

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

NATIONAL FAIR HOUSING ALLIANCE, INC. )  
and PARALYZED VETERANS OF AMERICA, )  
INC. )

Plaintiffs, )

v. )

HHHUNT CORPORATION; ABBERLY AT )  
WEST ASHLEY LIMITED PARTNERSHIP; )  
ASHTON POINTE PROPERTY LIMITED )  
PARTNERSHIP; AUSTON CHASE I LIMITED )  
PARTNERSHIP; AUSTON CHASE II LIMITED )  
PARTNERSHIP; ABBERLY PLACE - GARNER- )  
PHASE I LIMITED PARTNERSHIP; ASHTON )  
VILLAGE LIMITED PARTNERSHIP; AUSTON )  
WOODS-CHARLOTTE-PHASE I APARTMENTS )  
LIMITED PARTNERSHIP; AUSTON WOODS- )  
CHARLOTTE-PHASE II APARTMENTS )  
LIMITED PARTNERSHIP; AUSTON GROVE – )  
RALEIGH APARTMENTS LIMITED )  
PARTNERSHIP; ABBERLY FARMS- )  
LEXINGTON PARK – PHASE I LIMITED )  
PARTNERSHIP; ABBERLY CREST- )  
LEXINGTON PARK – PHASE II LIMITED )  
PARTNERSHIP; ABBERLY CREST- )  
LEXINGTON PARK – PHASE III LIMITED )  
PARTNERSHIP; ABBERLY GREEN – )  
MOORESVILLE PHASE I LIMITED )  
PARTNERSHIP; ABBERLY GREEN – )  
MOORESVILLE PHASE II LIMITED )  
PARTNERSHIP; TWIN HICKORY )  
APARTMENTS LIMITED PARTNERSHIP, )  
HHHUNT PROPERTY MANAGEMENT, INC. )  
and J DAVIS ARCHITECTS, PLLC. )

Defendants. )

Civil Action No.7:11-cv-00131

**FIRST AMENDED**  
**COMPLAINT**

**JURY DEMAND**

## I. INTRODUCTION AND SUMMARY OF CLAIMS

1. Plaintiffs National Fair Housing Alliance (“NFHA”) and Paralyzed Veterans of America (“Paralyzed Veterans”) hereby bring this civil rights action against the builder, designer, manager and current owners of multifamily apartment complexes designed and/or built by Defendant HHHunt Corporation (“HHHunt”) for monetary, declaratory and injunctive relief arising from violations of the accessibility requirements of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (FHA), 42 U.S.C. §§3601-3619. The FHA requires that certain apartment complexes built for first occupancy after March 13, 1991 be designed and constructed with accessible and adaptable features for people with disabilities.

2. Since at least 2002, the Design/Build Defendants, who are identified in paragraphs 12-20 herein, have engaged in a continuous pattern or practice of discrimination against people with disabilities in violation of the FHA by designing and/or constructing multifamily dwellings, and the common use and public use areas associated with those dwellings (hereafter referred to as “covered units” or “covered apartment complexes”), at seven apartment complexes tested by Plaintiffs, as to deny people with disabilities full access to, and the use of, these facilities as required under the FHA. The seven apartment complexes are: Auston Chase in Ridgeland, South Carolina; Abberly at West Ashley in Charleston, South Carolina; Ashton Pointe in Beaufort, South Carolina; Abberly Place in Garner, North Carolina; Auston Grove in Raleigh, North Carolina; Abberly Green-Mooresville in Mooresville, North Carolina; and Auston Woods

in Charlotte, North Carolina (hereinafter the “Tested Properties”). Some of these Tested Properties have apartment buildings with covered units that were first occupied within two years of the filing of this Complaint. The Design/Build Defendants’ violations of the FHA at these apartment complexes are serial and frequent, and they continue 20 years after the effective date of the FHA accessibility requirements.

