bring suit if he has reasonable cause to believe that a person or group of persons have *either* (1) engaged in a "pattern or practice" of discrimination *or* (2) denied rights to a group of persons and such denial raises an issue of "general public importance." 42 U.S.C. § 3614(a). A "pattern or practice" is established when the evidence shows "more than the mere occurrence of isolated . . . or sporadic discriminatory acts." See International Bhd. of Teamsters v. United States, 431 U.S. 324, 336 (1977). Instead, it must be shown that discrimination is the defendant's usual practice. Id.

Here, Defendants' acts of discrimination were neither isolated nor sporadic. The Shanrie Defendants constructed twenty-four inaccessible residential units at Applegate and the supporting public and common use areas. Exh. 3 at ¶¶ 12-22. *Every one* of the units and public and common use areas required to be accessible violates the Act to some degree, and there are violations of *all but one* of the Act's requirements. Exh. 3 at ¶¶ 12-22; Exh. 1 at 150-181. Similarly, the final architectural plans prepared by Defendant Netemeyer contain violations of

the Act in all of the ground floor units. Exh. 3 at ¶¶ 27-30; Exh. 1 at 150-181. Finally, Defendant TWM was aware that the Applegate design violated federal law but proceeded to assist Mr. Sheils and presented the project for approval to the Village of Swansea Planning Commission. Exh. 7 at 63-74, 81-98, 174-76. The Village's approval was a prerequisite to construction starting construction. 3/7/06 Harp Dep. at 28-32 (Exh. 21); Exh. 7 at 146-52. Moreover, TWM was aware that the plans that they submitted for approval would be used to build 32 ground floor units. See Exh. 6 at TWM0036. Furthermore, these violations have not been corrected, with a few minor exceptions. Exh. 3 at ¶ 22; Exh. 1 at 169-70, 174-75.[16] Accordingly, as a matter of law, Defendants have engaged in a pattern or practice of discrimination against persons with disabilities.

In addition, the accessibility violations at Applegate deny fair housing rights to a "group of persons" – that is, persons with disabilities, and those who wish their homes to be accessible to guests or family members who have disabilities.[17] In a case where the United States alleged a pattern or practice of discrimination and a denial of rights raising an issue of general public importance based on a failure to design and construct multi-family housing in violation of the

[16]In addition, the Shanrie Defendants have admitted that they have constructed another multifamily property that violates the Act. See 5/10/06 Objections to Magistrate's April 20, 2006 Order by Defendants Dan Sheils and Shanrie Co., Inc. at 2-4 (Document 75). This property was designed, in part, by Netemeyer. 3/28/06 Netemeyer Dep. at 31-36 (Exh. 22). The Shanrie Defendants' appeal of the Magistrate Judge's Order granting the United States' request for an extension of time to conduct a site visit at this property is pending. (Document 67).

[17]In bringing this suit, the Attorney General has made the determination that this denial raises an issue of "general public importance," see Complaint at ¶ 24(b) (Document 1), a determination which is not reviewable. See, e.g., Taigen & Sons, 303 F. Supp. 2d at 1138-39; Hallmark Homes, 2003 WL 23219807 at **5-6.

Act – identical to Plaintiff's allegations here – the court held that the case was properly brought under 3614(a):

> It is of course obvious that housing that is inadequately designed and constructed to serve persons with disabilities denies that class of persons rights granted by the Act – and as [the United States' complaint] alleges, that "denial raises an issue of general public importance." Any contention to the contrary is totally myopic or worse.

United States v. Hartz Constr. Co., No. 97-8175, 1998 WL 42265 at *2 (N.D. Ill. Jan. 28, 1998); see also Taigen & Sons, 303 F. Supp.2d at 1138-39; Hallmark Homes, 2003 WL 23219807 at **5-6. In fact, Courts have held that the violations of the Act's accessibility requirements at complexes comparable and smaller in size than Applegate constitute a denial of rights to a group of persons under 42 U.S.C. § 3614(a) as a matter of law. See Taigen & Sons, 303 F. Supp.2d at 1134-35 (32 ground floor units); Hallmark Homes, 2003 WL 23219807 at **1, 8 (14 ground floor units). Thus, as a matter of law, Defendants' conduct constitutes a denial of rights to a group of persons with disabilities, raising an issue of general public importance.

IV. THE COURT SHOULD ORDER DEFENDANTS TO SUBMIT A REMEDIAL PLAN

Finally, the United States requests that the Court require the Defendants to submit a detailed remedial plan with appropriate timetables identifying how the Defendants will timely eliminate the discriminatory conditions at issue. The only way to stop the discrimination is to order defendants to take corrective measures to bring the complexes into compliance with the Act. See Balachowski, 2000 WL 1365391 at *14-15; LOB, 92 F. Supp. 2d at 467; Perland, 1998 WL 142159 at **12-14; House Report. at 2184-85; Long v. Coast Resorts, Inc., 267 F.3d 918, 923 (9th Cir. 2001). Such an order is appropriate in light of this Court's inherent authority, and its authority under the Act to "award such preventive relief, including a permanent or temporary

injunction, . . . or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter," 42 U.S.C. § 3614(d)(1)(A); see also Memphis Center for Indep. Living & United States v. Richard & Milton Grant, Co., No. 01-2069, slip. op. (W.D. Tenn. June 3, 2005) (ordering defendants to submit remedial plan to correct design and construction violations) (Exh. 23); Fair Hous. Council, Inc. v. Village of Olde St. Andrews, Inc., No. 3:98-CV-630-H, slip. op. (W.D. Ky. Feb. 6, 2004) (same) (Exh. 24).

V. CONCLUSION

For the stated reasons, the United States respectfully requests that this Court grant the United States' motion for partial summary judgment in this matter and order the Defendants to submit a remedial plan to correct the violations.

Respectfully submitted,

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Certificate of Service

I hereby certify that on June 23, 2006 I electronically filed the United States' Motion for Partial Summary Judgment and accompanying exhibits in support with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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