

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Michael Lowrey,	)	Case No.: 06-13408-NGE-MKM
	)	
Plaintiff	)	Judge NANCY G. EDMUNDS
	)	
	)	Magistrate MONA MAZOUB
Beztak Properties, Inc., <i>et al</i>	)	
	)	
Defendants	)	

<p>J. Mark Finnegan (P68050) Denise M. Heberle (P64145) Heberle &amp; Finnegan, PLLC Attorneys for Plaintiff 2580 Craig Road Ann Arbor, MI 48103 (734) 302-3233 hffirm@comcast.net</p> <p>Brett Rendeiro (P64972) Varnum, Riddering, Schmidt &amp; Howlett, LLP Attorneys for Defendant Warner, Cantrell &amp; Padmos, Inc. 39500 High Pointe Blvd, Suite 150 Novi, MI (248) 567-7400 barendeiro@varnumlaw.com</p> <p>Gerard Mantese (P34424) Mantese &amp; Associates, PC Attorneys for Defendant Biltmore Properties Companies, Inc. 1361 E. Big Beaver Road Troy, MI 48083 (248) 457-9200 gmantese@manteselaw.com</p>	<p>Megan P. Norris (P39318) Leigh R. Greden (P61859) Miller, Canfield, Paddock and Stone, PLC Attorneys for Defendants Beztak Properties, Inc., Beztak Companies, Inc., Uptown Investors, LLC, and Monogram Homes 101 N. Main, 7<sup>th</sup> Floor Ann Arbor, MI 48104 (734) 663-2445 greden@millercanfield.com</p> <p>Theresa L. Kitay Law Office of Theresa L. Kitay Attorney for Defendant Looney, Ricks, Kiss 578 Washington Blvd., Suite 836 Marina Del Ray, CA 90292 (310) 578-9134 tkitay@kitaylaw.net</p>
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**PLAINTIFFS' MOTION FOR SANCTIONS AGAINST ALL DEFENDANTS  
EXCEPT CANTON TOWNSHIP TO COERCE DEFENDANTS' COMPLIANCE  
WITH JULY 26, 2007 COURT ORDER (Doc. 58) PARAGRAPHS 2(b), 2(c),  
2(d), 2(f), 2(g) and 2(h)**

Plaintiffs respectfully move this Court to find all Defendants except Canton Township)<sup>1</sup> in civil contempt of the July 26, 2007 Order (Doc. 58) paragraphs 2(b), 2(c), 2(d), 2(f), 2(g) and 2(h), and/or to take all steps necessary to enforce several of that Order's provisions and to compensate Plaintiffs for Defendants' ten-month delay in complying with the Order.

Plaintiffs state in support:

1. On July 26, 2007 the Court ordered all Defendants, except Canton Township which was not yet party to the case, to make several hundred thousand dollars' worth of accessibility retrofits, and set deadlines for completion. (Order, Doc. 58) Defendants made many of the ordered retrofits, but in several instances violated the construction standards set by the Order. Plaintiffs now move the Court to find these Defendants in civil contempt and to fashion all relief necessary to force them to immediately comply with the Order as to the following facilities:

A. **Paragraph 2(c):** Five newly constructed inaccessible sidewalk ramps along Defendants "Stage 1 construction." These five sidewalk ramps lack required handrails along both sides, lack required edge protection, and lack required landings;

B. **Paragraphs 2(c) and 2(d):** Eleven newly constructed inaccessible curb ramps along Defendants' "Stage 1 and Stage 2 construction." These curb ramps suffer from vertical changes in excess of ¼ inch which cause

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<sup>1</sup> Defendant Canton Township is not a party to the July 26 Order. All other Defendants are parties to that Order, and are the subjects to which this motion is directed.

water and debris to pool on the curb ramp surfaces obscuring the curb ramps and making them slippery. These curb ramps also suffer from transitions which are not on the same level;

C. **Paragraph 2(b):** Plaintiff Lowrey's designated parking space is too narrow and too steep and he must use the defective sidewalk ramp heading west from his apartment to access it;

D. **Paragraph 2(h):** Plaintiff Lowrey's mail kiosk is too steep and relies on the defective sidewalk ramp heading west from his apartment;

E. **Paragraph 2(f):** Plaintiff Lowrey's trash dumpster pad is too steep; and;

F. **Paragraph 2(g):** Defendants' proposal to create accessible retail parking and an accessible route to and from their public theater and the retail establishments served by that parking does not meet applicable standards. The proposed routes stop well short of the entrances to each of Defendants' retail establishments, and the proposal lacks any deadlines for completion. Moreover, Defendants propose to follow the ANSI standards for these facilities though it is the much stricter ADAAG standards which apply to commercial establishments and their accessible parking.