3. The Design/Build Defendants’ violations of the FHA accessibility requirements have serious and significant consequences for people with disabilities. As outlined below, many complexes have steps, curbs without curb cuts, excessive running and cross slopes, and primary entry doors with high thresholds impeding the only route of travel for people with mobility impairments to travel to covered units. There is insufficient centered clear floor space for people in wheelchairs at bathroom toilets, lavatories and tubs, and at kitchen sinks. There are inaccessible routes to public- and common-use areas that can be blocked by parked cars, designated accessible parking which lacks the required access aisle for people with mobility impairments to leave or enter their parked vehicles, common-use restrooms which lack the required clear floor space for people with mobility impairments, sinks with insufficient clear floor space for wheelchairs and exposed hot water and drain pipes at roll-under sinks, environmental controls beyond the reach range of wheelchair users, computer tables with work surfaces that are excessively high for people in wheelchairs, exercise facilities with narrow access aisles that block access to machines for wheelchair users – all in violation of the FHA’s accessibility requirements. These blatant violations, and many others, effectively communicate that people with disabilities are not welcome at the Tested Properties.

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

5. A person using a wheelchair or other mobility aid is just as effectively excluded from the opportunity to live in a particular dwelling by steps, excessively high thresholds at building or unit entrances or by excessive running slopes on the route to covered units as by a posted sign saying “No Handicapped People Allowed.” In considering the 1988 disability amendments to the FHA, Congress stressed that enforcement of the civil rights laws is necessary to protect people with disabilities from the “devastating” impact of housing discrimination, including the “architectural barriers” erected by developers and builders who fail to construct dwellings and public accommodations accessible to, and adaptable by, people with disabilities. H.R. REP. NO. 100-711, at 25 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2186.

6. The Design/Build Defendants’ flagrant, systematic and continuing violations of the FHA have thwarted Congressional efforts to eradicate housing discrimination against people with disabilities, rendered units unavailable to people with disabilities, frustrated the mission of Plaintiffs and caused Plaintiffs to divert their scarce resources in an attempt to redress these violations. Enforcement of the FHA against these Defendants

is necessary because of the extensive and continuing nature of the civil rights violations at numerous apartment complexes throughout the middle Atlantic states that have been designed and/or constructed by them.

7. To the date of this filing, Plaintiffs have also identified two additional covered apartment complexes designed and/or built by Defendant HHHunt and currently owned by Remedial Defendants, who are later identified herein. The two apartment complexes are: Abberly Crest in Lexington Park, Maryland and The Gardens at Twin Hickory in Glen Allen, Virginia. On information and belief, these additional properties share common design features with the tested apartment complexes, and Plaintiffs have reason to believe that similar FHA accessibility violations may exist at these properties as well. Further, Plaintiffs bring this action against Remedial Defendant HHHunt Property Management, Inc. in its capacity as the manager of covered properties designed and/or built by Defendant HHHunt. Plaintiffs request as a remedy, *inter alia*, that the Remedial Defendants be enjoined from refusing to permit any survey and, where necessary, any retrofits of covered properties that may be ordered by this Court to bring properties designed and/or built by Defendant HHHunt into full compliance with the FHA.

## II. JURISDICTION AND VENUE

8. This Court may exercise subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1332, and 42 U.S.C. §§ 3613(a) and 12188.

9. Venue is proper in the District of Virginia pursuant to 28 U.S.C. § 1391(b) in that Defendants are legal entities that reside in this district and /or that have transacted and continue to transact business and contract to supply services in this district, events

giving rise to these claims occurred in this district and these claims concern or otherwise relate to real property located in this district.

### **III. PARTIES**

#### **A. Plaintiffs**

10. Plaintiff NFHA is a national, nonprofit, public service organization incorporated under the laws of the Commonwealth of Virginia with its principal place of business at 1101 Vermont Avenue N.W., Suite 710, Washington, D.C. 20005. NFHA is a nationwide alliance of private, nonprofit, fair housing organizations, including organizations in 28 states. NFHA's mission includes advocating for the rights of people with disabilities to accessible housing. NFHA is the only national organization dedicated solely to ending housing discrimination and promoting residential integration. NFHA works to eliminate housing discrimination and to ensure equal opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy, investigation of fair housing violations and enforcement. One of NFHA's goals is the promotion of accessible housing; to that end, since 1992, NFHA has conducted nationwide educational campaigns to address accessibility in rental housing.

