

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND
SOUTHERN DIVISION**

THE EQUAL RIGHTS CENTER,)

Plaintiff,)

v.)

AVALONBAY COMMUNITIES, INC.,)

Defendant.)

Civil Action No. 8:05-cv-26265-AW

AMICUS BRIEF OF THE UNITED STATES OF AMERICA

I. Interest of the United States

In 1988, Congress amended Section 804 of the Fair Housing Act (“FHA”) to, *inter alia*, make it unlawful to discriminate against any person in housing on the basis of handicap and defined “discrimination” to include the failure to design and construct certain covered multi-family dwellings so that they would be accessible and usable by persons with disabilities. *See* 42 U.S.C. §§ 3604(f)(3)(C). The United States has important enforcement responsibilities under the FHA. For instance, the Attorney General may initiate civil proceedings on behalf of the United States in “pattern or practice” cases, 42 U.S.C. § 3614(a), or on behalf of an aggrieved person, following a determination by the Department of Housing and Urban Development (“HUD”) of reasonable cause and an election by either the complainant or respondent to a complaint of housing discrimination filed with HUD to proceed in federal court. *See* 42 U.S.C. § 3612(o).¹ Furthermore, under the FHA private litigation is an important supplement to government enforcement. *See Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972); 42 U.S.C. § 3616a (authorizing the Secretary of HUD to contract with private, non-profit fair housing organizations to conduct testing, investigation, and litigation under the FHA).

In its motion to dismiss, Defendant AvalonBay Communities (“AvalonBay”) contends that Plaintiff Equal Rights Center’s (“ERC”) allegations of FHA violations at 77 properties completed before September 22, 2003, are time barred by the FHA’s two-year statute of limitations for lawsuits brought by private persons. Def.’s Mot. to Dismiss at 19-30. Any decision by this Court concerning the statute

¹ HUD has also been charged with providing technical assistance to implement the requirements of Section 804(f)(3)(C), *see* 42 U.S.C. § 3604(f)(5)(C), and issuing rules to implement the Act. 42 U.S.C. § 3614a. To that end, HUD has issued regulations, 24 C.F.R. §100.205, implementing the accessibility provisions of the Act, and more detailed Fair Housing Accessibility Guidelines. *See* 56 Fed. Reg. 9472 (Mar. 6, 1991).

of limitations on private claims alleging violations based on 42 U.S.C. § 3604(f)(3) will set an important precedent that could impact the enforcement efforts of the United States. The United States, therefore, has an interest in setting forth its views as to these issues.²

II. Background and Procedural Posture

On September 22, 2005, ERC filed the present lawsuit alleging that AvalonBay had engaged in a pattern or practice of designing and constructing apartment buildings that are inaccessible to persons with disabilities.³ The lawsuit identifies 100 allegedly non-compliant properties in 11 states and the District of Columbia. According to ERC's complaint, inaccessible features were identified at 33 properties by on-site tests, Compl. ¶ 49, and at the remaining properties by a comparison of the identified violations with floor plans published by AvalonBay. *Id.* ¶¶ 39, 50. In light of the "frequency and similarity" of the observed FHA violations at the subject properties, *id.* ¶ 19, ERC alleged that AvalonBay had committed "a pattern and practice of repeated and continuing FHA violations in that AvalonBay has engaged in a systematic and consistent discriminatory pattern and practice of designing and constructing covered multifamily dwellings in violation of FHA requirements." *Id.* ¶ 53.

² The United States takes no position at this time on any of the other issues raised by Defendant in its motion to dismiss, and limits this *amicus* brief to addressing legal developments since the parties submitted their briefs in 2005, following this Court's June 3, 2008 Order.

³ The design and construction requirements of the FHA, 42 U.S.C. § 3604(f)(C)(3), apply to all covered, multifamily dwellings designed and constructed for first occupancy after March 13, 1991. *See* 42 U.S.C. § 3604(f)(C)(3). A property is considered accessible for persons with disabilities if it complies with guidelines promulgated by HUD or any of the buildings codes designated by HUD as a "safe harbor" for FHA compliance. 24 C.F.R. §§ 100.200 *et seq.*

III. Argument

Subject Properties Completed More Than Two Years Before ERC Filed Its Complaint Are Properly Before This Court Because ERC Has Pled A Pattern Or Practice Of Discrimination By AvalonBay Extending Into The Limitations Period.

The two-year statute of limitation governing private entities, 42 U.S.C. § 3613(a)(1)(A), does not bar the relief sought by ERC. In its Complaint, ERC alleged that AvalonBay has engaged in a pattern or practice of discrimination spanning 100 properties constructed since the early 1990s in 11 states and the District of Columbia. *See* Compl. ¶ 10 and Addendum A. Defendant does not contest that certificates of occupancy for 23 of these properties were issued on or after September 22, 2003.⁴ *See* Def.’s Mot. at 20. In other words, Defendant does not contest that 23 of the properties alleged to be part of AvalonBay’s pattern or practice of discriminating against persons with disabilities were completed within the two-year statute of limitations period. Because AvalonBay’s discriminatory conduct continued into the limitations period, the 77 properties completed more than two years before ERC filed its complaint are also properly included in this lawsuit.

ERC alleges that Defendant engaged in a “pervasive pattern and practice of designing and constructive apartment properties in violation of the FHA and ADA accessibility design requirements.” Compl. ¶ 19; *see also* Compl. ¶ 40-41. ERC identifies specific “common elements of design” in the subject properties based on “virtually identical” floor plans published by Defendant and replicated in hundreds, if not thousands, of covered units. *Id.* ¶¶ 39, 50. For example, the inaccessible kitchens in

⁴ AvalonBay also contends on grounds not related to the statute of limitations that five of these 23 properties are due to be dismissed. Even if AvalonBay is correct as to these five properties, there is no dispute that at least 18 properties were completed within the limitations period. The United States takes no position on AvalonBay’s other arguments.

Defendant's Avalon at Gallery Place property share common design elements with the kitchens in 24 other AvalonBay properties. *Id.* Similarly, the inaccessible bathrooms in Defendant's Avalon Fields property resemble those in 24 other AvalonBay properties, and the inaccessible bathrooms in Avalon Oaks resemble those in 34 other AvalonBay properties, all of which are identified by ERC in its Complaint. *Id.* ERC also alleges that AvalonBay is responsible for the "ownership, control, supervision, building, development, operation and/or management" of the 100 subject properties. *Id.* ¶ 10. Based on the "pervasiveness and similarity" of the violations at AvalonBay properties, ERC alleges that AvalonBay's pattern and practice is "continuing." *Id.* ¶ 40.

A continuing violation theory of liability is well-accepted under the Fair Housing Act. The United States Supreme Court has concluded that continuing violations "should be treated differently from one discrete act of discrimination" because "[w]here the challenged violation is a continuing one, the staleness concern disappears." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982). Congress reaffirmed *Havens* when it amended Section 813 the Fair Housing Act in 1988 to allow suits no later than two years "after the occurrence *or the termination* of an alleged discriminatory housing practice." 42 U.S.C. § 3613(a)(1)(A) (emphasis added); *see also* H.R. Rep. 100-711, at 33 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 2173, 2194 ("The latter term is intended to reaffirm the concept of continuing violations, under which the statute of limitations is measured from the date of the last asserted occurrence of the unlawful practice.")

In *Havens*, plaintiffs alleged five different and specific discriminatory acts, four of which occurred outside the limitations period. *See* 455 U.S. at 380. The acts—providing different information about the availability of housing to persons on account of their race—were "based not solely on isolated

incidents involving the two respondents, but a continuing violation manifested in a number of incidents. . . .” *Id.* at 381. The construction of any one inaccessible multifamily dwelling, like failing to provide information about the availability of housing to a person because of his race, is independently actionable and subject to its own statute of limitations. Under the FHA, it is also actionable if it occurs outside the limitations period as part of “a continuing policy and practice of unlawful” conduct. *Id.* Where a continuing policy or practice is alleged, the statute of limitations begins to run upon the last act of that policy or practice.⁵ AvalonBay does not contest that at least 23 “acts” pursuant to the alleged discriminatory policy or practice, the design and construction of allegedly inaccessible buildings, were completed in the limitations period. Accordingly, ERC’s entire pattern or practice claim is timely.

AvalonBay further contends it “would be manifestly unfair to require AvalonBay to defend itself for these events long after they have transpired.” Def’s Mot. at 22. That is not a concern where, as here, a plaintiff has alleged a pattern or practice of discrimination based on violations of 42 U.S.C. § 3604(f)(3)(C).

The features of an inaccessible building do not fade with time. For example, a ground-floor apartment that is made inaccessible because of steps leading to its entrance remains inaccessible until those steps are removed. Inaccessible features can be observed and measured, and proof of liability does not rely upon the memory of witnesses or the availability of documents. Indeed, courts have

⁵ In the context of a Title VII employment discrimination claim, the United States Supreme Court recently clarified that the statute of limitations “is triggered when a discrete unlawful practice takes place.” *Ledbetter v. Goodyear Tire and Rubber Co.*, 127 S. Ct. 2162, 2164 (2007) (“A new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination.”) *Ledbetter* is consistent with the application of the continuing violation theory under the pattern or practice alleged by ERC.

recognized that “intent is not relevant to the Court’s determination of whether a pattern or practice of discrimination exists.” *United States v. Quality Built Const., Inc.*, 309 F. Supp. 2d 756, 760 (E.D.N.C. 2003) (noting that pattern or practice of discrimination alleged consisted of “numerous features planned and constructed in over one hundred units at two separate developments”); *see also United States v. Shanrie Co., Inc.*, No. 05-CV-306-DRH, 2007 WL 980418 at *9 (S.D. Ill. Mar. 30, 2007) (holding with respect to an alleged pattern or practice of design and construction violations that “[t]he FHA holds parties liable regardless of their intent”); H.R. Rep. 100-711, at 25 (“housing discrimination against handicapped persons is not limited to blatant, intentional acts of discrimination. Acts that have the effect of causing discrimination can be just as devastating as intentional discrimination. 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’.”).

AvalonBay’s claim that its ability to defend itself from allegations concerning buildings completed outside the two-year statute of limitations period is also undermined by the overall statutory scheme of the FHA. As AvalonBay admits, Def.’s Mot. at 29-30, Congress has authorized the Attorney General to bring cases alleging a pattern or practice of discrimination or otherwise involving “issues of general public importance. *See* 42 U.S.C. § 3614(a). AvalonBay also correctly observes that there is no statute of limitations for claims brought by the Attorney General seeking injunctive relief, and a five-year statute of limitations for civil penalties.⁶ *See United States v. Tanski*, No. 1:04-CV-714, 2007 WL

⁶ The statute of limitations for monetary damages claims brought by the Attorney General on behalf of aggrieved persons is three years, and begins to accrue when the Attorney General knew or reasonably could have known about the cause of action. *See Tanski* 2007 WL

1017020 at *6 (N.D.N.Y. March 30, 2007); *United States v. Taigen & Sons*, 303 F. Supp. 2d. 1129, 1142-43 (D. Idaho 2003). In other words, Congress did not impose a two-year statute of limitations on pattern or practice claims brought by the Attorney General even though such claims would be identical to those brought by a private entities. Congress plainly concluded that it would not be a “manifest injustice” to require a developer like AvalonBay to defend itself against that claims could date back to the effective date of 42 U.S.C. § 3604(f)(C)(3) in 1991 if brought by the United States. There is no reason to conclude that AvalonBay would suffer a “manifest injustice” simply because the same claims have been brought by ERC.

Following *Havens*, at least four district courts have concluded that the two-year statute of limitations does not limit claims alleging a pattern or practice of violating of the FHA where some allegedly inaccessible buildings were completed more than two years before the complaint was filed. In *Memphis Cent. for Indep. Living v. Makowsky Constr. Co.*, No. 01-2069 (W.D. Tenn. filed Jul. 24, 2003) (unpublished),⁷ plaintiff alleged violations of § 3604(f)(3)(C) at three different complexes built by the same developer, and filed its complaint within two years of the completion of the last phase of the newest complex. Plaintiff also alleged that the design of the three complexes was “essentially the same” with each having the same unit floor plans. *Id.* at 2. All three complexes were designed by the same architectural firm and principal architect, owned and developed by the same entities, and constructed by the same construction company. Denying defendants’ motion for summary judgment, the court

1017020 at *6; *Taigen*, 303 F. Supp. 2d. at 1142-5.

⁷ A copy of the court’s unpublished decision is attached to this *amicus* brief as Exhibit A.

concluded that plaintiffs “sufficiently established that Defendants engaged in a pattern or practice of alleged discrimination” based on the similarity of the designs of the three complexes, and the same entities having been involved in the design and construction of each. *Id.* at 6.

In *Silver State Fair Hous. Council, Inc. v. ERGS*, 362 F. Supp. 2d 1218, 1221-22 (D. Nev. 2005), the Court concluded that the two-year statute of limitations did not prevent plaintiff from obtaining relief for the inaccessible design and construction of an apartment complex completed more than two years before the complaint was filed where a second complex was completed within the limitations period. The court found the two developments followed “seamlessly in time” and “featured the same alleged FHA violations which continued up until the very moment plaintiff filed suit.” *Id.* at 1222.

The same argument was adopted by this Court in *Equal Rights Center v. Archstone Smith Trust*, Civ. Doc. No. AMD 04-3975 (Davis, J.) (Nov. 17, 2005).⁸ In *Archstone*, plaintiffs alleged a “pervasive practice of systemic and continuous violation of the FHA” that included 111 apartment buildings located in 17 states and the District of Columbia. *See Archstone* Compl. ¶ 53 and Addendum A.⁹ Similar to the allegations in this case, plaintiffs alleged that the various properties shared “common design elements.” *Id.* ¶ 52. Judge Andre M. Davis denied a motion to dismiss claims concerning certain properties completed outside the statute of limitations period concluding that plaintiffs had alleged a sufficient “nexus” between properties completed within and outside the statute of limitations—a nexus in location, time, and entities involved with the design and construction—to survive a motion to dismiss and entitle

⁸ A transcript of the hearing in which Judge Davis denied defendants’ motion to dismiss in this case was attached to ERC’s Memorandum in Opposition as Exhibit A.

⁹ A copy of the complaint in *Archstone* is attached to this *amicus* brief as Exhibit B.

ERC to further discovery on defendants' policies and practices. *See* Tr. at 35.

Most recently, the continuing violation theory was held to preclude dismissal of some of 81 properties developed by defendants since 1991 pursuant to an alleged “continuous pattern and practice of discrimination against people with disabilities.” *National Fair Hous. Alliance v. A.G. Spanos Constr.*, 542 F. Supp. 2d. 1054, 1061-62 (N.D. Cal. 2008). Again similar to the allegations in this case, plaintiffs in *Spanos* alleged the subject properties “share common design features” and “fail to meet the basic requirements of the FHA.” *Spanos* First. Am. Compl. ¶¶ 6, 7.¹⁰ Furthermore, plaintiffs alleged that the defendants, their subsidiaries, and affiliated companies were responsible for these violations through their involvement with and control over the “ownership, control, supervision, development, operation, and/or management” of the subject properties. *Id.* ¶¶ 27-28.

Each of these cases correctly recognizes that the repeated design and construction of inaccessible multifamily dwellings can, in and of itself, constitute a discriminatory practice. Where such a practice is established, the completion of any one inaccessible property within the limitations periods makes timely claims for relief for others completed outside the limitations period.

Cases that have rejected the continuing violation theory for 42 U.S.C. § 3604(f)(3)(C) claims have not involved allegations of a pattern or practice of discrimination based on the construction of inaccessible dwellings where some of those inaccessible buildings were completed in the limitations period. For example, in *Garcia v. Brockway*, plaintiffs' claims concerned one allegedly inaccessible apartment building. *See* 526 F.3d 456, 459 (9th Cir. 2008) (en banc). Thus, the Ninth Circuit's conclusion that “[a]lthough the ill effects of a failure to properly design and construct may continue to

¹⁰ A copy of the complaint in *Spanos* is attached to this *amicus* brief as Exhibit C.

be felt decades after construction is complete, failing to design and construct is a single instance of unlawful conduct,” does not apply here. Similarly, courts in this Circuit have addressed the continuing violation theory either in the context of one building, *see Kuchmas v. Towson University*, C.A. No. RDB 06-3281, 2007 WL 2694186, *5 (D. Md. Sept. 10, 2007) (refusing to apply the continuing violation theory where claim involved one, 108-unit apartment building),¹¹ or where the last act of discrimination was outside the limitations period. *See Moseke v. Miller & Smith, Inc*, 202 F. Supp. 2d. 492, 501, 508 (E.D. Va. 2002) (refusing to apply the continuing violation theory in a case alleging the inaccessible design and construction of several condominium complexes where the last had been completed six years before the complaint was filed). Those cases also do not apply here.

ERC has not alleged a single discriminatory act with ongoing effects. It has alleged that Defendant has engaged in a long-term and ongoing pattern and practice discriminating against persons with disabilities by designing and constructing inaccessible multifamily dwellings. Taking all allegations in ERC’s favor, as this Court must on a motion to dismiss, ERC has adequately alleged a discriminatory practice that extends into the limitations period. Accordingly, AvalonBay’s motion to dismiss claims on 77 properties that were completed more than two years before ERC filed its complaint should be denied.

¹¹ In a subsequent decision in the same case, the court concluded that for the developer of allegedly inaccessible housing, the “statute of limitations with respect to a design and construction claim began when Plaintiff. . . leased a unit. . . .” *Kuchmas v. Towson University*, C.A. No. RDB 06-3281, 2008 WL 2065985, *5-6 (D. Md. May 15, 2008). That decision did not discuss the application of a continuing violation theory under the FHA, and its result is not inconsistent with the application of that theory to this case.

IV. Conclusion

For the reasons stated above, the United States respectfully requests that this Court deny Defendant AvalonBay's motion to dismiss ERC's claims on 77 properties completed more than two years before ERC filed its complaint.

Respectfully submitted,

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Dated: June 26, 2008

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2008, I electronically filed with the Clerk of the Court this *Amicus* Brief as an exhibit to the United States' Motion for Leave to File *Amicus* Brief using the ECF system, which will send notification of such filing to the following:

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

D BY [Signature] D.C.

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CLERK, U.S. DIST. CT.
WD. OF TN. MEMPHIS

MEMPHIS CENTER FOR INDEPENDENT
LIVING,

Plaintiff,

v.

MAKOWSKY CONSTRUCTION COMPANY,
INC., et al.,

Defendants,

and

Case No.: 01-2069 D/Pha

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

MAKOWSKY CONSTRUCTION COMPANY,
INC., et al.,

Defendants.

**ORDER DENYING DEFENDANTS PENN INVESTORS, INC.; JAN REALTY, INC.;
BELZ/SOUTH BLUFFS, INC.; MAKOWSKY RINGEL GREENBERG, LLC; MRB-
STONEBRIDGE, LP; AND MRB-WINDYKE, LP'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Before the Court is the motion of Defendants Penn Investors, Inc.; Jan Realty, Inc.; Belz/South Bluffs, Inc.; Makowsky Ringel Greenberg, LLC; MRB-Stonebridge, LP; and MRB-Windyke, LP, ("Defendants") for partial summary judgment. Defendants assert that Plaintiff Memphis Center for Independent Living ("MCIL")'s claim for failure to design and construct apartment complexes that are accessible to and useable by persons with physical disabilities, brought

pursuant to the Fair Housing Amendments Act ("FHAA"), 42 U.S.C. § 3604 et seq., was not brought within the two-year statute of limitation. Plaintiff maintains that although two of the three apartment complexes were designed and constructed more than two years before the commencement of the instant action, its claim was timely filed based on the continuing violations / pattern and practice exception. The Court has jurisdiction pursuant to 28 U.S.C. § 1331. For the following reasons, the Court denies Defendants' motion for partial summary judgment.