2. The Order specifies that any disputes concerning compliance shall be brought to the Court for resolution (Doc. 58 ¶ 2(i)).

3. Plaintiffs ask the Court to set a hearing to determine all necessary sanctions to coerce Defendants to comply with the Order and to determine

damages owing to Plaintiffs for Defendant s' failure for the last ten months to timely comply with the Court's Order.

Respectfully

submitted

/s/ J. Mark Finnegan  
J. Mark Finnegan (P68050)  
Denise M. Heberle (P64145)  
Heberle & Finnegan PLLC  
2580 Craig Road  
Ann Arbor, MI 48103  
(734) 302-3233  
(734) 302-3234 fax  
[hffirm@comcast.net](mailto:hffirm@comcast.net)

## MEMORANDUM IN SUPPORT

### SCOPE OF MOTION

Plaintiffs Mike and Marilyn Lowrey are seeking an Order from the Court—through a finding of civil contempt or otherwise—to enforce paragraphs 2(b), 2(c), 2(d), 2(f), 2(g) and 2(h) of the Court's Order entered on July 26, 2007 (Doc. 58.) This motion applies to all Defendants except Canton Township who was not a party to the lawsuit at the time the Order was entered.

#### I. PROCEDURAL HISTORY

Throughout the years 2006 and 2007, the parties negotiated a potential resolution to this lawsuit. On July 26, 2007 the Court entered its "Stipulated Order of Partial Settlement and Conditional Release" (Doc. 58). At Section 2, "Exterior Modifications", Defendants were ordered to complete hundreds of thousands of dollars' worth of exterior construction retrofits to the Uptown at Canton complex. (Doc. 58, pp. 4-6) The Order contains very detailed and

specific construction standards to be strictly met. *Id.* The construction was to be completed by October 2007. Massive retrofitting occurred throughout August and September 2007, stopping in October 2007.

Magistrate Morgan convened a post-retrofitting facilitated settlement conference in late October 2007 and counsel for all parties attended. During that conference, Plaintiffs' counsel told all defense counsel that there were numerous accessibility violations in the just-completed retrofitting, and orally provided several examples. Counsel for Defendants, and some Defendants themselves replied that they understood, and "would investigate" and get back to Plaintiffs. Defendants made no corrections, and winter set in.

Now warm weather has returned, but ten months after entry of the Court's Order Defendants have left the retrofitting defects uncorrected. Indeed, the only retrofitted defect Defendants have touched is one sidewalk ramp leading into the park ("Defective Sidewalk Ramp # 5). Sadly, they rebuilt this ramp so that it yet again violates the accessibility standards. Plaintiffs now bring this motion.

## **II. FACTS RELEVANT TO MOTION**

The facilities relevant to this motion are shown on a detailed map attached hereto as Exhibit 2, and are verified by the sworn declaration of Marguerite Claire Finnegan attached hereto as Exhibit 1.2

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<sup>2</sup> Plaintiffs present their evidence herein through sworn written declarations. "Affidavits are appropriate on a preliminary injunction motion and typically will be offered by both parties". See 11 A.C. Wright, A. Miller & M. Kane, *Federal Practice & Procedure*, § 2949 at 214-15 (1995), and numerous cases collected therein. Indeed, a preliminary injunction may issue entirely based on affidavits. See, e.g., *Ross-Whitney Corp. v. Smith, Kline & French Laboratories*, 207 F.2d

## **II. Inaccessible Sidewalk Ramps: Defendants' "Stage 1 Construction".**

The Order, ¶2(c) requires Defendants to retrofit an accessible route from Plaintiff Lowrey's apartment east and then north through the central park and into the rental offices, the clubhouse, the swimming pool and the recreation/playground area, and west to Ridge Road's sidewalks leading to the theater and Defendants' other commercial establishments. Defendants designated these routes as "Stage 1 construction." *Id.* (Attachment A to Ex. 1) These accessible routes were required to meet the American National Accessibility Standards (ANSI A-117.1-1998). (Doc. 58, ¶2(c).) But Defendants retrofitted Stage 1 leaving the following violations of the ANSI and the Order:

### **II. A. Court-ordered Construction Standards for the Sidewalk Ramps.**

The Order, ¶2(c) requires all "Stage 1" construction to meet ANSI A117.1-1998's accessibility standards. Here is what the ANSI requires. When any sidewalk surface exceeds a maximum steepness, these steeper portions are designated "ramps" and each is required to have additional features.<sup>3</sup>

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190, 198 (9<sup>th</sup> Cir. 1953). Pursuant to federal statute, written sworn declarations are properly substituted for notarized affidavits in federal court proceedings. 28 C.F.R. Section 1746(2)(2006).

<sup>3</sup> Sidewalk "ramps" vs. "curb ramps." Sidewalk ramps should not be confused with curb ramps. Curb ramps are much shorter, and always mount a curb of some sort. Sidewalk "ramps" do not cross any curbs and can be up to 72 feet in length, with total rises in level up to 30 inches and can require handrails on both sides. Curb ramps, on the other hand, seldom have total rises exceeding 6 inches, and never under any circumstances require handrails. Defendants created eleven defective curb ramps as part of "Stage 1 and 2 construction" in addition to the five defective sidewalk ramps discussed here. Plaintiffs discuss Defendants' eleven defective curb ramps later in this brief. See this brief's sections II C and II D below at pp. 11-12.

According to the ANSI: “Walking surfaces on accessible routes with a running slope [slope heading up the direction of travel] steeper than 1:20 [5%] are ramps and shall comply with Section 405.” ANSI § 405.1. Landings are required at the top and bottom of each ramp run, and the landings shall be at least 60 inches long, and be as wide as the sidewalk, and must be level, having a slope no steeper than 1:48 [2.08%]. ANSI § 405.7. Any ramp run having a total rise greater than 6 inches must have handrails on both sides. ANSI § 405.8. In addition no ramp is permitted under any circumstances to have a total rise exceeding 30 inches. ANSI § 405.6. Finally, some ramps must include edge protection to keep wheelchairs from rolling off the sides of ramps and their landings. ANSI § 405.9.

Defendants have built five sidewalk ramps as part of their “Stage 1 construction.” These ramps violate the Order and the ANSI and are inaccessible because they lack required handrails, edge protection and landings. The specific violations for each of the five sidewalk ramps follow here.

## **II. B. Defendants’ Five Defective Sidewalk Ramps: Full Details**

**B. 1. Defective Sidewalk Ramp # 1.** Beginning near the fire hydrant next to the North side of Apartment Building “1/X” and heading West along Uptown Avenue’s South sidewalk portions of the walking surfaces on the sidewalk have a running slope exceeding 1:20 or 5%. Declaration of Marguerite Claire Finnegan (Ex. 1) ¶5(a). Indeed, some of the walking surfaces exceed 8.33%. *Id.* This is never allowed in new construction. ANSI § 405.2. The distance between the landing at the top of the ramp run and the landing at the

bottom of the ramp run is approximately 40 feet, with a total rise exceeding 20 inches. *Id.* There are no handrails on the ramp. *Id.* Finally, within 10 inches horizontally of the edge of portions of the ramp there are vertical drop-offs exceeding ½ inch, but no edge protection. *Id.*

**B. 2. Defective Sidewalk Ramp # 2.** Beginning near the North side of Apartment Building “6/l” and heading West along Uptown Avenue’s South sidewalk, portions of the walking surfaces on the sidewalk have a running slope exceeding 1:20 or 5%. (Ex. 1, ¶5(b)). The distance between the landing at the top of the ramp run and the landing at the bottom of the ramp run is approximately 64 feet, with a total rise exceeding 36 inches. *Id.* A ramp rise exceeding 36 inches is never allowed under any circumstances. ANSI § 405.6. Also, there are no handrails on the ramp. *Id.*