11. Plaintiff Paralyzed Veterans is a private, nonprofit corporation, chartered by an act of the United States Congress, with its principal place of business at 801 18<sup>th</sup> Street N.W., Washington, D.C. 20006-3517. Paralyzed Veterans' membership is comprised of citizens of the United States who have served honorably in the United States Armed Forces and who have spinal cord injuries or diseases. Paralyzed Veterans' national office and its 34 chapters represent thousands of veterans in all 50 states. It is dedicated to

veterans service, medical research and advancing the civil rights of people with disabilities including advocating for truly universal accessibility in housing.

**B. Design/Build Defendants**

12. Defendant HHHunt is a Virginia corporation with its principal place of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. Either directly or through affiliated companies, HHHunt has been and continues to be in the business of developing, building and managing multifamily residential properties that are covered by the FHA, including but not limited to:

- a. Auston Chase at 59 Summerlake Circle, Ridgeland, South Carolina 29936;
- b. Abberly at West Ashley at 3100 Ashley Town Center Drive, Charleston, South Carolina 29414;
- c. Ashton Pointe at 100 Ashton Pointe Boulevard, Beaufort, South Carolina 29906;
- d. Abberly Crest at 46850 Abberly Crest Lane, Lexington Park, Maryland 20653;
- e. Abberly Green— Mooresville at 117 Abberly Green Boulevard, Mooresville, North Carolina 28117;
- f. Abberly Place at 500 Abberly Crest Boulevard, Garner, North Carolina 27529;
- g. Auston Grove at 1160 Auston Grove Drive, Raleigh, North Carolina 27610;
- h. Auston Woods at 5301 Roundstone Way, Charlotte, North Carolina 28216; and
- i. The Gardens at Twin Hickory at 4700 The Gardens Drive, Glen Allen, Virginia 23059.

In one or more of these capacities, Defendant HHHunt is responsible for the design and/or construction of these properties.

13. Defendants Auston Chase I Limited Partnership (“Defendant Auston Chase I”) and Auston Chase II Limited Partnership (“Defendant Auston Chase II”) are Virginia limited partnerships with their principal places of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. Defendant Auston Chase I was the owner of phase I of Auston Chase during the time of its design and/or construction, and Defendant Auston Chase II was the owner of phase II during its design and/or construction. In this capacity, each is responsible for the design and/or construction of its respective phase of Auston Chase. Defendants Auston Chase I and Auston Chase II are also the current owners of phases I and II, respectively, and, in this capacity, each is a necessary party for the relief sought by Plaintiffs with respect to their phase. Defendant HHHunt is the general partner of each limited partnership.

14. Defendant Abberly at West Ashley Limited Partnership (“Defendant Abberly at West Ashley”) is a Virginia limited partnership with its principal place of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. It was the owner of Abberly at West Ashley during the time of its design and/or construction and, in this capacity, is responsible for the design and/or construction of Abberly at West Ashley. Defendant Abberly at West Ashley is also the current owner of Abberly at West Ashley and, in this capacity, is a necessary party for the relief sought by Plaintiff. Defendant HHHunt is the general partner of this limited partnership.

15. Defendant Ashton Pointe Property Limited Partnership (“Defendant Ashton Pointe”) is a Virginia limited partnership with its principal place of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. It was the owner of Ashton Pointe during the time of its design and/or construction; and, in this capacity, is responsible for



the design and/or construction of Ashton Pointe. Defendant Ashton Pointe is also the current owner of Ashton Pointe and, in this capacity, is a necessary party for the relief sought by Plaintiffs. Defendant HHHunt is the general partner of this limited partnership.

16. Defendants Abberly Place – Garner – Phase I Limited Partnership (“Defendant Abberly Place I”) and Ashton Village Limited Partnership (“Defendant Ashton Village”) are Virginia limited partnerships with their principal places of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. Defendant Abberly Place I was the owner of phase I of Abberly Place during the time of its design and/or construction and Defendant Ashton Village was the owner of phase II during its design and/or construction. In this capacity, each is responsible for the design and/or construction of its respective phase of Abberly Place. Defendants Abberly Place I and Ashton Village are also the current owners of phases I and II of Abberly Place, respectively, and, in this capacity, each is a necessary party for the relief sought by Plaintiffs. Defendant HHHunt is the general partner of each limited partnership.