I. BACKGROUND AND PROCEDURAL FACTS

Defendants are the owner/developers of three apartment complexes: Eton Square, Champion Hills at Windyke ("Windyke"), and Champion Hills at Stonebridge ("Stonebridge"). Eton Square was built in one phase. The Certificate of Occupancy for Eton Square was issued on July 24, 1996. Eton Square L.P. owns Eton Square. Windyke was built in two phases. The Certificate of Occupancy for phases one and two of Windyke was issued on July 3, 1998, and January 7, 1998, respectively. MRB-Windyke, LP, owns Windyke. Stonebridge was also built in two separate phases. The Certificate of Occupancy for phases one and two of Stonebridge was on October 23, 1998, and September 23, 1999, respectively. MRB-Stonebridge, LP, owns Stonebridge. A Certificate of Occupancy, which is issued by the local building authority, indicates that construction is complete and the building is capable of being occupied.

Plaintiff asserts that the design of the three complexes are essentially the same. The same floor unit plans were used at all three complexes. Archeon, with Jack Schaffer acting as the principal architect, served as the architectural design company for all three complexes. Makowsky and Ringel were the owner/developers of all three properties. Likewise, Makowsky Construction Company built all of the complexes.

MCIL initiated that instant action on January 25, 2001, alleging that Defendants failed to design and construct the three apartment complexes in compliance with 42 U.S.C. § 3604(f)(3)(C). In October 2001, the United States of America joined as a plaintiff/intervenor in the action.

On March 27, 2003, Defendants filed a motion for partial summary judgment. Defendants assert that the only portion of Plaintiff's claim that is not barred by the statute of limitations is the part based on phase two of Stonebridge, which received its Certificate of Occupancy on September 23, 1999. Plaintiff MCIL argues that Defendants conduct in the building and design of the complexes is a continuing violation and exhibits a pattern or practice of discrimination.

II. LEGAL STANDARD

A. Summary Judgment

Summary judgment may be granted if no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. Material facts are those facts which are defined by substantive law and are necessary in order to apply the law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). A genuine issue for trial exists if the evidence would permit a reasonable jury to return a verdict for the non-moving party. Id.

In evaluating a motion for summary judgment, the evidence, facts, and any inferences must be viewed in a light most favorable to the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed.2d 538 (1986); Walbourn v. Erie County Care Facility, 150 F. 3d 584, 588 (6th Cir. 1998). Once a properly supported motion for summary judgment has been made, the "adverse party may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed.

R. Civ. P. 56(e). Summary judgment is appropriate when “the record taken as a whole could not lead a rational trier of fact to find for the non-moving party.” Matsushita Elec. Indus. Co., 475 U.S. at 587.

III. ANALYSIS

Defendants assert that Plaintiff’s action is barred by 42 U.S.C. § 3613(a), which provides that a civil action must be commenced “not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice.” Plaintiff MCIL argues in part that the instant action is not time-barred because 1) Defendants’ actions constitute a pattern and practice of discrimination in violation of the FHA, and 2) the violations at the complexes constitute continuing violations.

In Havens Realty Corporation v. Coleman, 455 U.S. 363, 102 S.Ct. 1114, 71 L. Ed. 2d 214 (1982), the Court held that when “a plaintiff, pursuant to the Fair Housing Act, challenges not just one incident of conduct violative of the Act, but an unlawful practice that continues into the limitations period, the complaint is timely [if] it is filed within [two-years] of the last asserted occurrence of that practice.” Id. at 380-81. The United States Court of Appeals for the Sixth Circuit further has held that there are two categories of continuing violations. See Tenenbaum v. Caldera, 45 Fed. Appx. 416 (6th Cir. 2002) (unpublished). The first category, known as the serial violations doctrine, arises when there is “a series of continuous and sufficiently related discriminatory acts, and at least one of those acts occurred within the statutory period.” Id. at 418; see also Haithcock v. Frank, 958 F.2d 671 (6th Cir. 1992).¹ Acts which are the present effect of past discrimination do not

¹The Tenenbaum Court noted that the United States Supreme Court limited the use of the serial violations doctrine in National Railroad Passenger Corporation v. Morgan, 536 U.S. 101, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002). The Court determined, however, that the United States Supreme Court in Havens Realty Corporation affirmed the application of the serial violations doctrine to pattern or practice cases brought pursuant to the FHA. Caldera, 45 Fed.

trigger a continuing violations exception. Id. at 419; see also Dixon v. Anderson, 928 F.2d 212, 216 (6th Cir. 1991). The second category is implicated when “there exists a long standing and demonstrable policy of discrimination.” Id.; see also Alexander v. Local 496, Laborers’ Int’l Union, 177 F.3d 394 (6th Cir. 1999).² “The preponderance of the evidence must establish that some form of intentional discrimination against the class of which plaintiff was a member was the company’s standing [sic] operating procedure.” EEOC v. Penton Indus. Publishiing Co., 851 F.2d 835, 838 (6th Cir. 1988).

A three-part inquiry is utilized to determine whether a continuing violation exists. Tolbert v. Ohio, 172 F.3d 934, 940 (6th Cir.1999). “First, the defendant’s wrongful conduct must continue after the precipitating event that began the pattern Second, injury to the plaintiff must continue to accrue after that event. Finally, further injury to the plaintiff[] must have been avoidable if the defendant[] had at any time ceased [its] wrongful conduct.” Id. In LRL Properties v. Portage Metro Housing Authority, 55 F.3d 1097 (6th Cir. 1995), the Court noted that courts have been reluctant to apply the continuing violations doctrine outside of the context of Title VII discrimination cases. Id. at 1106. In Paschal v. Flagstar Bank, FSB, 295 F.3d 565 (6th Cir. 2002), however, the Court applied the continuing violations doctrine to a case brought pursuant to the FHA. Likewise, other court have

Appx. at 419, n. 2.

²Plaintiff argues in part that its claim was timely filed because Defendants allegedly engaged in a pattern or practice of discrimination. Defendants reply that Plaintiff cannot bring a pattern or practice claim pursuant to the FHA because only the Attorney General of the United States may initiate such lawsuits pursuant to 42 U.S.C. § 3614. The Court need not address this argument given that Plaintiff is not asserting a claim for pattern or practice discrimination. Instead, Plaintiff is arguing that its FHA claim brought pursuant to 42 U.S.C. § 3604 is not barred based on the continuing violations exception which the Sixth Circuit has classified into two categories. The second category of the continuing violations exception contemplates a pattern or practice of discrimination.

applied the continuing violations doctrine to FHA claims. See, e.g., Spann v. Colonial Village, Inc., 899 F.2d 24 (D.C. Cir. 1990); Eastern Paralyzed Veterans Ass'n, Inc. v. Lazarus-Burman Assoc., 133 F. Supp. 2d 203 (E.D.N.Y. 2001); Montana Fair Housing, Inc. v. Am.Capital Dev., Inc., 81 F. Supp. 2d 1057 (D. Mont 1999).

The Court finds that Plaintiff has sufficiently established that Defendants engaged in a pattern or practice of alleged discrimination when designing and constructing the three apartment complexes. With respect to the three-part inquiry, the Court finds that the design and construction of Eton began the pattern of alleged discrimination. Thereafter, Windyke and Stonebridge were designed and constructed allegedly using a similar design as Eton, the same architect, and the same construction company. Injury to Plaintiff, i.e., alleged inaccessibility to the properties, accrued each time a phase was completed that allegedly failed to comply with FHA requirements. Finally, if Defendants had, as Plaintiff alleges, designed and constructed Windyke and Stonebridge in compliance with the FHA and remedied the alleged non-compliance at Eton, Plaintiff would have suffered no further injury. Thus, Plaintiff has satisfied the three-part inquiry used to determine whether application of the continuing violations doctrine is appropriate.³

Moreover, Plaintiff has established beyond a preponderance of the evidence that Defendant's alleged standard operating procedure included a policy of intentional discrimination against disabled individuals. In a memorandum dated December 9, 1997, written by Jack Schaffer, and addressed

³Defendant asserts that Plaintiff has not suffered an injury because no individual has been harmed who lives at the complexes nor have there been any complaints by individuals about inaccessibility. The Court finds this argument unavailing. Organizations may maintain claims for violation of the FHA. See Havens Realty Corporation, 455 U.S. 363 (1982). Furthermore, an injury suffered may be actual or *threatened*. Heights Cmty. Congress v. Hilltop Realty, Inc., 774 F.2d 135 (6th Cir. 1985).

to Jerry Makowsky, Mr. Schaffer indicated that he did not believe that the three complexes met the FHA guidelines. Mr. Schaffer further questioned whether the design and drawings should be revised. Assuming that the complexes were not in compliance with the FHA guidelines, this memorandum indicates that Defendants were aware of such non-compliance and chose to proceed with the construction anyway. The Court finds that this evidences a demonstrable policy of discrimination. The Court concludes therefore that Plaintiff's claim is not barred by the statute of limitations based on the second category of the continuing violations exception. Accordingly, Defendants' motion for partial summary judgment is denied.

IV. CONCLUSION

For the reasons stated herein, the Court finds that Plaintiff's FHAA claim is not barred by the statute of limitations. Accordingly, the Court denies Defendants' motion for partial summary judgment.

IT IS SO ORDERED this 24 day of July 2003.

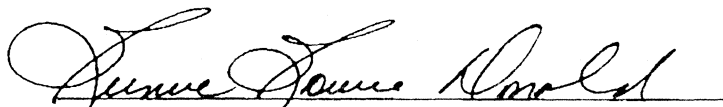

BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE

Exhibit B

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Dec 20 2004

EQUAL RIGHTS CENTER,
a not-for-profit corporation,
11 Dupont Circle, N.W., 4th Floor
Washington, D.C., 20036

AMERICAN ASSOCIATION OF
PEOPLE WITH DISABILITIES,
a not-for-profit corporation
1629 K Street, N.W, Suite 503
Washington, D.C., 20006

AND 04 CV 3975

UNITED SPINAL ASSOCIATION,
a not-for-profit corporation
75-20 Astoria Boulevard
Jackson Heights, New York 11370

Plaintiffs,

JURY TRIAL DEMANDED

vs.

ARCHSTONE SMITH TRUST,
a Maryland Trust and
ARCHSTONE
SMITH OPERATING TRUST, a
Maryland Trust
11 East Chase Street
Baltimore MD, 21202
County: Baltimore City

CLARK REALTY
BUILDERS, a Maryland Corporation,
2 Bethesda Metro
Bethesda, MD 20814
County: Montgomery

VIKA, INC., a Maryland Corporation,
7420 Westlake Terrace, Suite 508
Bethesda, MD 20034
County: Montgomery

NILES BOLTON ASSOCIATES, a
Georgia Corporation
3060 Peachtree Road, NW, Suite 600
Atlanta, GA 30305

MEEKS + PARTNERS, f/k/a
KAUFMAN MEEKS & PARTNERS,
a Texas partnership
Suite 100
16000 Memorial Drive
Houston, TX 77079

Defendants

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF, AND FOR DAMAGES**

1. Plaintiffs, Equal Rights Center (“ERC”), American Association of People with Disabilities (“AAPD”), and United Spinal Association, for their Complaint against Defendants Archstone Smith Trust (“AST”), Archstone Smith Operating Trust (“ASOT”) (collectively “Archstone”), Clark Realty Builders, VIKA, Inc., Niles Bolton Associates, and Meeks + Partners, f/k/a Kaufman Meeks & Partners (collectively, “Defendants”), allege and state as follows:

2. This action is brought by ERC, AAPD, and United Spinal Association, by and through their counsel, to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (“Fair Housing Act” or “FHA”) as amended by the Fair Housing Amendments Act of 1988 (“FHAA”), 42 U.S.C. §§ 3601-3619, and the Americans with Disabilities Act, 42 U.S.C. §§

12181, (the “ADA”), in order to remedy the continuous and systematic violations of these civil rights laws by the Defendants in the design and construction of apartment facilities across the fifty states.

3. Defendants, through the actions referred to herein, have discriminated against persons with disabilities in violation of the FHA and the ADA by designing and/or constructing dwellings and places of public accommodation that deny persons with disabilities the access to, and use of, these facilities required under these federal civil rights laws.

4. 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.’” In considering passage of the FHAA, the United States House of Representatives stated in its Committee Report that enforcement of these civil rights laws is necessary to protect people with disabilities from the “devastating” impact of housing discrimination, including the “architectural barriers” erected by developers who fail to construct dwellings and public accommodations accessible and adaptable to people with disabilities. (U.S. House of Rep. Report on the FHAA, H.R. Rep. No. 100-711 (1988)). As the Committee noted, such barriers, even if not the product of invidious intent, “can be just as devastating as intentional discrimination.” H.R. Rep. No. 100-711 at 25 (1988). Enforcement of the FHA and the ADA against Defendants is necessary because of the extensive and continuing nature of the civil rights violations at Defendants’ network of numerous apartment properties located throughout the United States.

5. Plaintiff ERC is a nonprofit civil rights organization that was established to pursue a mission of promoting fair housing and public accommodations throughout the United

States, and providing counseling and referral services to protected individuals seeking housing. As a result of Defendants' wrongful conduct complained of herein, ERC has been damaged by frustration of its mission, and by having to divert significant resources that could have been used to provide counseling, education, and referral services to instead identify and counteract Defendants' discriminatory policies and practices through extensive testing, investigation and litigation of these policies.

6. Plaintiff AAPD is the largest national nonprofit cross-disability member organization in the United States, dedicated to ensuring economic self-sufficiency and political empowerment for the more than 56 million Americans with disabilities. As a result of Defendants' wrongful conduct complained of herein, AAPD's members have been damaged by Defendants' denial of access to Defendants' dwelling units, common areas, and public areas, and AAPD has been harmed by diversion of its resources.

7. Plaintiff United Spinal Association has the mission of advocacy for all individuals with a spinal cord injury or disease. As a result of Defendants' wrongful conduct complained of herein, United Spinal Association's members have been damaged by Defendants' denial of access to Defendants' dwelling units, common areas, and public areas, and United Spinal Association has been harmed by diversion of its resources.

PARTIES, JURISDICTION AND VENUE

8. Plaintiff ERC is a nonprofit corporation organized under the laws of the District of Columbia with its principal place of business at 11 Dupont Circle, N.W., 4th Floor, Washington, D.C., 20036. The ERC was founded in 1999 by a group of interdenominational clergy and community leaders to provide a multi-faceted approach to civil rights issues and to

create an open society where equal opportunity for all is assured. The ERC provides a multi-disciplinary program of moral persuasion, education and outreach, counseling and advocacy, testing and compliance services, and research and planning dedicated to furthering the advancement, inter alia, of fair housing and public accommodations throughout the United States. The ERC's various programs provide guidance, information, and assistance to protected individuals who are seeking housing. The ERC and its predecessor organizations have been battling discriminatory housing practices since 1983.

9. Plaintiff AAPD is a nonprofit corporation organized under the laws of the District of Columbia with its principal place of business at 1629 K Street NW, Suite 503, Washington, D.C., 20006. AAPD was founded after five key leaders from the disability community met to organize what they believed would be the next logical step for people with disabilities -- creation of a national, non-partisan organization to represent the 56 million Americans with disabilities. AAPD currently has more than 100,000 members, which include people with disabilities and their families and friends. AAPD members live across the United States, including those states in which the Subject Properties (as defined below) are located. Among AAPD's purposes are to further the productivity, independence, full citizenship, and total integration of people with disabilities into all aspects of society and the natural environment; and to support the full implementation and enforcement of disability nondiscrimination laws.

10. Plaintiff United Spinal Association is a membership organization of more than 4,000 individuals with spinal cord dysfunction, injury, or disease, such as multiple sclerosis, poliomyelitis, or Lou Gehrig's disease, many of whom are persons with disabilities as defined by the FHA and ADA. The United Spinal Association furthers its members' interests by assuring

quality healthcare, promoting research, advocating for civil rights and independence, and educating the public about these issues and enlisting their help to achieve these fundamental goals. United Spinal Association and its predecessor organization have been advocates for people with spinal cord impairments since 1947. United Spinal Association's members live across the country, including in those states in which the Subject Properties (defined below) are located.

11. Defendant AST is a Maryland real estate investment trust in the business of owning, designing, constructing, developing, operating and managing garden-style and high-rise apartment facilities in this District and at various locations throughout the United States. AST maintains offices, and conducts business in this District. AST conducts business operations through a variety of trade names, including, but not limited to, Archstone Communities, Charles E. Smith Residential, Smith Corporate Living, and Ameriton. Further, AST substantially owns, and controls Defendant ASOT, and, on information and belief, conducts substantial portions of its business activities through ASOT.

12. Defendant ASOT is a Maryland trust owned in whole or in part, controlled and operated by AST. ASOT conducts business activities in this District. Through various business agreements, AST and ASOT act as a single enterprise in the ownership, design, construction, development, operation and management of garden-style and high-rise apartment facilities, some of which are in this District.

13. Defendant Clark Realty Builders ("Clark") is a Maryland corporation having its principal place of business at 2 Bethesda Metro Center, Mezzanine Level, Suite 250, Bethesda, MD 20814. Clark is in the business of designing, building and constructing a variety of

commercial structures, including multifamily apartment buildings. On information and belief, Clark has been a direct participant in the design and construction process of a number of the Subject Properties (defined below) in coordination with Archstone, including but not limited to the Archstone Van Dorn, Archstone Woodland, Archstone Columbia Town Center, and Archstone Rockville Town Center properties.

14. Defendant VIKA, Inc. (“VIKA”), is a Maryland corporation having its principal place of business at 8180 Greensboro Drive, Suite 200 McLean, VA 22102. VIKA is in the business of providing civil engineering, planning and surveying services to commercial land developers, including Archstone. On information and belief, VIKA has been a direct participant in the design and construction process of a number of the Subject Properties (defined below) in coordination with Archstone, including but not limited to the Archstone Milestone and Archstone Esplanade properties.

15. Defendant Niles Bolton Associates (“Niles Bolton”) is a Georgia corporation having offices located at 300 North Lee Street, Suite 502, Alexandria, VA 22314. Niles Bolton is in the business of providing architectural design services to commercial land developers, including Archstone. On information and belief, Niles Bolton has been a direct participant in the design and construction process of a number of the Subject Properties (defined below) in coordination with Archstone, including but not limited to the Archstone Milestone, Archstone Woodland Park and Archstone Van Dorn properties.

16. Defendant Meeks + Partners, f/k/a Kaufman Meeks & Partners (“Meeks”) is a Texas partnership having its principal place of business at 16000 Memorial Drive, Suite 100, Houston, Texas 77079. Meeks is in the business of providing architectural design services to

commercial land developers, including Archstone. On information and belief, Meeks has been a direct participant in the design and construction process of a number of the Subject Properties (defined below) in coordination with Archstone, including but not limited to the Archstone Columbia Town Center and the Archstone Rockville Town Center properties.

17. Through ownership, building, development, operation or management, Archstone has been involved in the process of the design and construction of more than one hundred apartment facilities (“Subject Properties”) located across the United States, in Maryland, Arizona, California, Colorado, Florida, Georgia, Illinois, Massachusetts, New Mexico, North Carolina, New Jersey, New York, Oregon, Tennessee, Texas, Virginia, Washington, and the District of Columbia. A list of these Subject Properties is contained in Addendum A to the Complaint.

18. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1391 and 42 U.S.C. §§ 3613(a) and 12188. Further, this Court may exercise personal jurisdiction over each of the Defendants.

19. Venue is proper in the District pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events and omissions giving rise to the claims herein occurred in this District, and a substantial part of the property that is the subject of this action is located in this District. Venue is also proper under 28 U.S.C. § 1391(b)(3), because the Defendants may be found in this District. Defendant Clark is resident in Montgomery County and several relevant Archstone properties are located in Montgomery and Prince George’s Counties, both of which are located in the Southern Division of this District.