**B. 3. Defective Sidewalk Ramp # 3.** From Plaintiff Lowrey’s apartment door in the building’s west breezeway, a sidewalk heads north for a short distance to intersect with Uptown Avenue’s south sidewalk. Heading west, portions of the walking surfaces on the sidewalk have a running slope exceeding 1:20 or 5%. (Ex. 1, ¶5(c)). The distance between the landing at the top of the ramp run and the landing at the bottom of the ramp run is approximately 15 feet, with a total rise exceeding 6 inches. *Id.* Yet, there are no handrails on the ramp. *Id.* Finally, within 10 inches horizontally of the edge of approximately 10 feet of the ramp run there are vertical drop-offs exceeding ½ inch, but no edge protection. *Id.* This is the sidewalk ramp the Lowreys must use to get to his mail kiosk, parking space and dumpster. This ramp is very difficult for Mike Lowrey to

use on his own, and he is afraid he might lose control and plunge off the ramp onto Uptown Avenue below. He has only used this ramp a few times since it was retrofitted, because it is so dangerous. Likewise, this ramp is very difficult for Ms. Lowrey to use, and she is afraid that she will lose control of her son's wheelchair and he and possibly she will plunge off the ramp onto Uptown Avenue below. In fact, she slipped and nearly fell off the ramp onto Uptown Avenue this past winter. Handrails would have been much safer for her.

**B. 4. Defective Sidewalk Ramp # 4.** From Plaintiff Lowrey's apartment building's east breezeway, a sidewalk heads north for a short distance to intersect with Uptown Avenue's south sidewalk. Heading east, portions of the walking surfaces on the sidewalk have a running slope exceeding 1:20 or 5%. (Ex.1, ¶5(d)). The distance between the landing at the top of the ramp run and the landing at the bottom of the ramp run is approximately 22 feet, with a total rise exceeding 13 inches. *Id.* Yet, there are no handrails on the ramp. *Id.* Finally, within 10 inches horizontally of the edge of approximately 15 feet of the ramp run there are vertical drop-offs exceeding ½ inch, but no edge protection. *Id.*

**B. 5. Defective Sidewalk Ramp # 5.** Uptown Avenue's north sidewalk intersects with the eight-foot-wide sidewalk entering into the south entrance of the central park dog walking area. Heading north from this intersection, portions of the walking surfaces on the sidewalk have a running slope exceeding 1:20 or 5%. (Ex. 1, ¶5(e)). The distance between the landing at the top of the ramp run

and the landing at the bottom of the ramp run is approximately 42 feet, with a total rise exceeding 23 inches. *Id.* Yet, there are no handrails on the ramp. *Id.*

**B. 6. Summary: The Five Defective Sidewalk Ramps.**

The Lowreys can not leave the breezeway without immediately encountering defective sidewalk ramps # 3 or # 4. (Attachment A to Ex. 1) Even if they overcome those defective ramps, they soon encounter one or more of the remaining three defective sidewalk ramps, as well as some or all of the eleven defective curb ramps described below. Each of the five defective sidewalk ramps clearly violates the terms of the July 26, 2007 Order, ¶2(c). Each also violates Michigan's Building Code and the FHAA constructions standards. These ramps are very difficult or impossible for Mike Lowrey to use on his own, and he is afraid he might lose control and plunge off the ramp onto Uptown Avenue below. Likewise, this ramp is very difficult for Ms. Lowrey to use, and she is afraid that she will lose control of her son's wheelchair and he and possibly she will plunge off the ramp onto Uptown Avenue below.

The Court must order Defendants to correct each of these five defective sidewalk ramps immediately.

**II. C. Defective Transitions: "Stage 1 and Stage 2"**

The Order ¶¶2(c) and 2(d) requires Defendants to build two separate accessible routes, "Stages 1 and 2." Defendants built approximately 25 curb ramps as a part of this Stage 1 and 2 construction. Ex. 1, ¶6. Each of these curb ramps must meet ANSI-1998 standards. Order ¶¶2(c) and 2(d). The ANSI defines a curb ramp as "[a] short ramp cutting through a curb or built up to it."

ANSI § 106.5. “Transitions from [curb] ramps to walls, gutters, or streets shall be at the same level.” ANSI § 406.3. Unfortunately, 10 of the 25 curb ramps along Stages 1 and 2 have transitions where the ramp is higher than the adjoining surface, sometimes up to a 1.5 inches difference. (Ex. 1, ¶6) Curb ramps with transitions at different levels cause great difficulty to Plaintiff Mike Lowrey, jarring his wheelchair as he attempts to enter or to exit a curb ramp.