17. Defendant Auston Grove-Raleigh Apartments Limited Partnership (“Defendant Auston Grove”) is a Virginia limited partnership with its principal place of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. It was the owner of Auston Grove during the time of its design and/or construction and, in this capacity, is responsible for the design and/or construction of Auston Grove. Defendant Auston Grove is also the current owner of Auston Grove and, in this capacity, is a necessary party for the relief sought by Plaintiffs. Defendant HHHunt is the general partner of this limited partnership.

18. Defendants Auston Woods-Charlotte-Phase I Apartments Limited Partnership (“Defendant Auston Woods I”) and Auston Woods-Charlotte-Phase II Apartments Limited Partnership (“Defendant Auston Woods II”) are Virginia limited partnerships with their principal places of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. Defendant Auston Woods I was the owner of phase I of Auston Woods during the time of its design and/or construction, and Defendant Auston Woods II was the owner of phase II during its design and/or construction. In this capacity, each is responsible for the design and/or construction of its respective phase of Auston Woods. Defendants Auston Woods I and Auston Woods II are also the current owners of phases I and II of Auston Woods, respectively, and, in this capacity, each is a necessary party for the relief sought by Plaintiffs. Defendant HHHunt is the general partner of each limited partnership.

19. Defendants Abberly Green – Mooresville – Phase I (“Defendant Abberly Green I”) and Abberly Green – Mooresville – Phase II (“Defendant Abberly Green II”) are Virginia limited partnerships with their principal places of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. Defendant Abberly Green I was the owner of phase I of Abberly Green during its design and/or construction, and Defendant Abberly Green II was the owner of phase II during its design and/or construction. In this capacity, each is responsible for the design and/or construction of its respective phase of Abberly Green Mooresville. Defendants Abberly Green I and Abberly Green I are also the current owners of phase I and II of Abberly Green Mooresville, respectively, and, in this capacity each is necessary party for the relief sought by Plaintiffs. Defendant HHHunt is the general partner of each limited partnership.

20. Defendant J Davis Architects, PLLC is a legal entity established under the laws of North Carolina with offices at 200 North West Street Raleigh North Carolina 27603. J Davis Architects, PLLC has been and continues to be in the business of preparing plans for the construction of multifamily residential properties that are covered by the FHA, including but not limited to Auston Chase at 59 Summerlake Circle, Ridgeland, South Carolina.

**C. Remedial Defendants:**

21. Defendants Abberly Farms – Lexington Park – Phase I (“Defendant Abberly Farms”), Abberly Crest – Lexington Park – Phase II (“Defendant Abberly Crest II”) and Abberly Crest – Lexington Park – Phase III (“Defendant Abberly Crest III”) are Virginia limited partnerships with their principal places of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. Defendant Abberly Farms is the owner of phase I of Abberly Crest, Defendant Abberly Crest II is the owner of phase II, and Defendant Abberly Crest III is the owner of phase III. In this capacity, each is a necessary party for the relief sought by Plaintiffs. Defendant HHHunt is the general partner of each of the three limited partnerships.

22. Defendant Twin Hickory Apartments Limited Partnership (“Defendant Twin Hickory”) is a Virginia limited partnership with its principal place of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060. It is the current owner of The Gardens At Twin Hickory, and, in this capacity, is a necessary party for the relief sought by Plaintiffs. Defendant HHHunt is the general partner of this limited partnership

23. Defendant HHHunt Property Management, Inc. is a Virginia corporation with its principal place of business at 800 Hethwood Boulevard, Blacksburg, Virginia 24060.

Defendant HHHunt Property Management, Inc. is in the business of managing covered multifamily residential properties designed and/or built by Defendant HHHunt and, in this capacity, is a necessary party for the relief sought by Plaintiffs.