FACTUAL AND LEGAL BACKGROUND

20. In 2000, Plaintiff ERC learned that a large number of new residential buildings were being constructed in the area around the District of Columbia, including in Maryland and Virginia. In order to determine compliance with civil rights laws, ERC tested properties being constructed by various developers.

21. ERC discovered a pattern at the Archstone properties: not only were there pervasive violations of the FHA in their design and construction, but the violations – and the design of the properties themselves - were notably consistent among the Archstone properties. ERC determined it would conduct additional, unplanned testing of Archstone properties to determine the extent of FHA and ADA violations at these properties. ERC then diverted one of its staff people full-time to test Archstone facilities.

22. In March 2002, ERC held an educational workshop in Washington, D.C., at which the results of testing of some of the Archstone Properties in Maryland, the District of Columbia and Virginia were discussed. Among the attendees were people with disabilities who had traveled to various Archstone properties to determine whether those properties had accessible residential apartments and had determined the apartments did not.

23. ERC also learned from the attendees of the workshop and from other sources among the community of persons with disabilities that it was known that Archstone apartment properties are not generally accessible to persons with disabilities. Two of the individuals who conducted tests at Archstone properties are individuals who use wheelchairs, and are members of disability rights' organizations.

24. Because of the information ERC possessed as a result of its initial routine testing of just a few Archstone properties, and as a result of information from members of the community of persons with disabilities, ERC undertook the investigation and testing of a large number of Archstone apartment properties. Altogether, it tested 30 properties in Maryland, Virginia, Florida, Texas, California, and the District of Columbia.

25. The ERC conducted testing of approximately 30% of the Archstone properties built for first occupancy after March 13, 1991 (the “Tested Properties”). All but one of these Tested Properties, identified in Addendum A, exhibited violations of the FHA and ADA. Based on the widespread and consistent violations at the Tested Properties, and on information and belief, Defendants engaged in a pervasive practice of designing and construction apartment properties in violation of FHA and ADA accessibility design requirements.

26. Each of the Tested Properties includes multiple units that are “covered multifamily dwellings” within the meaning of the FHA, 42 U.S.C. § 3604(f)(7)(A), were built for first occupancy after March 13, 1991, and are subject to the design and construction requirements set forth in 42 U.S.C. § 3604 (f)(3)(C) of the FHA.

27. Each of the Tested Properties includes a rental office and the facilities and accommodations appurtenant to the public use of the rental offices, including the parking, sidewalks, and restrooms which constitute “public accommodations” within the meaning of the ADA, 42 U.S.C. § 12181(7), were constructed for first occupancy after January 26, 1993, and are subject to the prohibition on discrimination contained in 42 U.S.C. § 12182(a) of the ADA, and to the design and construction requirements of 42 U.S.C. § 12183(a)(1) of the ADA and the applicable regulations.

28. The tests of these twenty-nine Archstone properties revealed multiple violations in the design and construction requirements of the FHA and the ADA at twenty-eight of the Tested Properties.

29. **Dwelling Units**: Twenty-eight of the twenty-nine Tested Properties are “covered dwelling units” that violate the antidiscrimination and the design and construction requirements of the FHA, 42 U.S.C. § 3604(f)(3)(C) and the applicable regulations, by failing to be designed and constructed in such manner that:

- a. 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
- b. 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; and
 - iii. usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

30. With respect to the dwelling units, such violations at the Tested Properties include:

- a. units to which there is no accessible route, including steps or other barriers that inhibit access to the unit;

- b. doorways (often multiple doorways) within the unit that are not wide enough to permit passage by persons who use wheelchairs;
- c. inaccessible patios or balconies;
- d. kitchens and bathrooms that provide insufficient floor space for use by persons who use wheelchairs; and
- e. environmental controls, electrical outlets, and fire alarms that are placed at heights that make them inaccessible to persons who use wheelchairs.

31. **Common Areas:** At fourteen of the twenty-nine Tested Properties, ERC testers determined that common areas for use by residents of the units violate the antidiscrimination provision and the design and construction requirements of the FHA, 42 U.S.C. §§ 3604 (f)(3)(C) by failing to be designed and constructed in such manner that they are readily accessible to, and usable by, persons with disabilities.

32. With respect to the common areas, such violations at the Tested Properties include:

- a. mailboxes inaccessible to persons who use wheelchairs or with other mobility impairments because the common areas lack curb cuts or are otherwise inaccessible; and
- b. recreational facilities including pools, barbeque areas, and children's play areas to which no accessible route has been provided.

33. **Public areas:** In addition, at seventeen of the twenty-nine Tested Properties, the rental offices, including facilities and accommodations appurtenant to the rental offices that are also areas of public use, violate the antidiscrimination provisions and the design and construction

requirements of the FHA, 42 U.S.C. §§ 3604 (f)(3)(C), the ADA, 42 U.S.C. §§ 12182(a)-12183(a)(1), and the applicable regulations, by failing to be designed and constructed in such manner that they are readily accessible to, and usable by, persons with disabilities. Specifically, some of the Tested Properties' rental offices are located up stairs or have other barriers that restrict access, lack reserved and accessible parking, an accessible route from the parking area to the rental office, and/or an accessible entrance. Further many rental offices have facilities, such as restrooms and other fixtures, that are inaccessible.

34. The following are illustrative, non-exhaustive examples of Defendants' continuing violations, which occurred in all geographic areas in which properties were tested:

a. Archstone Governor's Green Apartments

35. An ERC tester tested the Archstone Governor's Green Apartments in Bowie, Maryland. Archstone Governor's Green Apartments are a multifamily apartment property that consists of multi-story, multi-unit buildings and consist of 478 units.

36. The tester inspected the interior of two units at Archstone Governor's Green Apartments, and observed the following violations:

- a. doorways in the units are too narrow to provide access to persons in wheelchairs;
- b. entry doorways have thresholds that are too high to be accessible to persons who use a wheelchair;
- c. the environmental controls are placed too high on the wall to be accessible to persons who use a wheelchair;
- d. bathroom floor space is inadequate to provide access; and

- e. kitchen floor space is inadequate so that a person using a wheelchair cannot access the appliances.

37. The complex has a leasing office as well as external parking and sidewalks appurtenant to the rental office. The tester found at Archstone Governor's Green Apartments that the accessible space appurtenant to the leasing office is poorly marked with paint on the pavement that had almost completely faded.

b. Archstone Sussex Apartments

38. Another of the Archstone properties tested, the Archstone Sussex Apartments, is located in Alexandria, Virginia. It is a multifamily apartment property that consists of several multi-story, multi-unit buildings consisting of 556 units. The apartment complex has a leasing office as well as external parking spaces and sidewalks appurtenant to the rental office. The complex also includes areas containing resident mailboxes, recreational facilities, and other common areas.

39. During the visit, the ERC tester found:

- a. that the parking lot to the complex's rental office lacks reserved and accessible parking spaces;
- b. no accessible routes to several of the complex's recreational and fitness facilities;
- c. its resident mailboxes are located on concrete islands with no curb cuts, and are therefore inaccessible;

- d. that several ground floor units in the complex are inaccessible because steps provide the only access to the unit (the leasing agent who accompanied the tester conceded that only seven (7) ground floor units in the complex have an accessible means of entrance);
- e. some buildings lack curbcuts to provide access from the parking spaces nearest the those buildings;
- f. in the interior of a unit at Archstone Sussex Apartments, that: (1) multiple door ways are too narrow to permit passage by persons who use wheelchairs, (2) thresholds are too high to be accessible, and (3) environmental controls that are inaccessible because they are placed too high on the wall.

c. Archstone Commons at Kingstowne

40. An ERC investigative tester tested the Commons at Kingstowne, located in Alexandria, Virginia. The Archstone Kingstowne is a multi-family apartment property that consists of several multi-level, multi-unit buildings consisting of 358 units. The complex has a leasing office as well as external parking and sidewalks appurtenant to the rental office. The complex also has common recreational and other facilities, and common areas housing resident mailboxes.

41. The tester found:

- a. that for ten (10) or more of the buildings in the Kingstowne, the ground floor units can be accessed only by steps, so there are no accessible ground floor units in these buildings;

- b. that with respect to the rental office and areas and facilities appurtenant to the rental office at the Kingstowne, the parking lot has no reserved and accessible parking spaces;
- c. the sidewalks leading from the parking lot to the rental office are too steep and uneven to permit navigation by a wheelchair, and the entrance to the leasing office are not accessible; and
- d. that the common recreation areas, including a children's playground, tennis courts, and a volleyball court, are not accessible.

42. The ERC tester, who was in a wheelchair, asked the agent in the leasing office of the Kingstowne to show her a vacant, accessible ground floor unit in the complex. The agent stated that the complex had a policy of showing only "model" units, which were located on the third floor and accessible only by steps. Further demonstrating Archstone's disregard for the rights of the disabled, the agent refused a request to make an exception and show the tester a ground floor unit.

d. The Lansburgh

43. An ERC tester visited The Lansburgh in Washington, D.C. to test its accessibility for people with disabilities. The Lansburgh is a multi-family, multi-unit high rise apartment property.

44. The tester observed that:

- a. the leasing office at the Lansburgh is inaccessible because stairs provide the only access to the office;

- b. that the environmental controls in the unit or units are also placed too high to be accessible; and
- c. several of the doorways are too narrow to permit passage by persons who use wheelchairs.

e. Residences at Miramar Lakes

45. An ERC tester tested the Residences at Miramar Lakes in Miramar, Florida. The Residences at Miramar Lakes is a multifamily apartment property consisting of 344 units.

46. The tester inspected the interior of two units at the Residences at Miramar Lakes, and observed the following violations:

- a. the environmental controls are placed too high on the wall to be accessible to persons who use a wheelchair;
- b. doorways in the units are too narrow to provide access to persons in wheelchairs;
- c. entry doorways have thresholds that are too high to be accessible to persons who use a wheelchair;
- d. bathroom floor space is inadequate to provide access; and
- e. kitchen floor space is inadequate so that a person using a wheelchair cannot access the appliances.

47. During the visit, the ERC tester also found that the environmental controls and access pad in the complex's recreational and fitness facilities are placed too high on the wall to be accessible to persons who use a wheelchair.

f. Archstone Westchase

48. An ERC tester tested the Archstone Westchase Apartments in Houston, Texas.

The Archstone Westchase is a multifamily apartment property.

49. The tester inspected the interior of two units at the Residences at Miramar Lakes, and observed the following violations:

- a. the environmental controls are placed too high on the wall to be accessible to persons who use a wheelchair;
- b. doorways in the units are too narrow to provide access to persons in wheelchairs;
- c. entry doorways have thresholds that are too high to be accessible to persons who use a wheelchair;
- d. bathroom floor space is inadequate to provide access for a person using a wheelchair;
- e. that the environmental controls and access pad in the complex's club house are placed too high on the wall to be accessible to persons who use a wheelchair; and
- f. that the clubhouse entry doorways have thresholds that are too high to be accessible to persons who use a wheelchair.

g. Archstone Pasadena

50. An ERC tester tested the Archstone Pasadena Apartments in Pasadena, California.

The Archstone Pasadena is a multifamily, multi-story apartment property consisting of 120 units.

51. The tester inspected the interior of two units at the Residences at Miramar Lakes, and observed the following violations:

- a. the environmental controls are placed too high on the wall to be accessible to persons who use a wheelchair;
- b. doorways in the units are too narrow to provide access to persons in wheelchairs;
- c. entry doorways have thresholds that are too high to be accessible to persons who use a wheelchair;
- d. bathroom is inadequate to provide access;
- e. kitchen clearance between countertops is inadequate so that a person using a wheelchair cannot access the countertops; and
- f. the environmental controls and light switches in the complex's leasing office, business center, and common bathroom are placed too high on the wall to be accessible to persons who use a wheelchair.

52. The Subject Properties were all designed and constructed under the ultimate supervision and with the approval of Archstone after March 13, 1991 and using a limited number of architects and designers. The result is that, irrespective of location, many of the apartment units in the Tested Properties (indicated in bold font below) and the remaining Subject Properties share common design elements. The existence of these common design elements is demonstrable based on a comparison of apartment unit floor plans published by Archstone. These common design elements range from the use of common bathroom or kitchen designs, to virtually identical floor plans in numerous complexes. By way of example:

- a. Archstone Hickory Hollow in Tennessee uses the same 1, 2 and 3 bedroom floor plans as Archstone Rocky Creek in Florida, Cameron at Barrett Creek in Georgia, and Archstone Olde Apex in North Carolina;
- b. Archstone Aliso Viejo in Florida uses some of the same floor plans as Archstone Riverfront Park in Colorado;
- c. Archstone Dakota Ridge in Colorado uses some of the same floor plans as Archstone Canyon Creek in Texas;
- d. **Archstone Medical Center** in Texas uses some of the same floor plans as **Archstone Miramar Lakes** in Florida as well as **Archstone Memorial Heights**, Archstone Hunters Run, Archstone Vistas at Canyon Creek, and Archstone Monterey Ranch, also in Texas;
- e. **Archstone Playa Del Ray** in California uses many of the same floor plans as **Archstone Pasedena**, and **Archstone Westside**, also in California; and
- f. Archstone Waterways in Florida uses some of the same floor plans as Archstone Northcross in North Carolina and **Archstone Stoneridge** in Virginia.

53. On information and belief, as a result of Archstone's design and construction practices, and as demonstrated by the pervasiveness of the violations of the FHA and ADA at the Tested Properties, violations of the FHA and ADA that discriminate against persons with disabilities, and particularly those persons who use wheel chairs, exist at each of the Subject Properties. Based upon the practices discovered at the Tested Properties, and based upon common design and construction features at other Subject Properties, Defendants' violations of

the FHA and ADA at the specific Subject Properties, which continue to the present, demonstrate a pervasive practice of systematic and continuous violation of the FHA and ADA by failing to design and construct the Subject Properties, including their public and common use areas, in accordance with the requirements of the FHA, 42 U.S.C. § 3604 (f)(3)(C), the ADA, 42 U.S.C. § 12183(a)(1), and applicable regulations.

54. In carrying out the aforementioned actions, Defendants acted intentionally and willfully, and with callous and reckless disregard for the Plaintiffs' and their members' rights.

INJURY TO PLAINTIFFS

55. As a result of Defendants' actions described above, Plaintiffs ERC, AAPD, and United Spinal Association have been directly and substantially injured and frustrated in their mission to eradicate discrimination in housing, and in their efforts to carry out the programs and services that they provide, including encouraging integrated living patterns, educating the public about fair housing rights and requirements, educating and working with industry groups on fair housing compliance, providing counseling services to persons either looking for housing or affected by discriminatory housing practices, and eliminating discriminatory housing practices. Plaintiffs ERC, AAPD, and United Spinal Association has also been damaged by having to divert scarce resources that could have been used to provide these services to instead identify and counteract Defendants' discriminatory practices.

56. The unlawful discriminatory actions of the Defendants will continue to injure the ERC, AAPD, and United Spinal Association by inter alia:

- a. Interfering with efforts and programs intended to bring about equality of opportunity in housing;

- b. Requiring the commitment of scarce resources, including substantial staff time, to investigate the discriminatory conduct of Defendants, and counteract the Defendants' discriminatory conduct, thus diverting those resources from other services; and
- c. Frustrating their mission and purpose of promoting the equal availability of housing to all persons without regard to any protected category, including disability.

57. The members of Plaintiffs AAPD and United Spinal Association have been injured by Defendants' discriminatory denial of equal housing opportunities for their members with disabilities, and access to Defendants' dwelling units, common areas, and public areas.

FIRST CLAIM FOR RELIEF
(Violations of the FHA)

58. Plaintiffs adopt and reallege the allegations of Paragraphs 1 - 57 of this Complaint.

59. Each of the Subject Properties were designed and constructed for first occupancy after March 13, 1991. Each building located on the Subject Properties is a "dwelling" within the meaning of the FHA, 42 U.S.C. § 3602(b).

60. The Subject Properties are comprised of hundreds of buildings, and contain more than 32,000 units.

61. Each of the ground-floor units at the Subject Properties, and in addition, all units in any building at the Subject Properties having an elevator, is a "covered multifamily dwelling"

within the meaning of the FHA, 42 U.S.C. § 3604(f)(7)(A). Each “covered unit” at the Subject Properties, and the public and common use areas at the Subject Properties are subject to the design and construction requirements of the FHA, 42 U.S.C. § 3604(f)(3)(C).

62. On information and belief, the Defendants have incorporated common design factors and criteria in the design and construction of the “covered units” at the Subject Properties. In some instances, the same (or virtually the same) floor plans or “foot prints” have been utilized in the design and construction of hundreds, if not thousands of the “covered units” at the Subject Properties.

63. On information and belief, the Defendants, and each of them, have repeatedly, and continually, failed to design and construct the Subject Properties so that:

- a. the public-use and common-use portions are readily accessible to, and usable by, individuals with disabilities:
- b. all doors within the ground-floor units are sufficiently wide to allow passage by persons with disabilities who use wheelchairs;
- c. all the ground-floor units 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. useable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

64. Through the actions and inactions describe above, Defendants, and each of them, have:

- a. Discriminated in the rental of, or otherwise made unavailable, or denied dwellings to persons because of their handicaps in violation of the FHA, 42 U.S.C. § 3604(f)(1);
- b. Discriminated against persons because of their handicaps in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with the rental of a dwelling, in violation of the FHA, 42 U.S.C. § 3604(f)(2); and
- c. Failed to design and construct dwellings in compliance with the requirements mandated by the FHA, 42 U.S.C. § 3604(f)(3) , and the applicable regulations.

65. The actions complained of constitute repeated and continuing violations of the FHA, in that Defendants are engaged in a systematic and consistent discriminatory practice of designing and constructing covered multi-family dwellings in violation of the requirements of the FHA, and the applicable regulations.

66. Defendants' conduct described herein has been intentional, willful, and taken in disregard for the rights of others.

67. As a result of Defendants' wrongful conduct, Plaintiffs and their members have been injured by a discriminatory housing practice and are, therefore, "aggrieved person[s]," as defined by the FHA.

SECOND CLAIM FOR RELIEF
(Violations of the ADA)

68. Plaintiffs adopt and reallege the allegations of Paragraphs 1 - 67 of this Complaint.

69. The rental offices at the Subject Properties, and features and accommodations appurtenant to the rental offices, are sales or rental establishments, the operations of which affect commerce, and are thus, "public accommodations" as defined by 42 U.S.C. § 12181 (7).

70. Over 90% of the rental offices at the Subject Properties were designed and constructed for first use after January 26, 1993. The rental offices and the facilities and accommodations appurtenant to the public use of the rental offices, including the parking, sidewalks and restrooms at the rental offices of the Subject Properties, are subject to the prohibition on discrimination contained in 42 U.S.C. § 12182(a), and are subject to the design and construction requirements of 42 U.S.C. § 12183(a)(1), and the applicable regulations.

71. On information and belief, Archstone has failed to design and construct the rental offices at the Subject Properties, and the appurtenant parking, sidewalks, and restrooms at those rental offices, in such a manner that the facilities are readily accessible to and useable by individual with disabilities.

72. The actions of Defendants, as described herein, constitute:

- a. Discrimination against individuals with disabilities in the full and equal enjoyment of the services, facilities, privileges and accommodations of a place of public accommodation, in violation of the ADA, 42 U.S.C. § 12182(a), and
- b. A failure to design and construct public accommodation in compliance with the requirements of the ADA, 42 U.S.C. § 12183(a)(1) , and the applicable regulations.

73. The actions complained of constitute repeated and continuing violations of the ADA in that Defendants are engaged in a systematic and consistent discriminatory practice of designing and constructing the rental offices and the appurtenant parking, sidewalks, and restrooms at those rental offices in violation of the requirements of the ADA, and the applicable regulations.

74. Plaintiffs are each an “aggrieved person,” as defined by 42 U.S.C. § 12188(b)(2)(B), as a result of Defendants’ wrongful conduct.