**II. D. Defective Surfaces: “Stage 1 and Stage 2”.**

The Order ¶¶2(c) and 2(d) requires Defendants to build two separate accessible routes, “Stages 1 and 2”. Defendants built approximately 25 curb ramps as a part of this Stage 1 and 2 construction. (Ex. 1, ¶6) Each of these curb ramps must meet ANSI-1998 standards. Order ¶¶ 2(c) and 2(d). Unfortunately, the surfaces of 11 of the 25 curb ramps along Stages 1 and 2 suffer from vertical changes in level greater than ¼ inch. (Ex. 1, ¶7) These changes are jarring to Mike Lowrey’s wheelchair. These vertical changes in the surface of the curb ramps cause debris and water to pool on the ramps. *Id.* This makes the curb ramp surfaces slippery during and after rains, and in the winter when the water freezes on the ramp, making it dangerous for Plaintiffs. These defects in the curb ramp surfaces violate the ANSI at §§ 406.6; 302.1; 303.2 and 303.3.

**II. E. The Trash Dumpster Pad.** The Order ¶2(f) requires Defendants to modify the dumpster to create an unobstructed 36 inch-wide pad next to it, with a slope and cross slope not to exceed 2%. Order ¶2(f). However, Defendants

reconstructed the pad in such a way that some portions of the surface have slopes nearly triple the maximum 2% permitted. (Ex. 1, ¶8)

**II. F. Plaintiff Lowrey's Parking Space.** The Order ¶2(b) requires Defendants to create a parking space next to Mike Lowrey's apartment. The space must be 8 feet (96 inches) wide, and its surface must have no slope exceeding 2%. *Id.* In violation of the Order, Defendants reconstructed the parking space so that it is only 92 inches wide and so that some portions of its surface have slopes nearly double the maximum 2% permitted. (Ex. 1, ¶10) These defects make the space very difficult for Ms. Lowrey to use, especially in the winter when Defendants fail to clear the snow from the parking space. Also, the "accessible route" from the apartment to the parking space includes the sidewalk ramp with all defects—lack of handrails and edge protection—described here in Section II, B. 3.

**II. G. The Mail Kiosk.** The Order ¶2(h) requires that by July 1, 2007 Defendants were to have submitted a proposal for an accessible route to an accessible mail kiosk for Plaintiff Lowrey. (Doc. 58, ¶2(h)) Defendants' route was to meet ANSI A117.1-1998 standards. However, Defendants retrofitted the route to include defective sidewalk ramp # 3 which lacks required handrails and edge protection. See Section II B. 3 above. Also, the pad in front of the mail kiosk has cross slopes in excess of 2%, which violates ANSI. (Ex.1, ¶9.)

**II. H. Defendants' Proposal for Parking for and Accessible Route to Their Retail Establishments.** The Order ¶2(g) requires that by August 15, 2007 Defendants were to have submitted a proposal to create accessible parking

spaces and an accessible route from those spaces to the Defendants' retail establishments this parking was intended to serve. Order ¶2(g). The Court also ordered that Defendants' proposal include a deadline for completion of any proposed modifications. *Id.* Defendants' proposal lacked any deadlines. Defendants' August 15, 2007 proposal announced that Defendants would follow the ANSI A117.1-1998 as the standard for accessibility for parking and accessible routes to and from commercial establishments. As is more fully argued in Section III B below, the legally controlling accessibility standards for retail establishments and their parking is not the ANSI but the stricter American With Disabilities Act Accessibility Guidelines (the ADAAG), set forth at 28 C.F.R Part 36, Appendix A. Finally, the proposed accessible routes end far from the commercial entrances the parking spaces are designed to serve. Each entrance to each commercial establishment enters from the sidewalks running along either Cherry Hill Road or Ridge Road. (Attachment A to Ex. 1) Defendants' proposal fails to include any portion of the sidewalks running along Cherry Hill or Ridge and leading into the retail establishments and the theater. Thus, Defendants have failed to propose an accessible route from any accessible parking spaces to the retail establishments those spaces are intended to serve. This violates the Order.

## **LEGAL SUPPORT**

### **COMPLIANCE WITH LOCAL RULE 7.1**

Plaintiffs allege that Defendants have violated the July 26, 2007 Order (Doc. 58), and have refused to correct any of the violations after being notified in

person more than seven months ago by undersigned counsel. Rather than argue with each of the seven Defendants and their counsel, Plaintiffs assume that Defendants do not acquiesce in this motion.