#### **IV. STATUTORY AND REGULATORY FRAMEWORK**

24. Congress enacted the FHA design and construction accessibility requirements as part of a comprehensive revision of the FHA to prohibit discrimination on the basis of disability. The debates and legislative history of the FHA reflect Congressional findings that a person using a wheelchair or other mobility aid is just as effectively excluded from the opportunity to live in a particular dwelling by steps or thresholds at building or unit entrances and by too narrow doorways as by a posted sign saying “No Handicapped People Allowed.” In considering the 1988 disability amendments to the FHA, the Congress stressed that enforcement of 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 to, and adaptable by, people with disabilities. H.R. REP. NO. 100-711, at 25 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2186.

25. In response to Congressional findings, the FHA mandated that every multi-family apartment building containing four (4) or more units, and built for first occupancy after March 13, 1991 (“covered multi-family 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.

26. Pursuant to Congressional authority, the United States Department of Housing and Urban Development (“HUD”) promulgated final FHA design and construction regulations in January 1989, *see* 24 C.F.R. § 100.205 (2008), and published the final Fair Housing Act Accessibility Guidelines on March 6, 1991 (hereinafter “FHAAG”) which incorporates the requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people, A117-1-1986 (hereinafter “ANSI”), *see* 56 Fed.Reg. 9472 (Mar. 6, 1991), and the *Fair Housing Act Design Manual* in August 1996, which was revised in August 1998.

## **V. FACTUAL AND LEGAL BACKGROUND**

27. Plaintiff NFHA became aware in January 2010 that new multifamily housing complexes designed and/or constructed by the Design/Build Defendants did not include the required elements of accessible and adaptable design. NFHA subsequently visited the Tested Properties and identified multiple FHA design and construction violations.

28. Plaintiff Paralyzed Veterans became aware in September 2010 that Design/Build Defendants did not include the required elements of accessible and adaptable design. Members of Paralyzed Veterans subsequently visited Abberly Place, Auston Woods and Auston Grove and identified multiple FHA design and construction violations.

29. The Design/Build Defendants' violations of 42 U.S.C. § 3604(f)(3)(C) at the Tested Properties include, but are not limited to, those outlined in paragraphs 29 through 34 below. These allegations represent just some of the evidence of a continuing pattern and practice of the Design/Build Defendants' failures to design and construct covered units and the public and common use areas in accord with 42 U.S.C. § 3604(f)(3)(C) and are not intended as an exhaustive inventory of such violations.

30. Design/Build Defendants have failed to design and/or construct covered, multifamily dwellings with an accessible entrance on an accessible route, in compliance with 42 U.S.C. § 3604(f)(3)(C)(iii)(I) and 24 C.F.R. § 100.205(a) (2008). For example:

- a. Abberly Place, Ashton Pointe and Auston Woods have steps which cause excessively high and abrupt level changes for people with mobility impairments on the accessible route to covered units in violation of FHAAG Requirement 1, Guideline (1)(a);
- b. Ashton Pointe and Auston Chase have sidewalks with excessively steep running slopes for people with mobility impairments, greater than 5% ,and without ramp features in violation of FHAAG Requirement 1, Guideline (1)(a);
- c. Auston Woods has an accessible route with an excessively high and abrupt level change for people with mobility impairments caused by the curb

without a curb cut at the terminus of the cross walk in violation of FHAAG Requirement 1, Guideline 1(a); and

d. Auston Grove, Abberly Place and Auston Chase have curb ramps that are built in the sidewalks perpendicular to the line of travel on the sidewalk and without a 48 inches x 48 inches level landing at the top of the curb ramp such that people with mobility impairments must travel across the curb ramp with an excessive cross slope in violation of FHAAG Requirement 1, Guideline 1(a), ANSI 4.3.7 and 4.8.4

31. Design/Build Defendants have failed to design and/or construct public and common-use areas that are readily accessible to and usable by people with disabilities in compliance with 42 U.S.C. § 3604(f)(3)(C)(i) and 24 C.F.R. § 100.205(c)(1) (2008). For example:

a. Abberly at West Ashley, Auston Grove and Abberly Place have curb ramps on accessible routes that are partially or fully blocked for passage by people in wheelchairs when a vehicle is legally parked in the adjacent parking space, in violation of FHAAG Requirement 2, ANSI 4.3.3, 4.78 and 4.79;

b. Auston Grove has parking designated as “handicap accessible” future resident parking without an access aisle thereby preventing a wheelchair user from safely transferring to or from a parked vehicle to a wheelchair or using a van lift in violation of FHAAG Requirement 2, ANSI 4.6.2.