PRAYER FOR RELIEF

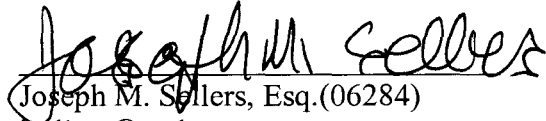
WHEREFORE, Plaintiffs respectively pray that this Court enter an order against Defendants, and each of them, as follows:

- A. Declaring, pursuant to 28 U.S.C. §§ 2201, that Defendants’ practices and actions, as alleged herein, violate the FHA and the ADA and the applicable regulations;

- B. Enjoining Defendants, their officers, directors, employees, agents, successors, assigns, and all other persons in active concert or participation with any of them, permanently from:
- 1) Failing or refusing to bring the covered dwelling units, and the public use and common use areas, at the Subject Properties into immediate compliance with the requirements of 42 U.S.C. § 3604(f)(3)(C) , and the applicable regulations,
 - 2) Failing or refusing to bring the public use and common use areas at the Subject Properties into immediate compliance with the requirements of 42 U.S.C. §§ 12182-83, and the applicable regulations, and
 - 3) Failing or refusing to design and construct any covered multi-family dwellings in the future in compliance with the FHA, the ADA, and the applicable regulations.
- C. Award such damages as would fully compensate each of the Plaintiffs for the injuries incurred as a result of the discriminatory housing practices and conduct of Defendants;
- D. Award such punitive damages as against Defendants as are proper under the law;
- E. Award plaintiffs their costs and attorneys' fees incurred herein; and
- F. Award plaintiffs such other relief as this Court deems just and proper.

Dated this 20th day of December, 2004

Respectfully Submitted,



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Addendum A
Archstone Subject and Tested Properties

* indicates Tested Property

Arizona Properties:

| | | |
|-----------|--|--|
| 1. | Archstone Arrowhead (formerly Cochise at Arrowhead) | 7701 West St. John Road Glendale, AZ 85308 |
| 2. | Archstone Old Town Scottsdale | 2929 North 70th Street Scottsdale, AZ 85251 |
| 3. | Archstone Rio Salado | 1535 North Scottsdale Road Tempe, AZ 85281 |

California Properties:

| | | |
|------------|---------------------------------|---|
| 4. | Archstone Aliso Town Center | 23511 Aliso Creek Road Aliso Viejo, CA 92656 |
| 5. | Archstone Aliso Viejo | 5000 Capobella Aliso Viejo, CA 92656 |
| 6. | Archstone City Place* | 404 Pine Avenue Long Beach, CA 90802 |
| 7. | Archstone Emerald Park | 5095 Haven Place Dublin, CA 94568 |
| 8. | Archstone Hacienda | 5650 Owens Drive Pleasanton, CA 94588 |
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | 8506 Villa La Jolla Drive La Jolla, CA 92037 |
| 13. | Archstone Mission Valley | 2288 Fenton Parkway San Diego, CA 92108 |
| 14. | Archstone Mission Viejo | 27260 Los Altos Mission Viejo, CA 92691 |
| 15. | Archstone Monterey Grove | 6100 Monterey Road San Jose, CA 95138 |
| 16. | Archstone Oak Creek | 29128 Oak Creek Lane Agoura Hills, CA 91301 |
| 17. | Archstone Pacific View | 5162 Whitman Way Carlsbad, CA 92008 |
| 18. | | |
| 19. | | |
| 20. | | 1650 Hope Drive Santa Clara, CA 95054 |

| | | |
|-----|-------------------------|---|
| 21. | Archstone Santa Monica* | 425 Broadway Santa Monica, CA 90401 |
| 22. | Archstone Torrey Hills | 11058 West Ocean Air Drive San Diego, CA 92130 |
| 23. | Archstone Vanoni Ranch | 10676 Veronica Lane Ventura, CA 93004 |
| 24. | Archstone Westside* | 3165 Sawtelle Boulevard Los Angeles, CA 90066 |
| 25. | Archstone Willow Glen | 3200 Rubino Drive San Jose, CA 95125 |
| 26. | Alara Camarillo | 390 Paseo Camarillo Camarillo, CA 93010 |
| 27. | Archstone Marina Bay | 1 Marina Lakes Drive Richmond, CA 94804 |

Connecticut Properties:

| | | |
|-----|--------------------|--|
| 28. | Archstone Stamford | 500 Bedford Street Stamford, CT 06901 |
|-----|--------------------|--|

Colorado Properties:

| | | |
|-----|---------------------------|--|
| 28. | Archstone Dakota Ridge | 13310 West Coal Mine Avenue Littleton, CO 80127 |
| 29. | Archstone Riverfront Park | 1460 Little Raven Street Denver, CO 80202 |
| 30. | Stonegate | 11815 Ridge Parkway Broomfield, CO 80021 |

Florida Properties:

| | | |
|-----|------------------------------|---|
| 31. | Archstone Cypress Cove | 1949 Cove Lake Road North Lauderdale, FL 33068 |
| 32. | Archstone Delray Beach | 5600 West Atlantic Avenue Delray Beach, FL 33484 |
| 33. | Archstone Doral Park | 10000 N W 45th Terrace Miami, FL 33178 |
| 34. | Archstone Doral West | 5400 N. W. 114th Avenue Miami, FL 33178 |
| 35. | Archstone Gardens | 8090 N. W. 96 Terrace Tamarac, FL 33321 |
| 36. | Archstone Marina Bay* | 3711 State Road 89 Davie, FL 33312 |
| 37. | Archstone Miramar Lakes* | 10720 North Preserve Way Miramar, FL 33025 |
| 38. | New River Village | 520 SE 5th Avenue Ft. Lauderdale FL 33301 |
| 39. | Archstone Promenade | 4000 Maguire Boulevard Orlando, FL 32803 |
| 40. | Residences at Miramar Lakes* | 2480 West Preserve Way Miramar, FL 33025 |
| 41. | Archstone Rocky Creek | 6820 West Hillsborough Avenue Tampa, FL 33634 |

| | | |
|-----|-------------------------|--|
| 42. | St. Andrews at Nob Hill | |
| 43. | Archstone Turtle Run | |
| 44. | Archstone Waterways | |

Georgia Properties:

| | | |
|-----|----------------------------|---|
| 45. | 1016 Lofts | 1016 Howell Mill Rd Atlanta, GA 30328 |
| 46. | Archstone North Point | 900 Jameson Pass Alpharetta, GA 30022 |
| 47. | Archstone Perimeter Center | 100 Ashford Gables Drive Dunwoody, GA 30338 |
| 48. | Archstone State Bridge | 10840 State Bridge Road Alpharetta, GA 30022 |
| 49. | Cameron at Barrett Creek | 2400 Barrett Creek Blvd. Marietta, GA 30066 |
| 50. | Cameron Landing | 3470 Mount Zion Road Stockbridge, GA 30281 |
| 51. | Dunwoody Courtyards | 6873 Peachtree Dunwoody Road Atlanta, GA 30328 |

Illinois Properties:

| | | |
|-----|--------------------|--|
| 52. | One Superior Place | One West Superior Chicago IL 60610 |
| 53. | Park Millennium | 222 North Columbus Drive Chicago IL 60601 |
| 54. | River North Park | 320 West Illinois Chicago IL 60610 |

Massachusetts Properties:

| | | |
|-----|----------------------------|--|
| 55. | Archstone Bear Hill | |
| 56. | Cronin's Landing | |
| 57. | Archstone Watertown Square | |

Maryland Properties:

| | | |
|-----|---------------------------------|---|
| 58. | Archstone Bowie Town Center | 3631 Elder Oaks Boulevard Bowie, MD 20716 |
| 59. | Archstone Columbia Town Center* | 10360 Swiftstream Place Columbia, MD 29732 |
| 60. | Archstone Governor's Green* | 16501 Governor Bridge Road Bowie, MD 20716 |
| 61. | Archstone Milestone Apartments* | 12526 Great Park Circle Germantown, MD 20876 |

| | | |
|------------|-----------------------------|--|
| 62. | Archstone Saybrooke* | 100 Old Macdonald Road Gaithersburg, MD 20877 |
| 63. | Archstone Seven Oaks | 2100 Sentry Court Odenton, MD 21113 |

New Mexico Properties:

| | | |
|------------|-------------------|--|
| 64. | La Ventana | 12200 Academy Road NE Albuquerque, NM 87111 |
|------------|-------------------|--|

North Carolina Properties:

| | | |
|------------|-------------------------------|---|
| 65. | Archstone Cornerstone | 100 Terrastone Place Cary, NC 27519 |
| 66. | Archstone Matthews | 1315 Cameron Matthews Drive Matthews, NC 28105 |
| 67. | Archstone Northcross | 8701 Pinnacle Cross Drive Huntersville, NC 28078 |
| 68. | Archstone North Park | 4800 Waterford Point Drive Raleigh, NC 27612 |
| 69. | Archstone Olde Apex | 1000 Cameron Woods Drive Apex, NC 27502 |
| 70. | Archstone Olde Raleigh | 4000 Grand Manor Court Raleigh, NC 27612 |
| 71. | Archstone Preston | 1100 Cameron Chase Drive Morrisville, NC 27560 |
| 72. | Archstone Reafield | 6609 Reafield Drive Charlotte, NC 28226 |
| 73. | | |

New Jersey Properties:

| | | |
|------------|------------------------------|---|
| 74. | Archstone Hudson Park | 77 Park Avenue Hoboken, NJ 07030 |
|------------|------------------------------|---|

New York Properties:

| | | |
|------------|------------------------|--|
| 75. | The Park Hudson | 101 West End Avenue New York NY 10023 |
|------------|------------------------|--|

Oregon Properties:

| | | |
|------------|---------------------------|---|
| 76. | Arbor Heights | 15199 S. W. Royalty Parkway Tigard, OR 97224 |
| 77. | Hedges Creek | 8900 S. W. Sweek Drive Tualatin, OR 97062 |
| 78. | Preston's Crossing | 14790 S W Scholls Ferry Road Beaverton, OR 97007 |

Tennessee Properties:

| | |
|-----|--------------------------|
| 79. | Archstone Hickory Hollow |
|-----|--------------------------|

**727 Bell Road
Nashville, TN 37013**

Texas Properties:

| | | |
|-----|--|--|
| 80. | Archstone Hunter's Run | 11900 Hobby Horse Court Austin, TX 78758 |
| 81. | Archstone Medical Center* (formerly Oaks at Medical Center) | 8181 Fannin Street Houston, TX 77054 |
| 82. | Archstone Memorial Heights* | 201 S. Heights Boulevard Houston, TX 77007 |
| 83. | Archstone Monterey Ranch | 4701 Staggerbrush Road Austin, TX 78749 |
| 84. | Cantebrea Crossing | 8021 FM 620 North Austin, TX 78726 |
| 85. | The Esplanade at Hermann Museum Circle* | One Hermann Museum Circle Houston, TX 77004 |
| 86. | Mission Gate | 8025 Ohio Drive Plano, TX 75024 |
| 87. | Vistas at Canyon Creek | 8025 FM 620 North Austin, TX 78726 |
| 88. | West Chase* | 2601 Woodland Park Drive Houston, TX 77077 |

Virginia Properties:

| | | |
|-----|--|--|
| 89. | 2201 Wilson Blvd.* | 2201 Wilson Boulevard Arlington, VA 22202 |
| 90. | Ballston Place* - Ballston Place/Pollard Gardens | 901 N. Pollard Drive Arlington, VA 22203 |
| 91. | Arlington Courthouse Place* | 1320 N. Veitch Street Arlington, VA 22201 |
| 92. | The Gallery at Rosslyn | 1800 North Oak Street Arlington, VA 22209 |
| 93. | Archstone Kingstowne* | 7150 Rock Ridge Lane Alexandria, VA 22315 |
| 94. | Lincoln Towers* | 850 North Randolph Street Arlington, VA 22203 |
| 95. | Lofts 590 (formerly called Lofts at Crystal Towers) | 590 15th Street Arlington, VA 22201 |
| 96. | Archstone Monument Park | 4457 Oakdale Crescent Court Fairfax, VA 22030 |
| 97. | Parc Vista | 801 15th Street Arlington, VA 22202 |
| 98. | Archstone Park Center* Park Center III, L. P. | 4556 Strutfield Lane Alexandria, VA 22311 |
| 99. | Archstone Springfield Station | 6802 Junction Boulevard Springfield, VA 22150 |

| | | |
|------|---|---|
| 100. | Archstone Reston Landing* (the only tested property where no violations found) | 12000 Cameron Pond Drive Reston, VA 20194 |
| 101. | Archstone Stoneridge Apartments* | 19900 Broad Vista Trail Ashburn, VA 20147 |
| 102. | Archstone Sussex Commons* | 6050 Edgeware Lane Alexandria, VA 22315 |
| 103. | Westchester at Stratford Farm | 500 Sunset View Terrace Leesburg, VA 20175 |
| 104. | Archstone Van Dorn | 6001 Archstone Way Alexandria, VA 22310 |
| 105. | Archstone Woodland Park Apts.* | 2399 Glen Echo Road Herndon, VA 20171 |
| 106. | Archstone Worldgate* | 13000 Wilkes Way Herndon, VA 20170 |

Washington Properties:

| | | |
|------|--------------------------|---|
| 107. | Archstone Northcreek | 20225 Bothell Everett Hwy Bothell, WA 98012 |
| 108. | Archstone Harbour Pointe | 4500 Harbour Pointe Boulevard Mukilteo, WA 98275 |
| 109. | Stonemeadow Farms | 23028 27th Avenue S.E. Bothell, WA 98021 |

Washington, D.C. Properties:



Exhibit C

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 Thomas J. Keary
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 (San Francisco)**

National Fair Housing Alliance, Inc.; Fair)
 Housing of Marin, Inc.; Fair Housing Napa)
 Valley, Inc.; Metro Fair Housing Services,)
 Inc.; and Fair Housing Continuum, Inc.,)

Plaintiffs,)

v.)

A.G. Spanos Construction, Inc.; A.G.)
 Spanos Development, Inc.; A.G. Spanos)
 Land Company, Inc.; A.G. Spanos)
 Management, Inc.; The Spanos Corporation;)
 and)

Knickerbocker Properties, Inc. XXXVIII;)
 and Highpointe Village, L.P, Individually)
 and As Representatives of a Class of All)
 Others Similarly Situated,)

Defendants)

Case No. C07-3255 (EMC)
 JUDGE SAUNDRA B. ARMSTRONG

**FIRST AMENDED COMPLAINT
 DEFENDANT CLASS ACTION**

I. PRELIMINARY STATEMENT

1. This civil rights action is brought by the National Fair Housing Alliance and four of its members against: A.G. Spanos Construction, Inc., one of the country’s largest builders and designers of multifamily apartment complexes, and its related companies: A.G

1 Spanos Development, Inc.; A.G. Spanos Land Company, Inc.; A.G. Spanos Management,
2 Inc.; and The Spanos Corporation, collectively referred to as the “A.G. Spanos Defendants,”
3 for violations of the accessibility requirements of the Fair Housing Act, as amended in 1988
4 (“FHA”). This action is also brought against Knickerbocker Properties, Inc. XXXVIII, and
5 Highpointe Village, L.P., both individually and as representatives of a defendant class
6 comprised of similarly situated, current owners of apartment complexes designed and/or
7 built by the A.G. Spanos Defendants since the effective date of the FHA. Declaratory and
8 injunctive relief against the members of this defendant class are necessary for the relief
9 sought by Plaintiffs.
10

11
12 2. Collectively, the A.G. Spanos Defendants comprise the fifth largest
13 multifamily rental apartment builder/developer in the United States having built, according to
14 the A.G. Spanos Companies’ website, more than 120,000 units at nearly 400 apartment
15 complexes since 1960.
16

17 3. Through careful investigation and testing, Plaintiffs have identified 34
18 apartment complexes in California, Arizona, Nevada, Texas, Kansas, Georgia and Florida
19 (the “Tested Properties”), totaling more than 10,000 individual apartment dwelling units, that
20 fail to meet the accessibility requirements of the FHA. *See* Appendix A.
21

22 4. This complaint alleges that, with respect to the Tested Properties and since
23 1991, the A.G. Spanos Defendants have engaged in a continuous pattern and practice of
24 discrimination against people with disabilities in violation of the FHA by designing and/or
25 constructing multifamily dwellings, and the common-use and public-use areas associated
26 with those dwellings (hereafter referred to as “covered units” or “covered apartment
27
28
29

1 complexes”), in such a manner as to deny people with disabilities full access to, and the use
2 of, these facilities as required under the FHA.

3
4 5. The A.G. Spanos Defendants’ violations of the FHA are serial and frequent,
5 and continue more than 16 years after the effective date of the FHA accessibility
6 requirements..

7
8 6. Plaintiffs have also identified another 47 apartment complexes—in California,
9 Arizona, Nevada, Colorado, New Mexico, Texas, Kansas, North Carolina, Georgia and
10 Florida—which the A.G. Spanos Defendants designed and/or constructed after March 1991.
11 *See* Appendix A. Because these share common design features with the Tested Properties,
12 Plaintiffs have reason to believe that similar FHA accessibility violations may exist at those
13 properties as well

14
15 7. Each and every one of the Tested Properties was built after March 13, 1991,
16 the effective date of the FHA accessibility requirements. Yet the A.G. Spanos Defendants
17 continued to design and construct dwelling units and common-use and public-use areas that
18 fail to meet the basic requirements of the FHA, rendering tens of thousands of units
19 inaccessible to people with disabilities. Unless restrained by this Court, the A.G. Spanos
20 Defendants will continue to violate the law.

21
22 8. The A.G. Spanos Defendants’ violations of the FHA design and construction
23 requirements have serious and significant consequences for people with disabilities. As
24 outlined below, many complexes have features—such as steps, thresholds, curbs, doors and
25 passageways that are too narrow for wheelchairs, or steep slopes on sidewalks, ramps and
26 parking areas—that would prevent people in wheelchairs and using other mobility aids from
27 traversing to and from covered units to the public streets and amenities throughout the
28
29

1 complex. Many others have bathrooms and kitchens that lack sufficient space at fixtures and
2 appliances for use by people in wheelchairs or using other mobility aids. Still others place
3 environmental controls and electrical sockets beyond the reach of wheelchair users, and have
4 constructed leasing offices, common restrooms, and recreational and entertainment facilities
5 in such a way as to make them inaccessible to wheelchair users. These blatant violations, and
6 many others, effectively communicate that people with disabilities are not welcome in the
7 Tested Properties.
8

9
10 9. According to the 2004 American Community Survey conducted by the U.S.
11 Census Bureau, more than 51 million Americans (nearly one in five) have some form of
12 disability, and one in eight has a severe disability. Of that number, more than 2.7 million
13 people over the age of 15 years use a wheelchair, and that number is expected to increase as
14 the population ages and medical care allows people with disabilities to live longer and fuller
15 lives. Another 7 million use a cane, crutches, a walker or other mobility aid. Accessible
16 housing is an essential means of ensuring that people with disabilities are able to fully
17 participate in community life.
18

19
20 10. A person using a wheelchair or other mobility aid is just as effectively
21 excluded from the opportunity to live in a particular dwelling by steps or thresholds at
22 building or unit entrances and by too narrow doorways as by a posted sign saying “No
23 Handicapped People Allowed.” In considering the 1988 disability amendments to the FHA,
24 the Congress stressed that enforcement of civil rights laws is necessary to protect people with
25 disabilities from the “devastating” impact of housing discrimination, including the
26 “architectural barriers” erected by developers who fail to construct dwellings and public
27
28
29

1 accommodations accessible to, and adaptable by, people with disabilities. H.R. REP. NO.
2 100-711, at 25 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2186.