### III. APPLICABLE LAW

#### III. A. Civil Contempt Standards

Defendants have violated the clear terms of the July 26, 2007 Order (Doc. 58). Civil contempt sanctions are designed to enforce compliance with court orders and to compensate injured parties for losses sustained. The Court should properly use the remedy of civil contempt “to coerce the defendant into compliance with the court’s order, and to compensate the complainants for losses sustained.” *Electrical Workers Pension Trust Fund of Local Union # 58, IBEW, et al., v. Gary’s Electric Service Company*, 340 F.3d 373, 378-79 (6<sup>th</sup> Cir. 2003)(internal citations omitted.) Accordingly, a fine that is payable to the complainant as compensation for damages caused by the contemnor’s noncompliance or that is contingent upon performing the act required by the court’s order is civil in nature. *United States v. Koubriti*, 305 F.Supp.2d 723 (E.D.Mich. 2003). The Court should coerce Defendants into complying with its July 26, 2007 Order.

#### **III. B. The July 26, 2007 Order ¶2(g): Defendants’ Proposal for Accessible Retail Establishments and Accessible Parking Serving Them Must Meet the ADA/ADAAG Standards, Rather than Defendants’ Proposed Weaker ANSI Standards**

The Lowreys are unable to access Defendants’ retail establishments, theater and the public-use parking and sidewalks serving those establishments.

Title III of the ADA requires Defendants to make these facilities accessible. 42 U.S.C. § 12183(a)(1). In violation of Title III, Defendants' proposal pursuant to the July 26, 2007 Order ¶2(g) calls for these accessible routes and parking serving them to meet only the weaker ANSI standards. The ANSI standards apply only to Defendants' apartment buildings and the parking and sidewalks serving those apartments. The ADAAG governs construction of the retail establishments and the public-use parking serving them, and the public-use sidewalks connecting them. 42 U.S.C. § 12183(a)(1); 28 C.F.R § 36.406; 28 C.F.R. § 36.401(a)(1); 28 C. F.R. Part 36, App. A (the "ADAAG".) The legal support is set out below.

### **III. B. 1. Defendants' Public-Use Facilities Are Subject to the ADA**

Defendants have retail establishments, public-use parking and public-use sidewalks serving those establishments for the use of their tenants and also for the general public. These public facilities are located throughout the southwest quadrant of the Uptown Apartments. (Attachment A to Ex. 1). According to Title III of the ADA, these public-use sidewalks must meet ADAAG standards. The United States Department of Justice illustrates this principal in its Title III Technical Assistance Manual, III-1.2000:

"Places of public accommodation within residential facilities"...[T]hus, areas [public parking lots, retail establishments, theaters] within multifamily residential facilities [like Uptown's apartment complex] that qualify as places of public accommodation are covered by the ADA if use of the areas is not limited exclusively to owners, [Uptown Apartments'] residents and their guests."

Defendants' retail establishments, their public-use parking spaces and the public-use sidewalks connecting them are not "limited exclusively to [Uptown's] residents and their guests." Rather, this parking and its connecting sidewalks are expressly for the routine daily use of the public patronizing the retail shops and theater, in addition to the tenants of Uptown and their guests, and are "public accommodations" subject to Title III of the ADA and its ADAAG.

### **III. B. 2. "Readily Accessible to and Usable by Persons with Disabilities" Defined**

Title III of the ADA requires Defendants' public-use parking and sidewalks to be "readily accessible to and usable by persons with disabilities". 42 U.S.C. § 12183(a)(1); 28 C.F.R. § 36.401(a)(1). Legally binding implementing regulations and statutory guidance define what is "readily accessible to and usable" by the Lowreys and other persons with disabilities. According to the USDOJ:

"What is 'readily accessible and usable?' This means that the facility<sup>4</sup> must be built in strict compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG). There is no cost defense to the new construction requirements."