c. Auston Grove has the outgoing mail slot located beyond the reach range of a wheelchair user in violation of FHAAG Requirement 2, ANSI 4.2.5 and 4.2.6;

d. Auston Grove, Abberly Place, Abberly at West Ashley, Auston Woods and Ashton Pointe fail to provide a sufficiently wide route to the exercise equipment for wheelchair passage and at Auston Woods a sufficiently wide route to the emergency telephone, both in violation of FHAAG Requirement 2, ANSI 4.3.3;

e. Auston Grove has a common-use kitchen without sufficient, centered, clear floor space at the sink for a wheelchair user to use the sink in violation of FHAAG Requirement 2, ANSI 4.19.3;

f. Ashton Pointe has doors to the fitness center that require excessive force to open in violation of Requirement 2, ANSI 4.13.11;

g. Auston Chase has common-use computer at tables with work surfaces that are excessively high for use by people in wheelchairs in violation of FHAAG Requirement 2, ANSI 4.30.4.

h. Abberly Place has a common-use men's room with excessive space between the centerline of the toilet and the adjacent wall for use of the toilet and grab bar by people with a mobility impairment in violation of FHAAG Requirement 2, ANSI 4.22.3 and 4.16.2, fig 28;

i. Abberly Place and Auston Woods have common-use rest rooms with sinks with exposed hot water and drain pipes under the sink in violation of FHAAG Requirement 2, ANSI 4.19.4;

j. A firm, stable and slip resistant traveling surface for people in wheelchairs is not provided to the playground at Abberly Place and Auston



Woods and to the dog run at Auston Grove in violation of FHAAG Requirement 2, ANSI 4.5.1; and

k. Auston Woods has drop down stairs in the breezeways without cane detection beneath the stairs that pose a protruding object into the accessible route of people with low visual impairments in violation of Requirement 2, ANSI 4.4.2.

32. Design/Build Defendants have failed to design and/or construct accessible routes into and through all premises within covered dwellings in compliance with 42 U.S.C. § 3604(f) (3)(C)(iii)(I) and 24 C.F.R. § 100.205(c)(3)(i) (2008). For example:

a. Auston Woods, Auston Grove and Abberly Place have primary entry doors to covered units with excessively high and/or abrupt level changes at thresholds in violation of FHAAG Requirement 4 Guideline (6); and

b. Abberly Place and Abberly Green have doors to the patio or balcony with excessively high and abrupt level changes at the interior side of the threshold in violation of FHAAG Requirement 4 Guideline (4).

33. Design/Build Defendants have failed to design and/or construct environmental controls in accessible locations in compliance with 42 U.S.C. § 3604(f)(3)(C)(iii)(II) and 24 C.F.R. § 100.205(c)(3)(ii) (2008). For example, at Ashton Pointe, the operable parts of environmental controls in the fitness center are beyond the reach range of people in wheelchairs in violation of FHAAG Requirement 5.

34. Design/Build Defendants have failed to design and/or construct usable kitchens such that an individual in a wheelchair can maneuver about the space in compliance with 42 U.S.C. § 3604(f)(3)(C)(iii)(IV) and 24 C.F.R. § 100.205(c)(3)(iv) (2008). For example, Auston Woods and Abberly Place have insufficient centered clear

floor space at the kitchen sink for a wheelchair user to use the sink in violation of FHAAG Requirement 7 Guideline 1(a).

35. Design/Build Defendants have failed to design and/or construct usable bathrooms such that an individual in a wheelchair can maneuver about the space in compliance with 42 U.S.C. § 3604(f)(3)(C)(iii)(IV) and 24 C.F.R. § 100.205(c)(3)(iv) (2008). For example:

a. Auston Woods has toilets located in alcoves with insufficient clear floor space at the toilets for people using a wheelchair or walker to maneuver, approach the toilet seat and transfer to the toilet, in violation of FHAAG Requirement 7, Guideline (2)(a)(ii), fig.7(a);

b. Auston Woods and Auston Grove have insufficient, clear space between the centerline of the toilet to the adjacent wall for the later installation of a grab bar in violation of FHAAG Requirement 7, Guideline (2)(b)(iv), fig. 7(a);

c. Auston Woods and Abberly Place have insufficient, centered, clear floor space at bathroom sinks for a wheelchair user to use the sink in violation of FHAAG Requirement 7, Guideline (2)(a)(ii), fig. 7(c); and

d. Auston Woods, Auston Grove and Abberly Place have insufficient, clear space for an access aisle parallel to the tubs for a wheelchair user in violation of FHAAG Requirement 7, Guideline (2)(b)(vi) fig. 8.