3
4 11. The A.G. Spanos Defendants' flagrant and systematic violations of the FHA
5 have thwarted Congressional efforts to eradicate housing discrimination against people with
6 disabilities, rendered thousands of units unavailable to people with disabilities, frustrated the
7 mission of each of the Plaintiffs, and caused each Plaintiff to divert its scarce resources in an
8 attempt to redress these violations. Enforcement of the FHA against the A.G. Spanos
9 Defendants is necessary because of the extensive and continuing nature of the civil rights
10 violations at the numerous apartment complexes throughout the United States that have been
11 designed and constructed by the A.G. Spanos Defendants.
12

13
14
15 **II. JURISDICTION AND VENUE**

16 12. This Court may exercise subject matter jurisdiction over this action pursuant
17 to 28 U.S.C. §§ 1331 and 1332, and 42 U.S.C. §§ 3613(a). Further, this Court may exercise
18 personal jurisdiction over the A.G. Spanos Defendants and class representative defendants.
19

20 13. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
21 1391(b) in that the A.G. Spanos Defendants are corporations that reside in this district, and a
22 number of the events giving rise to these claims occurred in this district. Venue is also proper
23 for the named class representatives as they either reside in the district or have a property in
24 the district with violations giving rise to the claims in this action.
25

26 14. Intradistrict assignment in San Francisco is proper because the unlawful
27 conduct that gives rise to these claims occurred in the Counties of Napa and Sonoma, as well
28 as other locations.
29

1 **III. PARTIES**

2 **A. Plaintiffs**

3 15. Plaintiff National Fair Housing Alliance, Inc. (“NFHA”) is a national non-
4 profit public service organization incorporated under the laws of the Commonwealth of
5 Virginia, with its principal place of business at 1212 New York Avenue, N.W., Suite 525,
6 Washington DC 20005. NFHA is a nationwide alliance of private, non-profit fair housing
7 organizations, including organizations in 28 states. NFHA’s mission includes advocating for
8 the rights of people with disabilities to accessible housing. NFHA is the only national
9 organization dedicated solely to ending housing discrimination and promoting residential
10 integration. NFHA works to eliminate housing discrimination and to ensure equal
11 opportunity for all people through leadership, education and outreach, membership services,
12 public policy initiatives, advocacy, investigation of fair housing violations and enforcement.
13 One of NFHA’s goals is the promotion of accessible housing; to that end, since 1992, NFHA
14 has conducted nationwide educational campaigns to address accessibility in rental housing.
15
16
17

18 16. Plaintiff Fair Housing of Marin (“FHOM”) is a private, non-profit community
19 organization located in San Rafael, California, organized under the laws of the State of
20 California. It is engaged in several different activities to further the mission of promoting
21 equal housing opportunities for people with disabilities and other protected classes,
22 including: fair housing counseling to victims of discrimination; outreach to the community
23 on fair housing; training seminars and counseling for real estate professionals, architects, and
24 seniors vulnerable to predatory loans; research regarding housing discrimination in rentals,
25 lending, homeowners insurance, and senior care facilities; programs to children and adults
26 that emphasize the value of diversity and open-mindedness; and advocacy for accessible and
27
28
29

1 affordable housing.

2 17. Plaintiff Fair Housing Napa Valley (“FHNV”) is a non-profit community
3 organization located in Napa, California, organized under the laws of the State of California.
4 It is engaged in many activities to further the mission of promoting accessible housing,
5 including education and outreach to home seekers, housing industry groups, and assistance to
6 victims of discrimination; investigation of fair housing violations; and publication of
7 materials concerning the housing rights of people with disabilities and others. Since 2005,
8 Fair Housing Napa Valley has conducted more than 80 community education sessions about
9 the FHA, the majority of which have included information about the rights of people with
10 disabilities, including the right to accessible housing.
11

12 18. Plaintiff Metro Fair Housing Services (“MFHS”) is a non-profit community
13 organization located in Atlanta, Georgia, organized under the laws of the State of Georgia.
14 Its mission is to promote social justice and eliminate housing and lending inequities for all
15 people, including those with disabilities, through leadership, education and outreach, public
16 policy advocacy and enforcement. During the past three years, MFHS has presented more
17 than 30 workshops including disability rights and accessibility issues, and conducted more
18 than 40 accessibility audits for the U.S. Department of Housing and Urban Development, the
19 City of Atlanta and the Georgia Commission on Equal Opportunity. In addition, MFHS
20 conducts a number of outreach and enforcement programs to further the mission of
21 promoting equal housing opportunities, including educating and assisting victims of
22 discrimination, reviewing and investigating complaints, conciliation and advocacy, and
23 publication of materials concerning the housing rights of people with disabilities and others.
24

25 19. Plaintiff The Fair Housing Continuum, Inc. (“FHC”) is a private, non-profit
26
27
28
29

1 organization committed to equal housing opportunity and the elimination of discrimination in
2 Florida. The FHC has developed strategies to increase accessibility prior to construction.
3 Among other activities, FHC partnered with the Florida Assistant Attorney General to deliver
4 training to permitting officials throughout the state, and worked with that office to get the
5 accessibility requirements placed into the curriculum for the state architectural school. As a
6 result, in 1999 every registered architect in Florida was notified of the accessibility
7 requirements by letter. In addition, FHC developed a written test with a checklist to be sent
8 to developers and builders prior to construction, and began training directed to permitting
9 officials and statewide disability advocates. FHC also developed a handout of “The Most
10 Common Accessibility Violations in Florida” based on its testing data. FHC trains fair
11 housing enforcement groups to conduct accessibility testing or has conducted testing for
12 them, has entered into partnerships with Centers for Independent Living throughout Central
13 Florida to increase fair housing rights knowledge to the disability community, and travels all
14 over the state of Florida to conduct education and outreach upon request. Finally, FHC
15 conducts an average of 30 education and outreach activities annually.
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20 **B. The A.G. Spanos Defendants**

21 20. The A.G. Spanos Defendants are corporations engaged in one or more
22 activities related to land acquisition, development, construction, and management of
23 multifamily apartment complexes throughout the United States. Although incorporated
24 separately, the A. G. Spanos Defendants hold themselves out to the world through a company
25 website at www.agspanos.com and otherwise as divisions of the “A.G. Spanos Companies,”
26 a national builder/developer of multifamily housing. According to *Builder* magazine, “A.G.
27 Spanos Companies” is the fifth largest builder/developer of multifamily rental apartment
28
29

1 communities in the United States.

2 21. Defendant A.G. Spanos Construction, Inc. has been incorporated in California
3 since October 25, 1967. On information and belief, it operates as the construction division of
4 the "A.G. Spanos Companies," and is responsible for the design and/or construction of the
5 noncompliant dwellings that are the subject of this lawsuit. Defendant A.G. Spanos
6 Construction, Inc. is also the owner of Corbin Crossing, an apartment complex at 6801 W.
7 138 Terrace, Overland, Kansas 66223.
8

9
10 22. Defendant A.G. Spanos Development, Inc. has been incorporated in
11 California since January 1, 1974. On information and belief, it operates as the land
12 development division of the "A.G. Spanos Companies," and participated in the design and/or
13 construction of the noncompliant dwellings that are the subject of this lawsuit.
14

15 23. Defendant A.G. Spanos Land Company, Inc. has been incorporated in
16 California since February 17, 1982. On information and belief, it operates as the land
17 acquisition division of the "A.G. Spanos Companies," and participated in the design and/or
18 construction of the noncompliant dwellings that are the subject of this lawsuit.
19

20 24. Defendant A.G. Spanos Management, Inc. has been incorporated in California
21 since September 26, 1967. On information and belief, it operates as the management
22 division of the "A.G. Spanos Companies," and participated in the design and/or construction
23 of the noncompliant dwellings that are the subject of this lawsuit
24

25 25. Defendant The Spanos Corporation has been incorporated in California since
26 December 2, 1994. On information and belief, it has owned covered multifamily housing
27 during its construction by Defendant A.G. Spanos Construction, Inc. In that capacity, it
28 participated in the design and/or construction of properties that are the subject of this lawsuit.
29

1 It is also the owner of: Ashgrove Place, an apartment complex at 3250 Laurel Drive, Rancho
2 Cordova, California 95670; Sycamore Terrace, an apartment complex at 40 Park City Court,
3 Sacramento, California 95831; and The Battery at Chamblee, an apartment complex at 3450
4 Miller Drive, Suite 100, Chamblee, Georgia 30341.

6 26. Together, the A.G. Spanos Defendants constitute a multi-faceted building,
7 construction and management enterprise, with principal offices located at 10100 Trinity
8 Parkway, 5th Floor, Stockton, California 95219. The A.G. Spanos Defendants build, develop,
9 redevelop, acquire and/or manage covered multifamily dwellings located across the United
10 States.

12 27. Through ownership, control, supervision, building, development, operation
13 and/or management, the A.G. Spanos Defendants have been involved in the design and
14 construction of at least 81 multifamily complexes in California, Nevada, Arizona, Colorado,
15 New Mexico, Texas, Kansas, North Carolina, Georgia and Florida that are subject to the
16 accessibility requirements of the FHA and of this lawsuit, including the 34 Tested Properties
17 and the 47 other properties.

19 28. On information and belief, the A.G. Spanos Defendants, through a number of
20 subsidiaries and affiliated companies, own, have developed, designed and constructed, and/or
21 manage additional multifamily housing complexes, the identity and location of which are not
22 yet known to Plaintiffs.

24 29. Plaintiffs have identified, through on-site inspection of the A.G. Spanos
25 Defendants' publications or other public records, Spanos units and complexes that are subject
26 to the accessibility requirements of the FHA. For purposes of this complaint, all Spanos
27 units and properties currently known to Plaintiffs and subject to the FHA are referred to as
28
29

1 the “Subject Properties.” Attached as Appendix A to this complaint is a list of Subject
2 Properties identified to date.

3 **C. Defendant Class and Its Representatives**

4
5 30. The relief sought by Plaintiffs includes an order directing the A.G. Spanos
6 Defendants to take whatever action is appropriate to bring inaccessible features into
7 compliance with the requirements of the FHA. The A.G. Spanos Defendants, however, no
8 longer own most of the covered apartment complexes for which such relief is requested.
9 There are sixty-seven (67) such current owners of these apartment complexes, who are now
10 known to Plaintiffs. *See* Appendix B. There may be more such owners of additional covered
11 multifamily housing complexes developed, designed and constructed, and/or managed by the
12 A.G. Spanos Companies, the identity and location of which are not yet known to Plaintiffs.
13 These current owners of non-compliant units may be necessary parties in order to effectuate
14 any judgment or order for injunctive relief requested by Plaintiffs. The class is so numerous
15 that individual joinders of such a large number of defendants are impractical, however.
16
17

18 31. There are questions of law or fact that are common to the class of current
19 owners of covered apartment complexes designed and/or built by the A.G. Spanos
20 Defendants. Such questions include whether the built conditions identified by the Plaintiffs
21 violate the FHA, and whether this Court may enjoin the current owners from failing or
22 refusing to allow the A.G. Spanos Defendants to bring such violations into compliance with
23 the FHA.
24

25
26 32. The defendant class is comprised of the current owners of covered apartment
27 complexes that were designed and/or built by the A.G. Spanos Defendants since the effective
28 date of the FHA, but are no longer owned by the A.G. Spanos Defendants. Knickerbocker
29

1 Properties, Inc. XXXVIII, and Highpointe Village, L.P. have been named both individually
2 and as representatives of that class.

3
4 33. Defendant Knickerbocker Properties, Inc. XXXVIII is a Delaware
5 corporation, registered to do business in California, with its address at 1251 Avenue of the
6 Americas, New York, New York 10020. On information and belief, Defendant
7 Knickerbocker Properties, Inc. XXXVIII is a corporate name for the New York Teacher's
8 Retirement Fund. Defendant is the owner of: Mountain Shadows, an apartment complex at
9 160 Golf Course Drive, Rohnert Park, California 94928; and The Commons, an apartment
10 complex at 1300 Burton Drive, Vacaville, California 95687. These apartment complexes
11 were designed and/or constructed by the A.G. Spanos Defendants.
12

13 34. Defendant Highpointe Village, L.P. is a California limited partnership whose
14 address is 207 Second Street, Sausalito, California 94965. It is the owner of Highpointe
15 Village, an apartment complex at 10000 81st Street, Overland Park, Kansas 66204, which
16 was designed and/or constructed by the A.G. Spanos Defendants.
17

18 35. The claims or defenses of these class representative defendants are typical of
19 the claims or defenses of the class of current owner defendants. Like the entire defendant
20 class, each of the class representatives has purchased one or more apartment complexes from
21 the A.G. Spanos Defendants that do not fully comply with the accessibility and adaptability
22 requirements of the FHA. Based on Plaintiffs' investigation to date, the violations found at
23 the apartment complexes that are owned by the class representative defendants, see ¶¶ 55, 62,
24 and 64, *infra*, are typical of the violations found at the other properties that have been tested
25 by Plaintiffs. See ¶¶ 56-61, 63 and 65-71, *infra*
26
27

28 36. The representative defendants will fairly and adequately protect the interests
29

1 of the remaining members of the class of owner defendants. Each has a sufficient stake in
2 the issues of fact and law, which are common to the class members, to assure fair and
3 adequate representation.
4

5 37. In addition, a defendant class action is appropriate because the prosecution of
6 multiple, separate actions involving individual owners will create the risk of inconsistent and
7 varying adjudications as to the standards of accessibility and adaptability at apartment
8 complexes designed and /or built by the A.G. Spanos Defendants. Separate legal actions
9 involving the same built condition may lead to inconsistent outcomes — the same
10 construction held to violate the FHA in one apartment complex, but not at the other. Such
11 outcome would be detrimental to people with disabilities, whose interests the Plaintiffs
12 represent, and the interests of others such as the suppliers of products used in the construction
13 of multifamily housing including manufacturers of pre-fabricated doors and cabinetry for
14 bathrooms and kitchens.
15
16

17 In the alternative, a defendant class action is appropriate because those questions
18 of law or fact that are common to the members of the defendant class predominate over any
19 questions affecting only individual members of the class. While some individual issues may
20 arise with respect to the injunctive relief sought by Plaintiffs, such as how or when retrofits
21 will be performed to bring a particular non-compliant feature into compliance, such issues
22 may be tried individually after the common issues have been litigated. Proceeding with a
23 defendant owner class is superior to the alternative of multiple actions against individual
24 class members. It will promote judicial efficiency and enhanced enforcement of the FHA's
25 access provisions.
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IV. STATUTORY AND REGULATORY FRAMEWORK

38. The FHA mandates that every multifamily apartment building containing four (4) or more units, and built for first occupancy after March 13, 1991 (“covered multifamily dwellings”), be subject to certain design and construction requirements. All ground floor units must comply with the following requirements, as must all units served by an elevator:

- a. Public-use and common-use areas that are readily accessible to, and usable by, people with disabilities;
- b. Doors into and within covered units that are sufficiently wide to allow passage by people in wheelchairs;
- c. An accessible route into and through the dwelling;
- d. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
- e. Reinforcements in bathroom walls that allow for the later installation of grab bars; and
- f. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

39. Pursuant to Congressional authority, the U.S. Department of Housing and Urban Development (“HUD”) promulgated final FHA design and construction regulations in January 1989, *see* 24 C.F.R. §100.205, and published the final Fair Housing Accessibility Guidelines on March 6, 1991. *See* 56 Fed.Reg. 9472.

1 **V. FACTUAL AND LEGAL BACKGROUND**

2 40. In the course of their advocacy on behalf of people protected by the FHA,
3 NFHA and the other Plaintiffs became aware that a large number of new multifamily housing
4 complexes designed and constructed by the A.G. Spanos Defendants did not include the
5 required elements of accessible and adaptable design. By itself, and in concert with the other
6 Plaintiffs, NFHA visited a number of the A.G. Spanos Defendants' properties and discovered
7 FHA violations in the design and construction of those properties.
8

9
10 41. As a result of the discovery of these violations, NFHA and the other Plaintiffs
11 began investigations of the A.G. Spanos Defendants' properties, requiring Plaintiffs to divert
12 resources, including funding and staff members' time, from other activities in order to
13 conduct further investigation and testing of the A.G. Spanos Defendants' properties so as to
14 ascertain the extent of FHA violations.
15

16 42. In 2006 and 2007, NFHA and the other Plaintiffs conducted site visits,
17 investigations, surveys and tests at 34 of the Subject Properties in California, Nevada,
18 Arizona, Texas, Kansas, Florida and Georgia. The Tested Properties are identified on
19 Appendix A with an asterisk.
20

21 43. Upon information and belief, the A.G. Spanos Defendants participated in,
22 supervised, controlled and/or approved the design and/or construction of each of the Tested
23 Properties.
24

25 44. All of the Tested Properties are subject to the design and construction
26 requirements set forth in 42 U.S.C. § 3604(f)(3)(C) of the FHA because they are “dwellings”
27 within the meaning of 42 U.S.C. § 3602(b), are “covered multifamily dwellings” within the
28 meaning of the FHA, 42 U.S.C. § 3604(f)(7)(A), and were built for first occupancy after
29

1 March 13, 1991.

2 45. NFHA and the other Plaintiffs have identified at least one FHA violation and,
3 in most cases, multiple violations, at each of the Tested Properties. The frequency and
4 similarity of these violations demonstrates that the A.G. Spanos Defendants have engaged in
5 a pervasive pattern and practice of designing and constructing apartment communities in
6 violation of the FHA accessibility design requirements. On information and belief, the A.G.
7 Spanos Defendants have been involved in the design and construction of other noncompliant
8 properties not identified herein.
9
10

11 46. By way of example and not as an exhaustive inventory, the A.G. Spanos
12 Defendants have violated 42 U.S.C. § 3604(b)(3)(C) by failing to design and construct
13 covered dwelling units in the Tested Properties so that:

- 14 a. doors in units that are sufficiently wide so as to allow passage into
15 kitchens, bathrooms, bedrooms and other areas in the units by people using
16 wheelchairs;
- 17 b. an accessible route into and through the unit is provided, including access
18 to patios, balconies and other outside areas;
- 19 c. bathrooms have sufficient clear floor space to allow a person in a
20 wheelchair to maneuver about the space;
- 21 d. kitchens have sufficient clear floor space to allow a person in a wheelchair
22 to maneuver about the space; and
- 23 e. light switches, electrical outlets, thermostats and other environmental
24 controls are in accessible locations.
25
26
27

28 47. The A.G. Spanos Defendants have also violated 42 U.S.C. § 3604(f)(3)(C) by
29

1 failing to design and construct the public and common areas of many of the Tested Properties
2 so that they are readily accessible to and usable by people with disabilities. By way of
3 example and not as an exhaustive inventory, some of the violations in the common areas of
4 the Tested Properties include the following:
5

6 a. doors that require opening pressure that is too great;

7 b. lack of readily accessible routes into and through common-use and public-
8 use areas, including a lack of readily accessible routes to meeting rooms, recreation
9 facilities, entertainment facilities, patios, balconies, and other outside facilities;
10

11 c. inaccessible common-use bathrooms;

12 d. environmental controls and fire alarms placed at heights that make them
13 inaccessible to people in wheelchairs;

14 e. lack of curb cuts, or obstructed curb cuts;

15 f. inaccessible ramp routes; and

16 g. a lack of designated accessible parking spaces.
17

18 48. The untested Subject Properties share relevant common elements of design
19 with many of the Tested Properties, including common bathroom and kitchen designs, and
20 virtually identical floor plans in a number of complexes. By way of example and not as an
21 exhaustive inventory:
22

23 a. Seven Tested Properties—Mountain Shadows in Rohnert Park California;
24 North Point in Vacaville, California; Highlands/Highpointe in Overland Park,
25 Kansas; Crescent Cove in Lewisville, Texas; Lansbrook in Allen, Texas; Wade
26 Crossing in Frisco, Texas; and Sheridan Park in Plano, Texas—share common design
27 elements in the kitchens of their units, and with kitchen units of at least 18 untested
28
29