United States Department of Justice ADA Title III Technical Assistance Manual, Section III-5.1000. USDOJ's Technical Assistance Manual is entitled to "substantial deference". *Johnson v. City of Saline*, 151 F.3d 564, 570 (6<sup>th</sup> Cir. 1998). Thus, only when Uptown's public-use sidewalks and parking "strictly comply" with the ADAAG is it "readily accessible to and usable" by the Plaintiffs Lowrey. See e.g., *Ability Center v. City of Sandusky*, 385 F.3d 901 at 904 (6<sup>th</sup>

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<sup>4</sup> The ADAAG defines "facilities" as including, among other things, "site improvements...roads, walks, passageways, [and] parking lots." 28 C.F.R. Part 36, App. A, Section 3.5 (ADAAG).

Cir. 2004) citing *Tennessee v. Lane*, 541 U.S. 509, 124 S.Ct. 1978, 1993 (2004), which holds: “In the case of facilities built ...after 1992, the [ADA implementing] regulations require compliance with specific architectural accessibility standards.” Those “specific architectural accessibility standards” are the ADAAG. See 28 C.F.R. 36.406. See also *Deck v. City of Toledo*, 29 F.Supp.2d 431 (same).

“Because [the ADA] was enacted with broad language and directed to the Department of Justice to promulgate regulations [thereunder], the regulations which the Department [of Justice] promulgated are entitled to substantial deference.” *Niece v. Fitzner*, 941 F.Supp. 1497, 1507 (E.D.Mich. 1996) citing *Helen L. v. DiDario*, 46 F.3d 325, 331 (3d Cir.), cert. denied, 116 S.Ct. 64 (1995). Accord, *Johnson v. City of Saline*, 151 F.3d 564, 570 (6<sup>th</sup> Cir. 1998), citing *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994). Thus, the ADAAG, and not the ANSI, govern Defendants’ retail establishments, as well as the public-use sidewalks and parking serving those establishments.

### **CONCLUSION**

Defendants violated the July 26, 2007 Order (Doc. 58), and 10 months later, the myriad accessibility violations remain uncorrected. The Court should find the Defendants in contempt and/or fashion all appropriate sanctions to coerce Defendants into meeting the standards required by the July 26, 2007 Order. The Court should award Plaintiffs their damages for Defendants’ myriad violations of the Court-ordered accessibility retrofits, and the isolation of Plaintiffs caused by Defendants’ delays.

Respectfully

submitted,

J.  
Denis  
Heberle  
2580  
Ann  
734-302-3233  
734-302-3234

/s/ J. Mark Finnegan  
Mark Finnegan (P68050)  
e M. Heberle (P64145)  
& Finnegan, PLLC  
Craig Road  
Arbor, MI 48103  
  
fax  
hffirm@comcast.net

Attorneys

for Plaintiffs Lowrey

**Certificate of Service**

I hereby certify that on this 17<sup>th</sup> day of June, 2008 the foregoing Motion and Memorandum In Support, along with all exhibits and declarations in support were filed electronically. Parties will receive notice of the filing through the Court's electronic filing system and may access the document through the Court's electronic filing system. In addition, I served the foregoing by first class mail upon counsel for all Defendants at the following addresses

<p>Brett Rendeiro (P64972) Varnum, Riddering, Schmidt &amp; Howlett, LLP Attorneys for Defendant Warner, Cantrell &amp; Padmos, Inc. 39500 High Pointe Blvd, Suite 150 Novi, MI (248) 567-7400 barendeiro@varnumlaw.com</p> <p>Gerard Mantese (P34424) Mantese &amp; Associates, PC</p>	<p>Megan P. Norris (P39318) Leigh R. Greden (P61859) Miller, Canfield, Paddock and Stone, PLC Attorneys for Defendants Beztak Properties, Inc., Beztak Companies, Inc., Uptown Investors, LLC, and Monogram Homes 101 N. Main, 7<sup>th</sup> Floor Ann Arbor, MI 48104 (734) 663-2445 greden@millercanfield.com</p>
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Attorneys for Defendant Biltmore Properties  
Companies, Inc.  
1361 E. Big Beaver Road  
Troy, MI 48083  
(248) 457-9200  
gmantese@manteselaw.com

Theresa L. Kitay  
Law Office of Theresa L. Kitay  
Attorney for Defendant Looney, Ricks,  
Kiss  
578 Washington Blvd., Suite 836  
Marina Del Ray, CA 90292  
(310) 578-9134  
tkitay@kitaylaw.net

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/s/ J. Mark Finnegan