36. Further, by failing to provide the accessible and adaptable features required by 42 U.S.C. § 3604(f)(3)(C) at the Tested Properties for people with physical disabilities, including but not limited to those outlined in paragraphs 29 through 34 above, the Design/Build Defendants have made dwellings unavailable to people with

physical disabilities in violation of 42 U.S.C. § 3604(f)(1) and/or have discriminated against them in the terms, conditions or privileges of the rental of dwellings in violation of 42 U.S.C. § 3604(f)(2).

## **VI. INJURY TO PLAINTIFFS**

37. As a result of the Design/Build Defendants' actions described above, Plaintiffs have been directly and substantially injured. Plaintiffs have been frustrated in their missions to eradicate discrimination in housing and in carrying out the programs and services 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 assistance to individuals and families looking for housing or affected by discriminatory housing practices and eliminating discriminatory housing practices. Plaintiffs have also been damaged by having to divert scarce resources that could have been used to provide these services to instead identify and counteract the Design/Build Defendants' discriminatory conduct.

38. In addition, Plaintiffs have invested considerable time and effort in education about the importance of accessible housing for people with disabilities, in an attempt to secure compliance by entities involved in the design and construction of covered multi-family dwellings. Each time the Design/Build Defendants designed and constructed covered dwellings that did not comply with the FHA, they frustrated the mission of Plaintiffs inasmuch as they served to discourage people with disabilities from living at that dwelling and encouraged other entities involved in the design, construction and rental of covered units to disregard their own responsibilities under the FHA. The Design/Build Defendants' conduct reduced the effectiveness of Plaintiffs' outreach

efforts and caused Plaintiffs to provide additional educational programs to rebut the impression that constructing inaccessible residential housing is permissible.

39. The Design/Build Defendants' continuing discriminatory practices have forced NFHA to divert significant and scarce resources to identify, investigate and counteract the Defendants' discriminatory practices, and such practices have frustrated NFHA's other efforts against discrimination, causing NFHA to suffer concrete and demonstrable injuries.

40. Plaintiffs have conducted site visits, investigations, surveys or tests at the Tested Properties, resulting in the diversion of their resources in terms of staff time, salaries and travel and incidental expenses that it would not have had to expend were it not for the Design/Build Defendants' violations. In doing the acts or in omitting to act as alleged in this Complaint, each employee or officer of each Design/Build Defendant was acting in the course and scope of his or her actual or apparent authority pursuant to such agencies, or the alleged acts or omissions of each employee or officer as agent was subsequently ratified and adopted by each Design/Build Defendant as principal.

41. Until remedied, the Design/Build Defendants' unlawful, discriminatory actions will continue to injure Plaintiffs 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 and funding, to investigate and counteract the Design/Build Defendants' discriminatory conduct, thus diverting those resources from the

Plaintiffs' other activities and services, such as education, outreach, and counseling; and

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

42. The Design/Build Defendants' discriminatory conduct will also deprive individuals to whom Plaintiffs provide services and others living in and near the Tested Properties of the benefit of living in a diverse community that includes people who have disabilities and use wheelchairs.

## **VII. LEGAL CLAIMS**

43. Plaintiffs adopt and re-allege the allegations of paragraphs 1 through 41 of this Complaint.

44. Each of the properties specified in paragraph 12 above contains residential apartment units that are "dwelling[s]" within the meaning of 42 U.S.C. § 3602(b).

45. At the properties specified in paragraph 12 above, all ground-floor units in non-elevator buildings and all units on floors served by elevators are "covered multifamily dwellings" within the meaning of 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. The public- and common-use areas of the properties specified in paragraph 12 above are also subject to the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).