1 Subject Properties in California, Arizona, Nevada, New Mexico, Colorado, North
2 Carolina, Florida and Georgia. On information and belief, the Subject Properties in
3 those and other states share the accessibility violations present in the seven tested
4 properties, including lack of clear floor space at the sink, stove, refrigerator and/or
5 dishwasher, rendering those fixtures inaccessible to, or unsafe for use by, wheelchair
6 users.
7

8 b. Three Tested Properties—Bristol Bay in Reno, Nevada; Constellation
9 Ranch in Fort Worth, Texas; and Arlington at Northwood in Wesley Chapel,
10 Florida—share common design elements in the bathrooms of their units, and with
11 bathroom units of at least 25 untested Subject Properties in California, Arizona,
12 Nevada, New Mexico, Colorado, North Carolina, Florida and Georgia. On
13 information and belief, the Subject Properties in those and other states share the
14 accessibility violations present in the three tested properties, including lack of clear
15 floor space at the tub, toilet and/or sink, rendering those fixtures inaccessible to, or
16 unsafe for use by, wheelchair users.
17

18 49. On information and belief as demonstrated by: (a) the pervasiveness and
19 similarity of the FHA violations at the Tested Properties; and (b) the common elements of
20 design at the Tested Properties and untested Subject Properties, the A.G. Spanos Defendants'
21 continuing pattern and practice of design and construction have resulted in violations at each
22 of the Subject Properties, and Plaintiffs believe there are design and construction violations at
23 both Tested Properties and untested Subject Properties that can only be identified through a
24 careful survey of each Subject Property.
25

26 50. The A.G. Spanos Defendants' violations are continuing, ongoing and
27
28
29

1 demonstrate a pervasive pattern and practice of systematic and continuous FHA violations
 2 over several years. The A.G. Spanos Defendants have repeatedly and continually failed to
 3 design and construct covered multifamily dwellings, including their public and common-use
 4 areas, in accordance with the requirements of 42 U.S.C. § 3604(f)(3)(C), 42 U.S.C. §
 5 12183(a)(1), and their applicable regulations. In some instances, the A.G. Spanos Defendants
 6 utilized the same or similar floor plans in the design and construction of thousands of
 7 “covered units” at the Subject Properties.
 8

9
 10 51. For example, the A.G. Spanos Defendants built 19 of the Tested Properties
 11 from 1995 to 2007, as follows:

| <u>Property Name</u> | <u>Date(s) Built</u> |
|--|----------------------|
| Alexander Gardens (Las Vegas, NV) | 1995 |
| Timberlake Apts. (Las Vegas, NV) | 1997 |
| Eagle Crest (Las Vegas, NV) | 1997 |
| Diamond Sands (Las Vegas, NV) | 1997 |
| Crescent Cove (Las Vegas, NV) | 1997 |
| Avery Point (Fort Worth, TX) | 1999 |
| The Pavilions (Stockton, CA) | 2003 |
| Mountain Shadows (Rohnert Park, CA) | 2002 |
| Hawthorn Village (Napa, CA) | 2003 |
| The Commons (Vacaville, CA) | 2003 |
| North Point (Vacaville, CA) | 2005 |
| Auberry (Allen, TX) | 2005 |
| Windsor/Redwood Creek (Rohnert Park, CA) | 2005 |
| Constellation Ranch (Fort Worth, TX) | 2006 |
| Park Crossing (Fairfield, CA) | 2006 |
| Sycamore Terrace (Sacramento, CA) | 2006 |
| Tamarron (Phoenix, AZ) | 2006 |
| Battery at Chamblee (Chamblee, GA) | 2006 |
| Summer Winds (Las Vegas, NV) | 2007 |

25
 26 Each of these Tested Properties has internal thresholds at balconies, patios, and front
 27 doors or in transition from room to room, making these rooms and spaces (and appliances,
 28 fixtures and amenities connected with each) inaccessible to wheelchair users and other
 29

1 people using mobility aids. On information and belief, dozens of untested Subject Properties
 2 also share this threshold feature with the 19 Tested Properties.

3 52. Similarly, the A.G. Spanos Defendants built 15 of the Tested Properties from
 4 1996 to 2006, as follows:

| <u>Property Name</u> | <u>Date(s) Built</u> |
|---|----------------------|
| Villa Serena (Las Vegas, NV) | 1996 |
| Crescent Cove (Las Vegas, NV) | 1997 |
| Eastland Hills (Sparks, NV) | 1998 |
| Sheridan Park (Plano, TX) | 1999 |
| Avery Point (Fort Worth, TX) | 1999 |
| Wade Crossing (Frisco, TX) | 2000 |
| Canyon Vista (Sparks, NV) | 2002 |
| Bristol Bay at Desert Highlands (Reno, NV) | 2003 |
| Mountain Shadows (Rohnert Park, CA) | 2003 |
| Auberry (Allen, TX) | 2005 |
| Highland/Highpointe Village (Overland Park, KS) | 2005 |
| Belterra (Fort Worth, TX) | 2005 |
| Windsor/Redwood Creek (Rohnert Park, CA) | 2005 |
| Park Crossing (Fairfield, CA) | 2006 |
| Delano (Wesley Chapel, FL) | 2006 |

17 Each of these Tested Properties had environmental controls, fire alarms, electrical
 18 switches and/or electrical outlets placed beyond the reach range of a wheelchair user, making
 19 those controls and fixtures inaccessible to, or unsafe for use by, wheelchair users or other
 20 people using mobility aids. On information and belief, dozens of untested Subject Properties
 21 also share this threshold feature with the 16 Tested Properties.

23 53. Many of the Tested Properties identified above have been completed within
 24 two years of the filing of this Complaint.

26 54. The following specific examples are illustrative, and not exhaustive, of the
 27 A.G. Spanos Defendants' pattern and practice of FHA violations:

Mountain Shadows

1
2 55. Mountain Shadows in Rohnert Park, California, is a covered multifamily
3 complex consisting of more than 171 units that was completed in 2002. Some of the
4 violations Plaintiffs observed at Mountain Shadows include, but are not limited to, the
5 following:
6

7 a. Interior thresholds and changes of level from one room to another are too
8 high and act as barriers to wheelchair users, many of whom could not easily move
9 from one room to another;
10

11 b. Bathroom clearances are insufficient to allow a person in a wheelchair to
12 maneuver about the space. Specifically, absence of clear floor space adjacent to the
13 tub area can make it unsafe for a person transferring from a wheelchair to the tub.
14 Also, the failure to provide sufficient clear floor space at the sink area can make it
15 difficult to approach and use the sink;
16

17 c. Kitchen clearances are insufficient to allow a person in a wheelchair to
18 maneuver about the space. Specifically, there is not enough room at the stove top for
19 a person in a wheelchair to safely reach and use that appliance without the possibility
20 of being burned;
21

22 d. Doorways from kitchens to laundry rooms in the units are too narrow to
23 allow passage by people in wheelchairs, essentially depriving them of use of those
24 facilities;
25

26 e. Environmental controls are placed at heights that are beyond the reach of a
27 person in a wheelchair;

28 f. Parking access aisles are too narrow and therefore prevent a wheelchair
29

1 user from parking and having sufficient room to set up and transfer to a wheelchair to
2 enter a dwelling or the leasing office;

3 g. Common-use and public-use bathroom clearance is insufficient to allow a
4 person in a wheelchair to approach and use the toilet facilities;

5
6 h. Excessive opening pressure on mailroom door is required, rendering it
7 inaccessible to some people with disabilities who lack upper body strength or
8 dexterity.

9
10 **The Battery at Chamblee**

11 56. The Battery at Chamblee, in Chamblee, Georgia, is a covered multifamily
12 complex consisting of 291 units that was still under construction as of February 2007. Some
13 of the violations Plaintiffs observed at The Battery at Chamblee include, but are not limited
14 to, the following:

15
16 a. Steps up to primary entrances of some units, making those entrances and
17 units inaccessible to wheelchair users and people using other mobility aids;

18 b. Threshold at the leasing office is too high and acts as a barrier to a person
19 in a wheelchair;

20
21 c. Thresholds at balconies are too high and act as a barrier to a person in a
22 wheelchair;

23 d. Bathroom clearances are insufficient to allow a person in a wheelchair to
24 maneuver about the space;

25
26 e. Kitchen clearances are insufficient to allow a person in a wheelchair to
27 maneuver about the space;

28 f. Common-use and public-use bathroom clearances are insufficient to allow
29

1 a person in a wheelchair to maneuver about the space.

2 **Belterra**

3 57. Belterra, in Fort Worth, Texas, is a covered multifamily housing complex
4 consisting of more than 200 units that was completed in 2005. Some of the violations
5 Plaintiffs observed at Belterra include, but are not limited to, the following:
6

7 a. Doorways within units are too narrow for a wheelchair to pass through,
8 making bathrooms and bedrooms entirely inaccessible to wheelchair users;

9 b. Environmental controls are placed at heights that are beyond the reach of a
10 person in a wheelchair;
11

12 c. Bathroom clearances are insufficient to allow a person in a wheelchair to
13 maneuver about the space;

14 d. Excessive opening pressure on common and public use men's restroom
15 render it inaccessible to some people with disabilities who lack upper body strength
16 or dexterity.
17

18 **Constellation Ranch**

19 58. Constellation Ranch, in Fort Worth, Texas, is a covered multifamily housing
20 complex consisting of 324 units that was completed in 2006. Some of the violations
21 Plaintiffs observed at Constellation Ranch include, but are not limited to, the following:
22

23 a. Doorways within units are too narrow for a wheelchair to pass through,
24 making bathrooms and bedrooms entirely inaccessible to wheelchair users;

25 b. Bathroom clearances are insufficient to allow a person in a wheelchair to
26 maneuver about the space, and toilets are set too low to be accessible to a wheelchair
27 user. Specifically, absence of clear floor space adjacent to the tub area can make it
28
29

1 unsafe for a person transferring from a wheelchair to the tub;

2 c. Internal thresholds at balcony doors are too high and act as a barrier to a
3 person in a wheelchair;

4 d. Resident parking areas lack curb cuts, rendering parking inaccessible to
5 wheelchair users.
6

7 **Auberry at Twin Creeks Apartments**

8 59. Auberry at Twin Creeks Apartments, in Allen, Texas, is a covered multifamily
9 housing complex consisting of 216 units that was completed in 2005. Some of the violations
10 Plaintiffs observed at Auberry at Twin Creeks Apartments include, but are not limited to, the
11 following:
12

13 a. Thresholds (exterior and interior) at front entrances to dwellings that make
14 the entrances inaccessible to wheelchair users, particularly those who lack upper body
15 strength or dexterity and cannot roll over these obstructions;
16

17 b. Doorways within units that are too narrow for a wheelchair to pass
18 through, making bathrooms and bedrooms and closets entirely inaccessible to
19 wheelchair users;
20

21 c. Environmental controls are placed at heights that are beyond the reach of a
22 person in a wheelchair;

23 d. Parking access aisles that are too narrow to be accessible to and usable by
24 people in wheelchairs, preventing wheelchair users from parking and having
25 sufficient room to set up and transfer to a wheelchair to enter a dwelling or the leasing
26 office;
27

28 e. Recreational facilities that are not served by accessible routes.
29

1 **Arlington at Northwood**

2 60. Arlington at Northwood, in Wesley Chapel, Florida, is a covered multifamily
3 housing complex that consists of 312 units that was completed in 2006. Some of the
4 violations Plaintiffs observed at Arlington at Northwood include, but are not limited to, the
5 following:
6

- 7 a. Lack of accessible routes through dwelling units. Specifically, the passage
8 from the living room area to the front bath is too narrow for passage in a wheelchair,
9 making a large proportion of each unit entirely inaccessible to wheelchair users;
10
11 b. Narrow closet doors, rendering closets inaccessible to wheelchair users;
12
13 c. Inaccessible door to pool area, and lack of an accessible route in the
14 exercise facilities;
15
16 d. Environmental controls in common areas placed at heights that make them
17 inaccessible to a person in a wheelchair;
18
19 e. Complex owned golf carts parked across access aisles of handicapped
20 spaces.

21 **Hawthorn Village**

22 61. Hawthorn Village, in Napa, California, is a covered multifamily complex
23 consisting of more than 200 units that was completed in 2003, and which has new units under
24 construction as of the date this complaint is being filed. Some of the violations Plaintiffs
25 observed at Hawthorn Village include, but are not limited to, the following:

- 26 a. Internal thresholds at balcony doors are too high and act as a barrier to a
27 person in a wheelchair;
28
29 b. Bathroom clearances are insufficient to allow a person in a wheelchair to

1 maneuver about the space. Specifically, absence of clear floor space adjacent to the
2 tub area can make this bathroom unsafe for a person transferring from a wheelchair to
3 the tub;

4
5 c. Toilet not properly centered between bathroom elements so that grab bars
6 can be installed. As a result, it can be unsafe for a person transferring from a
7 wheelchair to the toilet;

8
9 d. Environmental controls are placed at heights that are beyond the reach of a
10 person in a wheelchair;

11 e. Inaccessible routes through communal exercise areas;

12
13 f. Slopes on curb cuts are too steep to be accessible to, and usable by,
14 people in wheelchairs. Steep slopes without railings may prevent wheelchair users
15 from ascending the curb cuts, and may cause them to roll too fast into parking lots or
16 streets on the descent;

17
18 g. Insufficient accessible parking spaces and access aisles too narrow to be
19 accessible to and usable by people in wheelchairs. As a consequence, wheelchair
20 users may be discouraged from leaving their units for fear of not finding an accessible
21 space on return, or prevented from returning to their units because no space is
22 available. Furthermore, narrow access aisles prevent a wheelchair user from parking
23 and having sufficient room to set up and transfer to a wheelchair to enter a dwelling
24 or the leasing office.

25
26 **The Highlands and Highpointe Village**

27 62. The Highlands, in Overland Park, Kansas, is a covered multifamily complex
28 consisting of more than 180 units that was completed in 2005. Highpointe Village, in
29

1 Overland Park, Kansas, is an adjacent covered multifamily complex consisting of
2 approximately 300 units that was completed in 2003 and that appears to share common
3 elements with The Highlands. Some of the violations Plaintiffs observed at the Highlands
4 and Highpointe Village include, but are not limited to, the following:
5

6 a. Thresholds at balconies are too high and act as a barrier to a person in a
7 wheelchair;

8 b. Bathroom clearances are insufficient to allow a person in a wheelchair to
9 maneuver about the space;
10

11 c. Kitchen clearances are insufficient to allow a person in a wheelchair to
12 maneuver about the space. Specifically, there is not enough room at the stove top for
13 a person in a wheelchair to safely reach and use that appliance without the possibility
14 of being burned, and not enough room at the sink for a wheelchair user to be able to
15 reach and use the sink;
16

17 d. Environmental controls are placed at heights that are beyond the reach of a
18 person in a wheelchair;

19 e. Slopes adjacent to the primary entrance to the leasing office, clubhouse,
20 exercise room, computer room and theater, and at least one intersection are too steep,
21 and therefore inaccessible to wheelchair users. Steep slopes without railings may
22 prevent wheelchair users from ascending the curb cuts, and may cause them to roll
23 too fast into parking lots or streets on the descent;
24

25 f. Routes of travel between some buildings and common elements, such as
26 the recreation areas, are inaccessible meaning that a wheelchair user could not safely
27 use and enjoy the premises because he or she could simply not get there;
28
29

1 g. Door to the pool area is inaccessible, and lack of an accessible route in the
2 exercise facilities, rendering them unusable by wheelchair users;

3 h. Uneven sidewalks adjacent to mail room, making it very difficult for a
4 wheelchair user to get to them, and a security system for the mail room installed at a
5 height that is beyond the reach of a person in a wheelchair;

6 i. Common and public use restroom lacks a fully accessible toilet stall,
7 rendering this element unusable by many wheelchair users;

8 j. Parking spaces and access aisles for common-use and public-use parking
9 are inaccessible, and some buildings are without designated handicapped parking and
10 curb cuts at all;

11 k. Environmental controls in common areas are placed at heights that make
12 them inaccessible to a person in a wheelchair.

13 **Sycamore Terrace**

14 63. Sycamore Terrace, in Sacramento, California, is a covered multifamily
15 complex consisting of 266 units that was still under construction as of September 2006.
16 Some of the violations Plaintiffs observed at Sycamore Terrace include, but are not limited
17 to, the following:
18

19 a. Thresholds at doorways are too high and act as a barrier to a person in a
20 wheelchair.

21 b. Bathroom clearance is insufficient to allow a person in a wheelchair to
22 maneuver about the space;

23 c. The common-use door in the swimming pool area is inaccessible;

24 d. Pool lift for people with disabilities is inaccessible.
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The Commons Apartments

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2 64. The Commons Apartments, in Vacaville, California, is a covered multifamily
3 housing complex consisting of approximately 200 units that was completed in 2003. Some
4 of the violations Plaintiffs observed at The Commons Apartments include, but are not limited
5 to, the following:
6

7 a. Thresholds at balconies are too high and act as a barrier to a person in a
8 wheelchair;

9
10 b. Sufficient centered clear floor space is not provided at the bathroom sink
11 for a parallel approach by a person in a wheelchair nor is the cabinet under the sink
12 removable for a forward wheelchair approach.

13 c. Sufficient clear floor space is not provided adjacent to the tub area for a
14 wheelchair user to safely transfer from a wheelchair to the tub.
15

16 **Park Crossing**

17 65. Park Crossing, in Fairfield, California, is a covered multifamily complex
18 consisting of more than 200 units that was completed in 2006. Some of the violations
19 Plaintiffs observed at Park Crossing include, but are not limited to, the following:
20

21 a. Thresholds at balconies are too high and act as a barrier to a person in a
22 wheelchair;

23 b. Bathroom clearances are insufficient to allow a person in a wheelchair to
24 maneuver about the space;

25 c. Environmental controls are placed at heights that make them inaccessible
26 to a person in a wheelchair.
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Tamarron

66. Tamarron in Phoenix, Arizona, is a covered multifamily complex consisting of more than 380 units that was completed in 2006. Some of the violations Plaintiffs observed at Tamarron include, but are not limited to, the following:

- a. Thresholds at doorways are too high and act as a barrier to a person in a wheelchair;
- b. Bathroom clearances are insufficient to allow a person in a wheelchair to maneuver about the space;
- c. Closet doorways in the units are too narrow to allow passage by a person in a wheelchair.

Canyon Vista

67. Canyon Vista, in Sparks, Nevada, is a covered multifamily complex consisting of more than 276 units that was completed in 2002. Some of the violations Plaintiffs observed at Canyon Vista include, but are not limited to, the following:

- a. Slopes adjacent to the primary entrance to the leasing office, club house, and theater are too steep, and therefore inaccessible to wheelchair users;
- b. Curb cuts have steep slopes and are without landing areas, making them inaccessible to wheelchair users;
- c. One or more steps make the common-use theater area inaccessible to wheelchair users;
- d. The door to the pool area is inaccessible, and the route in the exercise facilities is inaccessible;
- e. Environmental controls and fire alarm in dwelling units are placed at

1 heights that make them inaccessible to a person in a wheelchair.

2 **Delano**

3 68. Delano, in Wesley Chapel, Florida, is a covered multifamily complex
4 consisting of 288 units that was completed in 2006. Some of the violations Plaintiffs
5 observed at Delano include, but are not limited to, the following:
6

7 a. Lack of accessible routes through dwelling units;

8 b. Bathroom clearances are insufficient to allow a person in a wheelchair to
9 maneuver about the space;

10 c. Environmental controls in dwelling units are placed at heights that make
11 them inaccessible to a person in a wheelchair;

12 d. Slopes adjacent to some units are too steep, and therefore inaccessible to
13 wheelchair users;

14 e. Access aisles, accessible parking spaces and curb cuts blocked by
15 vehicles;

16 f. Environmental controls in common areas are placed at heights that make
17 them inaccessible to a person in a wheelchair;

18 g. The door to the pool area is inaccessible, and there is a lack of an
19 accessible route in the exercise facilities.
20

21 **Eastland Hills**

22 69. Eastland Hills, in Sparks, Nevada, is a covered multifamily complex
23 consisting of 296 units that was completed in 1998. Some of the violations Plaintiffs
24 observed at Eastland Hills include, but are not limited to, the following:
25

26 a. Doors throughout dwelling units are too narrow to be accessible to a
27
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1 wheelchair user;

2 b. Bathroom clearances are insufficient to allow a person in a wheelchair to
3 maneuver about the space;

4 c. Kitchen clearances at sink and dishwasher are insufficient to allow a
5 person in a wheelchair to maneuver about the space;

6 d. Environmental controls and fire alarm in dwelling units are placed at
7 heights that make them inaccessible to a person in a wheelchair;

8 e. Most buildings lack accessible parking and curb cuts; some handicapped
9 spaces are too narrow to be accessible for wheelchair users;

10 f. Common and public use bathroom clearances are insufficient to allow a
11 person in a wheelchair to maneuver about the space.

12 **Bristol Bay at Desert Highlands**

13 70. Bristol Bay at Desert Highlands, in Reno, Nevada, is a covered multifamily
14 complex consisting of 264 units that was completed in 2004. Some of the violations
15 Plaintiffs observed at Bristol Bay at Desert Highlands include, but are not limited to, the
16 following:

17 a. Slopes adjacent to some units are too steep, and therefore inaccessible to
18 wheelchair users;

19 b. Bathroom clearances are insufficient to allow a person in a wheelchair to
20 maneuver about the space;

21 c. Kitchen clearances are insufficient to allow a person in a wheelchair to
22 maneuver about the space;

23 d. Environmental controls in dwelling units are placed at heights that make
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1 them inaccessible to a person in a wheelchair;

2 e. Slopes adjacent to the primary entrance to the leasing office, club house,
3 and theater are too steep, and therefore inaccessible to wheelchair users;

4 f. Staff of the complex park golf carts across access aisles of handicapped
5 spaces;

6 g. The door to the pool area is inaccessible, and there is a lack of an
7 accessible route in the exercise facilities;

8 h. Lack of accessible routes (narrow sidewalks and lack of curb cuts) in
9 common and public use areas;

10 i. One or more steps make the common-use theater area inaccessible to
11 wheelchair users;

12 j. Resident parking access aisles are too narrow to be accessible to wheelchair
13 users.

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16
17 **Timberlake Apartments**

18 71. Timberlake Apartments, in Henderson, Nevada, is a covered multifamily
19 complex consisting of 307 units that was completed in 1997. Some of the violations
20 Plaintiffs observed at Timberlake Apartments include, but are not limited to, the following:
21

22 a. Thresholds at balconies are too high and act as a barrier to a person in a
23 wheelchair, and also make laundry facilities for each individual unit inaccessible;

24 b. Bathroom clearances are insufficient to allow a person in a wheelchair to
25 maneuver about the space;

26 c. One or more steps make the common-use theater area inaccessible to
27 wheelchair users;
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29

1 d. There is a lack of an accessible route in common-use areas, specifically
2 from leasing office to model unit;

3 e. Slopes adjacent to some units are too steep, and some lack curb cuts,
4 making them inaccessible to wheelchair users.
5

6
7 **VI. INJURY TO PLAINTIFFS**

8 72. As a result of the A.G. Spanos Defendants' actions described above, Plaintiffs
9 have been directly and substantially injured in that they have been frustrated in their missions
10 to eradicate discrimination in housing, and in carrying out the programs and services they
11 provide, including encouraging integrated living patterns, educating the public about fair
12 housing rights and requirements, educating and working with industry groups on fair housing
13 compliance, providing counseling services to individuals and families looking for housing or
14 affected by discriminatory housing practices and eliminating discriminatory housing
15 practices.
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18 73. As outlined above, each Plaintiff has invested considerable time and effort in
19 educating its respective communities about the importance of accessible housing for people
20 with disabilities, in an attempt to secure compliance by entities involved in the design and
21 construction of covered multifamily dwellings. Each time the A.G. Spanos Defendants
22 designed and constructed covered dwellings that did not comply with the FHA in one of
23 Plaintiffs' service areas, the A.G. Spanos Defendants frustrated the mission of that Plaintiff,
24 inasmuch as it served to discourage people with disabilities from living at that dwelling, and
25 encouraged other entities involved in the design and construction of covered units to
26 disregard their own responsibilities under the FHA.
27
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1 74. The A.G. Spanos Defendants' continuing discriminatory practices have forced
2 Plaintiffs to divert significant and scarce resources to identify, investigate, and counteract the
3 A.G. Spanos Defendants' discriminatory practices, and such practices have frustrated
4 Plaintiffs' other efforts against discrimination, causing each to suffer concrete and
5 demonstrable injuries.
6

7 75. Each Plaintiff conducted site visits, investigations, surveys and/or tests at the
8 Tested Properties, resulting in the diversion of its resources in terms of staff time and salaries
9 and travel and incidental expenses that it would not have had to expend were it not for the
10 A.G. Spanos Defendants' violations. FHOM, FHNV, MFHS and FHC each diverted staff
11 time and resources to meet with NFHA staff, receive detailed training concerning the
12 accessibility requirements of the FHA and provide logistical support for NFHA staff. In
13 addition to such support:
14

15 a. Plaintiff FHOM conducted site visits and investigations at Mountain
16 Shadows and Windsor at Redwood Creek, two properties within its service area.
17

18 b. Plaintiff FHNV conducted a site visit and investigation at Hawthorn
19 Village, a property within its service area.
20

21 c. Plaintiff MFHS conducted a site visit and investigation at Battery at
22 Chamblee, a property within its service area.
23

24 d. Plaintiff FHC conducted tests at Delano and Arlington at Northwood, two
25 properties within its service area.
26

27 76. In doing the acts or in omitting to act as alleged in this Complaint, each
28 employee or officer of each A.G. Spanos Defendant was acting in the course and scope of his
29 or her actual or apparent authority pursuant to such agencies, or the alleged acts or omissions

1 of each employee or officer as agent were subsequently ratified and adopted by each A.G.
2 Spanos Defendant as principal.

3 77. In carrying out the aforementioned actions, the A.G. Spanos Defendants acted
4 intentionally and willfully, and with callous and reckless disregard of the rights of Plaintiffs
5 and people with disabilities to accessible housing, pursuant to the FHA. The A.G. Spanos
6 Defendants knew or should have known of their design and construction obligations with
7 respect to these properties.
8

9 78. Until remedied, the A.G. Spanos Defendants' unlawful, discriminatory actions
10 will continue to injure Plaintiffs by:
11

12 a. Interfering with efforts and programs intended to bring about equality of
13 opportunity in housing;

14 b. Requiring the commitment of scarce resources, including substantial staff
15 time and funding, to investigate and counteract the A.G. Spanos Defendants'
16 discriminatory conduct, thus diverting those resources from the Plaintiffs' other
17 activities and services, such as education, outreach, and counseling; and
18

19 c. Frustrating Plaintiffs' missions and purposes of promoting the equal
20 availability of housing to all persons without regard to any protected category,
21 including disability.
22

23
24 **VII. LEGAL CLAIMS**

25
26 (Federal Fair Housing Act, 42 U.S.C. §§3601 *et seq.*)

27 79. Plaintiffs reallege the allegations of Paragraphs 1-78, and incorporate them
28 herein.
29

1 80. The Subject Properties include 81 apartment complexes, which, on
2 information and belief, contain more than 22,000 individual dwelling units.

3 81. Each of the Tested Properties is a covered multifamily dwelling subject to the
4 FHA. At the Tested Properties, each of the ground-floor units in all buildings, and each unit
5 on floors in buildings serviced by an elevator, is a “covered unit” within the meaning of the
6 FHA. Each “covered unit” at the Tested Properties, and the public and common-use areas at
7 the Tested Properties, is subject to the design and construction requirements of the FHA, 42
8 U.S.C. § 3604(f)(3)(C).
9

10 82. On information and belief, the A.G. Spanos Defendants repeatedly and
11 continually have failed to design and construct the Subject Properties so that:
12

13 a. Public-use and common-use areas are readily accessible to, and usable by,
14 people with disabilities;

15 b. Doors into and within covered units are sufficiently wide to allow passage
16 by people in wheelchairs;

17 c. Covered units contain the following features of adaptive design:

18 1. An accessible route into and through the dwelling;

19 2. Usable kitchens and bathrooms such that an individual in a
20 wheelchair can maneuver about the space;

21 3. Light switches, electrical outlets, thermostats and other
22 environmental controls in accessible locations;

23 4. Reinforcements in bathroom walls that allow for the later
24 installation of grab bars
25

26 83. Through the actions and inactions described above, the A.G. Spanos
27
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29

1 Defendants have:

2 a. Discriminated in the rental of, otherwise made unavailable, or denied
3 dwellings to individuals because of disabilities in violation of the FHA, 42 U.S.C. §
4 3604(f)(1);
5

6 b. Discriminated against individuals because of disability in the terms,
7 conditions, or privileges of rental, or in the provision of services or facilities in
8 connection with the rental of a dwelling, in violation of the FHA, 42 U.S.C.
9 3604(f)(2);
10

11 c. Failed to design and construct dwellings in compliance with the
12 requirements mandated by the FHA, 42 U.S.C. § 3604(f)(3)(C), and the applicable
13 regulations.
14

15 84. The actions complained of constitute a continuing pattern and practice of
16 repeated and continuing FHA violations in that the A.G. Spanos Defendants have engaged in
17 a systematic and consistent pattern and practice of designing and constructing covered
18 multifamily dwellings in violation of FHA requirements.

19 85. As a result of the A.G. Spanos Defendants' wrongful conduct, NFHA and the
20 other Plaintiffs each have been injured by a discriminatory housing practice and are,
21 therefore, "aggrieved persons" as defined by the FHA, 42 U.S.C. § 3602(i)(1).
22
23
24

25 **JURY TRIAL DEMAND**

26 Plaintiffs hereby demand a trial by jury.
27
28
29

PRAYER FOR RELIEF

1
2 WHEREFORE, for the foregoing reasons, Plaintiffs pray that this Court grant
3 judgment in their favor, and against all Defendants, as follows:
4

5 A. Declaring, pursuant to 28 U.S.C. § 2201, that the A.G. Spanos Defendants’
6 practices and actions, as alleged herein, violate the FHA, and the applicable regulations;

7 B. Enjoining the A.G. Spanos Defendants, its officers, directors, employees,
8 agents, successors, assigns, and all other persons in active concert or participation with any
9 of them, both temporarily during the pendency of this action, and permanently, from:
10

- 11 1. constructing any covered multifamily housing and/or common areas
12 that, in any way, fails to comply with the FHA and the applicable
13 regulations, including the acquisition of any building or construction
14 permits, or certificates of occupancy;
- 15 2. selling any building containing a covered unit until the entry of final
16 relief herein, or until the completion of such retrofit alteration to
17 covered units as may be ordered by the Court;
- 18 3. failing or refusing to bring the covered dwelling units and the public-
19 use and common-use areas at the Tested Properties into compliance
20 with the requirements of 42 U.S.C. § 3604(f)(3)(C), and the applicable
21 regulations
22 4. failing or refusing to design and construct any covered multifamily
23 dwellings in the future in compliance with the FHA and applicable
24 regulations;
25 26
27

28 C. Enjoining the A.G. Spanos Defendants, their officers, directors, employees,
29

1 agents, successors, assigns, and all other persons in active concert or participation with any
2 of them from failing or refusing to :

- 3 1. survey each and every apartment community containing “covered
4 units” and appurtenant common and public use areas, for which any of
5 them had a role in the design and construction since March 13, 1991
6 (the “Portfolio”), and assess the compliance of each with the
7 accessibility requirements of the FHA;
8
- 9 2. report to the Court the extent of the noncompliance of the Portfolio
10 with the accessibility requirements of the FHA; and
11
- 12 3. bring each and every such apartment community into compliance with
13 the requirements of 42 U.S.C. § 3604(f)(3)(C), and the applicable
14 regulations.
15

16 D. Enjoining the Owner Defendants from failing or refusing to permit the retrofits
17 ordered by the Court to be made in their respective properties, to comply with such
18 procedures for inspection and certification of the retrofits performed as may be ordered by
19 this Court, and to perform or allow such other acts as may be necessary to effectuate any
20 judgment against the A.G. Spanos Defendants.
21

22 E. Awarding such damages against the A. G. Spanos Defendants as would fully
23 compensate Plaintiffs for their injuries incurred as a result of the A. G. Spanos Defendants’
24 discriminatory housing practices and conduct;
25

26 F. Awarding such punitive damages against the A. G. Spanos Defendants as are
27 proper under law;

28 G. Awarding Plaintiffs their costs and attorneys’ fees incurred herein against the
29

1 A. G. Spanos Defendants; and

2 H. Awarding Plaintiffs such other relief as this Court deems just and proper.

3
4
5 Dated this 11th day of September 2007.

6 Respectfully Submitted,

7
8 S/ D. Scott Chang

9
10 Michael Allen
11 Stephen M. Dane
12 John P. Relman
13 Thomas J. Keary
14 Pending admission *pro hac vice*
15 D. Scott Chang, Bar No. 146403
16 RELMAN & DANE PLLC
17 1225 19th Street, NW, Suite 600
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21 Attorneys for Plaintiffs
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APPENDIX A

Appendix A

NFHA et al. v. A. G. Spanos Construction, Inc., et al.

Subject Properties

Note: All tested properties built after January 26, 1993, and therefore subject to both Fair Housing Act Accessibility Guidelines and The Americans With Disabilities Act Accessibility Standards. (*) Denotes tested properties.

ARIZONA

- | | |
|---|--|
| 1. Ocotillo Bay 1889 West Queen Creek Chandler, AZ 85248 | 4. Sonoma Ridge 9246 W. Beardsley Road Peoria, AZ 85382 |
| 2. Biscayne Bay (Phases I & II) 300 East Warner Road Chandler, AZ 85224 | 5. Tuscany Ridge 8203 West Oraibi Drive Peoria, AZ 85382 |
| 3. Arrowhead Landing 15740 North 83 rd Avenue Peoria, AZ 85382 | 6. Tamarron* 4410 N. 99 th Avenue Phoenix, AZ 85037 |

CALIFORNIA

- | | |
|--|--|
| 7. Sterling Heights 50 Rankin Way Benecia, CA 94510 | 11. Aventine 47750 Adams Street La Quinta, CA 92253 |
| 8. Rolling Oaks 3700 Lyon Road Fairfield, CA 94534 | 12. The Enclave 30300 Antelope Road Menifee, CA 92584 |
| 9. Park Crossing* 2100 West Texas Street Fairfield, CA 94533 | 13. Hawthorne Village* 3663 Solano Avenue Napa, CA 94558 |
| 10. Willow Springs 250 McAdoo Drive Folsom, CA 95630 | 14. Ashgrove Place 3250 Laurelhurst Drive Rancho Cordova, CA 95670 |

15. Stone Canyon
5100 Quail Run Road
Riverside, CA 92507

16. View Pointe
5059 Quail Run Road
Riverside, CA 92507

17. Mountain Shadows*
160 Golf Course Drive
Rohnert Park, CA 94928

18. Windsor at Redwood Creek*
600 Rohnert Park Expressway
Rohnert Park, CA 94928

19. Cobble Oaks
12155 Tributary Point Drive
Sacramento, CA 95670

20. Sycamore Terrace*
40 Park City Court
Sacramento, CA 95831

21. Pinewood
7051 Bowling Drive
Sacramento, CA 95823

22. The Pavilions*
5222 Cosumnes Drive
Stockton, CA 95219

23. Tuscany Ridge
41955 Margarita Road
Temecula, CA 92591

24. River Oaks
1000 Allison Drive
Vacaville, CA 95687

25. The Commons*
1300 Burton Drive
Vacaville, CA 95687

26. North Pointe*
6801 Leisure Town Road
Vacaville, CA 95688

COLORADO

27. Spring Canyon
4510 Spring Canyon Heights
Colorado Springs, CO 80907

28. Pine Bluffs
6470 Timber Bluff Point
Colorado Springs, CO 80918

FLORIDA

29. Asprey Place
1240 Astor Common Place
Brandon, FL 33511

32. Versant Place
1010 Versant Drive
Brandon, FL 33511

30. Lucerne at Lake
1419 Lake Lucerne Way
Brandon, FL 33511

33. Bayridge
3021 State Road 590
Clearwater, FL 33759

31. The Hamlin at Lake Brandon
508 LaDora Drive
Brandon, FL 33511

34. Alexandria (Phase I)
Orlando, FL 32836

35. Egret's Landing
1500 Seagull Drive
Palm Harbor, FL 34685

Tampa, FL 33647

36. Andover Place
Tampa, FL

38. Park del Mar
19411 Via Del Mar
Tampa, FL 33647

37. Addison Park
10202 Altavista Avenue
Tampa, FL 33647

39. Arlington at Northwood*
1930 Devonwood Drive
Wesley Chapel, FL 33543

38. Portofino
8702 New Tampa Boulevard

40. Delano at Cypress Creek*
2440 Delano Place
Wesley Chapel, FL 33543

GEORGIA

41. The Alexander at the District
1731 Commerce Drive, NW
Atlanta, GA 30318

44. Idlewylde
1435 Boggs Road
Duluth, GA 30096

42. The Alexander at the
Perimeter
70 Perimeter Center East
Atlanta, GA 30346

45. Orion at Roswell Village
100 Hemingway Lane
Roswell, GA 30075

43. The Battery at Chamblee*
3450 Miller Drive, Suite 100
Chamblee, GA 30341

46. The Oaks
909 Penn Waller Road
Savannah, GA 31410

KANSAS

47. Corbin Corssing
6801 W. 138th Terrace
Overland Park, KS 66223

48. Highpointe Village*
10000 81st Street
Overland Park, KS 66204

NORTH CAROLINA

49. Berkeley Place
500 Solano Drive
Charlotte, NC 28262

50. Parkside
605 Candler Lane
Charlotte, NC 28217

51. Cheswyk (Phase I)
14360 Wynhollow Downs
Charlotte, NC 28277

NEW MEXICO

52. Eagle Ranch II
9270 Eagle Ranch Road, NW
Albuquerque, NM 87114

NEVADA

53. Villa Serena*
325 N. Gibson Road
Henderson, NV 8901455. Big
Horn/Horizon Bluffs*
231 West Horizon Ridge
Henderson, NV 89012

2725 West Wigwam
Las Vegas, NV 89123

59. Canyon Club*
2665 S. Bruce Street
Las Vegas, NV 89109

54. Timberlake Apartments*
80 South Gibson
Henderson, NV 89012

60. Summit Trails
1350 Grand Summit Drive
Reno, NV 89523

55. Alexander Gardens*
3900 Dalecrest Drive
Las Vegas, NV 89129

61. Canyon Vista (Phase I)*
5200 Los Altos Parkway
Sparks, NV 89436

56. Diamond Sands*
8445 Las Vegas Boulevard South
Las Vegas, NV 89123

62. Bristol Bay at Desert
Highlands (Phase II)*
5300 Los Altos Parkway
Sparks, NV 89436

57. Eagle Crest (Phases I & II)*
5850 Sky Pointe Drive
Las Vegas, NV 89130

63. Eastland Hills*
1855 Baring Boulevard
Sparks, NV 89434

58. Summer Winds*

TEXAS

64. Benton Pointe
205 Benton Drive
Allen, TX 75013

Allen, TX 75013

65. Lansbrook at Twin Creeks*
505 Benton Drive
Allen, TX 75013

67. Wyndhaven
1720 Wells Branch parkway
Austin, TX 78728

66. Auberry at Twin Creeks*
705 Bray Central Drive

68. Statton Park
8585 Spicewood Springs
Austin, TX 78759

69. Escalon at Canyon Creek
(Phase II)
9715 North FM-620
Austin, TX 78726

70. Cambria at Coyote Ridge
4230 Fairway Drive
Carrollton, TX 75010

71. The Coventry at City View*
5200 Bryant Irvin Road
Fort Worth, TX 76132

72. Avery Pointe at City View*
5230 Bryant Irvin Road
Fort Worth, TX 76132

73. Fairmont
3701 Fossil Creek Boulevard
Fort Worth, TX 76137

74. Belterra*
7001 Sandshell Boulevard
Fort Worth, TX 76137

75. Wade Crossing*
9399 Wade Bouevard
Frisco, TX 75035

76. Amesbury Court*
4699 Fossil Vista Drive
Haltom City, TX 76137

77. Chandler Park
1950 Eldridge Parkway
Houston, TX 77077

78. Cheval
7105 Old Katy Road
Houston, TX 77024

79. Monterra
Las Colinas, TX

81. The Fairway at Southshore
3045 Marina bay Drive
League City, TX 77573

80. Crescent Cove*
801 Hebron parkway
Lewisville, TX 75057

81. Sheridan Park*
2001 E. Spring Creek Parkway
Plano, TX 75074

82. Constellation Ranch*
500 W. Loop South
Fort Worth, TX 76108

APPENDIX B

Appendix B

NFHA et al. v. A.G. Spanos Construction Inc., et al.