46. The Design/Build Defendants, together and separately, have failed to design and/or construct the Tested Properties so that:

- a. the public-use and common-use portions are readily accessible to and usable by people with disabilities; and
- b. 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; and
  - iii. usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

47. Through the actions and inactions described above, the Design/Build Defendants, together and separately, have:

- a. discriminated in the rental of, or otherwise made unavailable or denied, dwellings to persons because of their disabilities in violation of 42 U.S.C. § 3604(f)(1);
- b. discriminated against persons because of their disabilities 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 42 U.S.C. § 3604(f)(2); and
- c. failed to design and construct dwellings in compliance with the requirements mandated by 42 U.S.C. § 3604(f)(3)(C) and the applicable regulations, 24 C.F.R. Part 100.205 (2008).

### **VIII. JURY TRIAL DEMAND**

Plaintiffs hereby demand a trial by jury.

## IX. PRAYER FOR RELIEF

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

A. Declare, pursuant to 28 U.S.C. § 2201 (2010), that the conduct of the Design/Build Defendants in designing and constructing the Tested Properties, as alleged herein, is in violation of the FHA, 42 U.S.C. § 3604(f)(1), (f)(2) and (f)(3)(C), and the applicable regulations;

B. Enjoin, pursuant to 42 U.S.C. § 3613(c)(1)(a), the Design/Build Defendants, their officers, directors, employees, agents, successors, assigns and all other persons in active concert or participation with any of them, both temporarily during the pendency of this action, and permanently from:

1. with regard to the Tested Properties, failing or refusing to bring the covered dwelling units and the public use and common use areas into compliance with the requirements of 42 U.S.C. § 3604(f)(3)(C) and the applicable regulations; to comply with such procedures for inspection and certification of the retrofits performed as may be ordered by this Court; and to perform or allow such other acts as may be necessary to effectuate any judgment of this Court against them;
2. failing or refusing to design and construct any covered multifamily dwellings in the future in compliance with 42 U.S.C. § 3604(f)(3)(C) and the applicable regulations; and
3. failing or refusing to take such steps as will eliminate, to the fullest extent practicable, the lingering effects of the Design/Build Defendants unlawful housing practices.

C. Ordering Defendants HHHunt and J Davis Architects, PLLC to:

1. survey each and every apartment community containing “covered units” and appurtenant common and public use areas at any covered property owned by HHHunt or a related entity for which it had a role in the design and construction since March 13, 1991 other than the Tested Properties (“Remaining Hunt Portfolio”) and assess the compliance of each with the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C);

2. report to the Court the extent of the noncompliance of the Remaining Hunt Portfolio with the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C); and

3. bring each and every such apartment community in the Remaining Hunt Portfolio into compliance with the requirements of 42 U.S.C. § 3604(f)(3)(C) and the applicable regulations.

D. Enjoining the Remedial Defendants and the owner of any other covered apartment community in the Remaining Portfolio not presently known to Plaintiffs from failing or refusing to permit the survey of any of their covered properties that were designed and/or built by Defendant HHHunt and any retrofits ordered by the Court to be made at such property, to also comply with such procedures for inspection and certification of the retrofits performed as may be ordered by this Court and to perform or allow such other acts as may be necessary to effectuate any judgment against Defendant HHHunt.



E. Award such damages as would fully compensate NFHA and Paralyzed Veterans for their injuries incurred as a result of the Design/Build Defendants' discriminatory housing practices and conduct, pursuant to 42 U.S.C. § 3613(c)(1)(a);

F. Award such punitive damages against the Design/Build Defendants as is proper under law, pursuant to 42 U.S.C. § 3613(c)(1)(a);

G. Award NFHA and Paralyzed Veterans their costs and attorneys' fees incurred herein, pursuant to 42 U.S.C. § 3613(c)(2); and

F. Award NFHA and Paralyzed Veteran such other relief as this Court deems just and proper.

Dated this 4th day of April 2012.

Respectfully Submitted,

/s/ Michael Allen  
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Virginia Bar No. 25141  
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Thomas J. Keary\*

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*\*Application for Pro Hac Vice To Be Filed*