Current Owners of Subject Properties In Addition to Defendants A.G. Spanos Construction, Inc. and The Spanos Corporation and the Defendant Class Representatives

1. AGS Ventures, Inc. is a California corporation with its address at 10100 Trinity Parkway, 5th Floor, Stockton, California 95219. It is the owner of: Hawthorne Village, an apartment complex at 3663 Solano Avenue, Napa, California 94458; Cheval, an apartment complex at 7105 Old Katy Road, Houston Texas 77024; and Monterra, an apartment complex at 301 W. Las Colinas Boulevard, Las Colinas, Texas.
2. Alex and Faye Spanos Trust, A.G. Spanos Trustee, whose address is 10100 Trinity Parkway, 5th Floor, Stockton, California 95219 is the owner of Timberlake Apartments at 80 South Gibson, Henderson, Nevada 89012. It is also the majority owner of the Eastland Hills, an apartment complex at 1855 Baring Boulevard, Sparks, Nevada 89434.
3. The Alexander at the District, LLC, a California limited liability company with its address at 10100 Trinity Parkway, 5th Floor, Stockton, California 95219, is the owner of The Alexander at the District, an apartment complex at 1731 Commerce Drive, NW, Atlanta, Georgia 30318.
4. The Alexander at the Perimeter Center, LLC, a California limited liability company, with its address at 10100 Trinity Parkway, 5th Floor, Stockton, California 95219, is

the owner of The Alexander at Perimeter Center, an apartment complex at 70 Perimeter Center, NW, Atlanta, Georgia 30346.

5. Bay Arizona Apartments Limited Partnership is an Arizona limited partnership and the owner of Ocotillo Bay, an apartment complex at 1889 West Queen Creek, Chandler Arizona 85248. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
6. Vista West Limited Partnership is a Nevada limited partnership and the owner of Tuscan Ridge, an apartment complex at 8203 West Oraibi Drive, Peoria, Arizona 85382. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
7. Fox Trails Limited Partnership is a Delaware limited partnership and the owner of Tamarron, an apartment complex at 4410 North 99th Avenue, Phoenix, Arizona 85037. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
8. Carrington Place Limited Partnership is a Connecticut limited partnership and the owner of The Enclave, an apartment complex at 30300 Antelope Road, Menifee, California 92584. Its address is c/o Sentinel Aquisitions Corporation 1251 Avenue of the Americas, New York, New York 10020.
9. Columbia Redwood Creek LLC is a Delaware limited liability company, registered to do business in California, with its address at 125 High Street, High Street Tower, 27th Floor, Boston, Massachusetts 02110. It is the owner of Windsor at Redwood Creek, an apartment complex at 600 Rohnert Park Expressway, Rohnert Park, California 94928.

10. Glacier/River Oaks Corp. is a California corporation and the owner of River Oaks, an apartment complex at 1000 Allison Drive, Vacaville, California 95687. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
11. Asprey Brandon Apartments, Inc. is a Florida corporation and the owner of Asprey Place, an apartment complex at 1240 Astor Common Place, Brandon, Florida 33511. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
12. Social-Lakes, Inc. is a Florida corporation and the owner of Lucerne at Lake, an apartment complex at 1419 Lake Lucerne Way, Brandon, Florida 33511. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
13. Hamlin Apartments Florida / Limited Partnership is a Florida limited partnership and owner of The Hamlin at Lake Brandon, an apartment complex at 1508 LaDora Drive, Brandon, Florida 33511. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
14. Glacier / Versant Corp. is a Florida corporation and the owner of Versant Place, an apartment complex at 1010 Versant Drive, Brandon, Florida 33511. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
15. Egrets Apartments, Inc., a Florida corporation and the owner of Egret's Landing, an apartment complex at 1500 Seagull Drive, Palm Harbor, Florida 34685. Its address is

c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.

16. Andover Place North Limited Partnership is a Florida limited partnership and the owner of Andover Place, an apartment complex at 10202 Altavista Avenue, Tampa, Florida 33647. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
17. Addison Park Limited Partnership is a Florida limited partnership and the owner of Addison Park, an apartment complex at 10202 Altavista Avenue, Tampa, Florida 33647. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
18. Protea Northwoods Apartments, LP is a Florida limited partnership and the owner of Arlington at Northwood, an apartment complex at 1930 Devonwood Drive, Wesley Chapel, Florida 33543. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
19. Protea North Pointe Apartments L.P. is a California limited partnership and the owner of North Pointe, an apartment complex at 6801 Leisure Town Road, Vacaville, California 95688. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
20. Delano @ Cypress Creek, LLC is a Florida limited liability company and the owner of Delano at Cypress Creek, an apartment complex at 2440 Delano Place, Wesley Chapel, Florida 33543. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.

21. Villa Serena LP is a Nevada limited partnership and the owner of Villa Serena, an apartment complex at 325 North Gibson Road, Henderson, Nevada 89014. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
22. Canyon Vista Apartments, Inc. is a Maryland corporation and the owner of Canyon Vista, an apartment complex at 5200 Los Altos Parkway, Sparks, Nevada 89436. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
23. Glacier / Colonnade Corporation is a Texas corporation and the owner of Bristol Bay at Desert Highland, an apartment complex at 5300 Los Altos Parkway, Sparks, Nevada. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
24. Benton Pointe Apartments Inc. is a Texas corporation and the owner of Benton Pointe, an apartment complex at 205 Benton Drive, Allen, Texas 75013. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
25. Lansbrook Apartments Limited Partnership is a Texas limited partnership and the owner of Lansbrook at Twin Creeks, an apartment complex at 505 Benton Drive, Allen, Texas 75013. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
26. Escalon Canyon Creek Apartments Limited Partnership is a Texas limited partnership and the owner of Escalon at Canyon Creek, Phase II, an apartment complex at 9715

North FM-620, Austin, Texas 78726. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.

27. Protea Amesbury Court, LP, is a Texas limited partnership and the owner of Amesbury Court, an apartment complex at 4699 Fossil Vista Drive, Haltom City, Texas 76137. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
28. Berkeley Apartments, Inc. is a Maryland corporation and the owner of Berkley Place, an apartment at 500 Solano Drive, Charlotte, North Carolina, 28262. Its address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020.
29. Knickerbocker Properties, Inc. XX is a Delaware corporation, registered to do business in California, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10020. It is the owner of: Arrowhead Landing, an apartment complex at 15740 North 83rd Avenue, Peoria, Arizona 85382; Park Del Mar, an apartment complex at 19411 Via Del Mar, Tampa, Florida 33647; Willow Springs, an apartment complex at 240 McAdoo Drive, Folsom, California 95630; Wyndhaven, an apartment complex at 1720 Wells Branch Parkway, Austin, Texas 78727; and Cheswyk (Phase I), an apartment complex at 14360 Wynhollow Downs, Charlotte, North Carolina 28277.
30. Summit Trails of Nevada LLC is a Delaware limited liability company, with its address c/o Hamilton Zanze & Company, 37 Graham Street, Suite 200B, San Francisco, California 94129. It is the owner of Summit Trails Apartments at 1350 Grand Summit Drive, Reno, Nevada 89523.

31. EC Flying Ranch, LLC, a Delaware limited liability company; DA Flying Ranch, LLC, a Delaware limited liability company; WJC Flying Ranch, LLC, a Delaware limited liability company; CGC Flying Ranch, LLC, a Delaware limited liability company; RBW Flying Ranch, LLC, a Delaware limited liability company; JONZAN Flying Ranch, LLC, a Delaware limited liability company; 112 Fell Flying Ranch, LLC, a Delaware limited liability company; RAW Flying Ranch, LLC, a Delaware limited liability company; GFP Flying Ranch, LLC, a Delaware limited liability company; ERP Flying Ranch, LLC, a Delaware limited liability company; WCG Flying Ranch, LLC, a Delaware limited liability company; Metro Flying Ranch, LLC, a Delaware limited liability company; Harbor Way Flying Ranch, LLC, a Delaware limited liability company; Fling Ranch Road Apartments, LLC, a Delaware limited liability company all of whom are the owners of Spring Canyon, an apartment complex at 4510 Spring Canyon Heights, Colorado Springs, Colorado 80907. Their addresses are c/o Hamilton Zanze & Company, 37 Graham Street, Suite 200B, San Francisco, California 94129.
32. Sequoia Glenn Partners, a California limited partnership, with its mailing address at 1777 Bothelho Drive, Suite 300, Walnut Creek, California 94596, and Stanford W. and Maria S. Jones Family Trust, Stanford W. Jones Trustee, are the owners of Sterling Heights, an apartment complex at 50 Rankin Way, Benecia, California 94510.
33. RO Funding Company LLC is a Delaware limited liability company, registered to do business in California, with its address at 3900 Ruffin Road, Suite 100, San Diego,

California 92123. It is the owner of Rolling Oaks, an apartment complex at 3700 Lyon Road, Fairfield, California 94534.

34. The Pavilions Apartments, LP is a California limited partnership whose address is c/o Sentinel Real Estate Corporation 1251 Avenue of the Americas, New York, New York 10020. Defendant is the owner of The Pavilions Apartments, an apartment complex at 5222 Consumnes Drive, Stockton, California 95219,
35. Aventine Development LLC, is a Delaware limited liability company, registered to do business in California, with its address at 7131 Owensmouth Avenue, #6-D, Canoga Park, California 91303. It is the owner of Aventine, an apartment complex at 47750 Adams Street, La Quinta, California 92253.
36. Stone Canyon L.P. is a California limited partnership, with its address at 207 Second Street, Sausalito, California 94965. It is the owner of Stone Canyon, an apartment complex at 5100 Quail Run Road, Riverdale, California 92507.
37. ERP Operating Limited Partnership is an Illinois limited partnership, registered to do business in California, with its address at Two North Riverside Plaza, Chicago, Illinois 60606. It is the owner of View Point, an apartment complex at 5059 Quail Run Road, Riverside, California 92507.
38. Max H. Hoseitt and Eleanor Hoseitt are the owner of Pinewood, an apartment complex at 7051 Bowling Drive, Sacramento, California 95823.
39. Tuscany Ridge LLC is a Delaware limited liability company registered to do business in California, with it address at 2859 Paces Ferry Road, Suite 1450, Atlanta, Georgia 30339. It is the owner of Tuscany Ridge, an apartment complex at 41955 Margarita Road, Temecula, California 92951.

40. Gateway Tyler, Inc., is a California corporation, whose address is 300 North Lake Avenue, Suite 620, Pasadena, California 91101. Gateway Tyler, Inc. is the owner of Sheridan Park, an apartment complex at 2001 E. Spring Creek Parkway, Plano, Texas 75074.
41. TIAA Realty, Inc., a Delaware corporation registered to do business in California, whose address is 730 Third Avenue, New York, New York 10017, is the owner of Chandler Park, an apartment complex at 1950 Eldridge Parkway, Houston, Texas 77077.
42. California State Teachers Retirement System, City National Bank of Florida, as Trustee, with its address at City National Bank of Florida Trust Department, 25 West Flagler Street, Suite 711, Miami, Florida 33130, is the owner of the Alexandria Park at Lake Buena Vista, an apartment complex, at 10651 Demilo Place, Orlando, Florida 32836. In addition, California State Teachers Retirement System is the owner of Avery Pointe at City View, an apartment complex at 5230 Bryant Irvin Road, Fort Worth, Texas 76132
43. Las Vegas 9-B II LLC is a limited liability company under the laws of Arizona with its mailing address at c/o Acacia Capital Corporation, 101 South Ellsworth Avenue, Suite 300, San Mateo, California 94401-3911. It is the owner of Eagle Crest, an apartment complex at 5850 Sky Pointe Drive, Las Vegas, Nevada 89130.
44. Southern Nevada Apartments, LLC is a Nevada limited liability company. The address of its managing member is 26146 Avenue de la Playa, La Jolla, California 92037-3214. Southern Nevada Apartments, LLC is the owner of Canyon Club Apartments at 2665 South Bruce Street, Las Vegas, Nevada 89109.

45. USA Cambria 17, LLC, a Delaware limited liability company, whose address is c/o U.S. Advisor, LLC, Five Financial Plaza, Suite 105, Napa, California 94558, is the owner of Cambria at Coyote Ridge, an apartment complex at 4230 Fairway Drive, Carrollton, Texas 750101.

46. USA Parkside 1, LLC; USA Parkside 2, LLC; USA Parkside 3, LLC; USA Parkside 4, LLC; USA Parkside 5, LLC; USA Parkside 6, LLC; USA Parkside 7, LLC; USA Parkside 8, LLC; USA Parkside 9, LLC; USA Parkside 10, LLC; USA Parkside 11, LLC; USA Parkside 12, LLC; USA Parkside 13, LLC; USA Parkside 14, LLC; USA Parkside 15, LLC; USA Parkside 16, LLC; USA Parkside 17, LLC; USA Parkside 18, LLC; USA Parkside 19, LLC; USA Parkside 20, LLC; USA Parkside 21, LLC; USA Parkside 22, LLC; and USA Parkside 23, LLC are Delaware limited liability companies whose address is Five Financial Plaza, Suite 205, Napa, California 94558. They are owners of Parkside, an apartment complex at 605 Candler Lane, Charlotte, North Carolina 28217.

47. CFS Biscayne Bay LLC is a Delaware limited liability company with its address at 700 N. Mopac / Expressway, Suite 430, Austin, Texas 78731. It is the owner of Biscayne Bay, an apartment complex at 300 East Warner Road, Chandler, Arizona 85224.

48. Sonoma Ridge Apartments, Inc. is a Maryland corporation with its mailing address at 836 Park Avenue, 2nd Floor, Baltimore, Maryland 21201. It is the owner of Sonoma Ridge, an apartment complex at 9246 W. Beardsley Road, Peoria, Arizona 85382.

49. Alliance HC II LP is a Delaware limited partnership, with its principal place of business at 433 East Las Colinas Boulevard, Suite 980, Irvine, Texas 75039-5513. It

is the owner of Alexander Gardens, an apartment complex at 3900 Dalecrest Drive, Las Vegas, Nevada 89129.

50. Diamond Sands Apartments LLC is a Nevada limited liability company, with its address at 5800 West Charleston Boulevard, Las Vegas, Nevada 89146. It is the owner of Diamond Sands Apartments, 8445 Las Vegas Boulevard South, Las Vegas, Nevada 89123.
51. Summer Winds III LLC is a Nevada limited liability company, with its address at 630 Trade Center Drive, Las Vegas, Nevada 89119-3712. It is the owner of Summer Winds, an apartment complex at 2725 West Wigwam, Las Vegas, Nevada 89123.
52. Bayridge Investment Partners, LLC is a Delaware limited liability company, whose mailing address is 4301 Westbank Drive, Building B, Suite 270, Austin, Texas 78746. It is the owner of Bayridge, an apartment complex at 3021 State Road 590, Clearwater, Florida 33759.
53. Auberry Investors Limited Partnership, a Delaware limited partnership, whose address is 666 Fifth Avenue, 27th Floor, New York, New York 10103, is the owner of Aubrey at Twin Creeks, an apartment complex at 705 Bray Central Drive, Allen, Texas 75013.
54. Fairmont Apartments Limited Partnership, a Delaware limited partnership, whose address is 666 Fifth Avenue, 27th Floor, New York, New York 10103, is the owner of Fairmont, an apartment complex at 3701 Fossil Creek Boulevard, Fort Worth, Texas 76137.
55. Belterra Investors Limited Partnership, a Delaware limited partnership, whose address is 666 Fifth Avenue, 27th Floor, New York, New York 10103, is the owner of

Beltera, an apartment complex at 7001 Sandshell Boulevard, Fort Worth, Texas 76137.

56. Constellation Ranch Apartments LP, a Texas limited partnership whose address is 6363 Woodway Drive, Suite 250, Houston, Texas 77057, is the owner of Constellation Ranch, an apartment complex at 500 West Loop South, Fort Worth, Texas 76018.

57. Stanton Park Apartments LLC, a Washington limited liability company, whose address is 23219 SE 47th Street, Sammamish, Washington 98075, is the owner of Stanton Park, an apartment complex at 8585 Spicewood Springs, Austin, Texas 78759.

58. EQR-Fankey 2004 Limited Partnership, an Illinois limited partnership, whose address is c/o Equity Residential, Two North Riverside Plaza, Suite 400, Chicago, Illinois 60606, is the owner of the Coventry at City View, an apartment complex at 5200 Bryant Irvin Road, Fort Worth, Texas 76132.

59. Wade Crossing LLC, a Kansas limited liability company, whose address is 12721 Metcalf Avenue, Suite 200, Overland Park, Kansas 66213-2623, is the owner of Wade Crossing, an apartment complex at 9399 Wade Boulevard, Frisco, Texas 75035.

60. Pine Bluffs LLC, a Colorado limited liability company whose address is 6470 Timer Bluff Point, Colorado Springs, Colorado 80918, is the owner of Pine Bluffs, an apartment complex at 6470 Timber Bluff Point, Colorado Springs, Colorado 80918.

61. Mid-America Apartments, L.P., a Tennessee Limited Partnership with its address at 6584 Poplar Avenue, Suite 340, Memphis, Tennessee 38138 is the owner of The Oaks, an apartment complex at 909 Penn Waller Road, Savannah, Georgia 31410.
62. Frankel Family Trust, Edward B. Frankel, M.D., Trustee, with its address at 2001 La Cuesta Drive, Santa Ana, California 92705-2523 is the owner of Crescent Cove, an apartment complex located at 801 Hebron Parkway, Lewisville, Texas 75057.
63. AERC DPF Phase I LLC, a Delaware limited liability company, whose address is 5025 Swetland Court, Richmond Heights, Ohio 44143-1467, is the owner of Idlewylde, an apartment complex at 1435 Boggs Road, Duluth, Georgia 30096.
64. N/A Eagle Ranch-67 Limited Partnership, a Washington limited partnership whose address is 920 Garden Street, Suite A, Santa Barbara, CA 93101, is the owner of Eagle Ranch II, an apartment complex at 9270 Eagle Ranch Road, NW, Albuquerque, New Mexico 87114.
65. Park Crossing Investors LLC is a Delaware limited liability company, registered to do business in California, with its address at 666 5th Avenue, 27th Floor, New York, New York 10103. It is the owner of Park Crossing, an apartment complex at 2100 West Texas Street, Fairfield, California 94533.