IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| ADAPT OF PHILADELPHIA, et al. | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| PHILADELPHIA HOUSING AUTHORITY, et al. | : | NO. 98-4609 |

MEMORANDUM

Bartle, J. August 29, 2005

The court has before it the motion of plaintiffs to enforce a Settlement Agreement between the parties. In addition, defendants have moved to enforce the Settlement Agreement, or, in the alternative to vacate it. After an extended discovery period and much acrimony, the court held an evidentiary hearing on the alleged violations.

I.

Plaintiffs ADAPT of Philadelphia ("ADAPT"), Liberty Resources, Inc. ("LRI"), and several individuals instituted this action some seven years ago against the Philadelphia Housing Authority and its director Carl Greene (collectively "PHA") for violations of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and certain regulations which implement § 504, including 24 C.F.R. §§ 8.23, 8.24, and 8.26, for their failure to provide a sufficient number of public scattered-site housing units accessible to persons with mobility impairments. Plaintiffs sought declaratory and injunctive relief. After a non-jury trial

in December, 1999 in which we found in favor of plaintiffs and while the matter was on appeal, the parties finally entered into a Settlement Agreement which was approved by the Department of Housing and Urban Development ("HUD") and then by this court on May 20, 2002. The Settlement Agreement provided that PHA would make available certain scattered-site housing units for the mobility impaired in accordance with an enunciated timetable. The court retained jurisdiction to enforce the agreement.[1]

Under the Settlement Agreement, PHA was to create 248 "accessible public housing rental units (which may include rentals with sale options for resident households including a person with a mobility impairment)," at least 124 of which were to be "accessible and otherwise ready for occupancy no later than December 31, 2003." Settlement Agreement § B at 3. These units were to be in addition to the five percent accessibility requirement under 24 C.F.R. Part 8.

The Settlement Agreement, among other things, requires that PHA "take reasonable non-discriminatory steps to maximize utilization of such units by eligible households that include an individual whose disability requires the accessibility features of the particular unit, in accordance with 24 C.F.R. § 8.27." Settlement Agreement § C at 8. Section 8.27 provides:

Occupancy of accessible dwelling units.

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1. Section G of the Settlement Agreement states: "[i]f the parties are not able to resolve any dispute, either party may seek judicial relief by motion submitted to the Court."

> (a) Owners and managers of multifamily housing projects having accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the owner or manager before offering such units to a non-handicapped applicant shall offer such unit:
>
> (1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then
>
> (2) Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.
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> (b) When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

24 C.F.R. § 8.27. Nowhere in the Settlement Agreement is the term "mobility impairments" specifically defined.

Section P of the Settlement Agreement provides that "[e]very four months, PHA shall provide Plaintiffs with a report (with a copy to the Court) regarding the implementation and status of Paragraph B, Accessible Units, above, and upon

reasonable request by counsel for Plaintiffs or PHA, counsel shall meet to discuss the report."

After the December 31, 2003 deadline had passed, plaintiffs sought confirmation from PHA that the first group of accessible units was ready for occupancy. Counsel for PHA responded at the end of January, 2004 that 149 units had been completed but that "cosmetic finishing is still required on a handful of units." In a letter of March, 2004, PHA counsel wrote that 37 units still required cosmetic finishing and 68 units were not yet occupied.

On May 10, 2004, pursuant to a motion by plaintiffs, the court ordered PHA to identify the locations of accessible units constructed under the Settlement Agreement and to furnish a "statement identifying which of these units are not leased to households that have a person with a mobility disability that requires the accessibility features." Plaintiffs' counsel thereafter visited a number of these units. As a result of this assessment, plaintiffs filed the instant motion on July 6, 2004 to enforce the Settlement Agreement on the ground that between 43 and 53 units identified as accessible had not been leased to households with occupants who required the accessibility features. Specifically, plaintiffs contended that the occupants of these units do not require wheelchairs or the additional maneuvering space provided to accommodate wheelchairs in the scattered site units. Plaintiffs alleged that as of the time their motion was filed 17 units were still unoccupied, 25 were

not occupied with a person having a disability requiring the accessible features, one address did not exist, and 10 were "uncertain." Plaintiffs also asserted that PHA's delay of more than seven months in filling some of these units with appropriate residents amounted to non-compliance with the Settlement Agreement. They seek declaratory and injunctive relief. On August 10, 2004, the court allowed the Resident Advisory Board ("RAB") to intervene in this action on behalf of residents living in PHA housing.

As a result of discovery, plaintiffs shifted their position somewhat, and by the end of the hearing they were challenging the eligibility of residents in 36 accessible units. They also continued to assert that some units, although now occupied, were not available for occupancy by the December 31, 2003 deadline set forth in the Settlement Agreement. Six of the 36 challenged units are managed by PHA staff, and the rest are managed by alternative management entities ("AMEs"), which operate as leasing agents for PHA at several of the housing sites under the Settlement Agreement. Each AME has entered into a regulatory and operating agreement with PHA requiring the AME to operate in accordance with all applicable public housing regulations.

At the recent hearing on their motion to enforce, plaintiffs presented the testimony of architect Robert Thomas, an expert in architectural design and cost issues for accessible housing, including accessibility under the Uniform Federal

Accessibility Standards ("UFAS"). Generally, Mr. Thomas' testimony focused on the ease of adding some accessible features to existing public housing. These standards were created pursuant to the Architectural Barriers Act, 42 U.S.C. § 4151 et seq., and were adopted by HUD in 24 C.F.R. Part 40. Cheryl T. West, a physical therapist who performs home assessments for persons with disabilities, also testified as an expert for plaintiffs. Ms. West's opinion was that most of the residents in the contested units did not require all the accessible features. Defendants called as a witness Robert S. Ardinger, an expert in disability accessibility and accommodations. Ms. Margaret B. Fahringer, the Accessibility Coordinator for PHA, also testified for PHA. Intervenor RAB presented the expert testimony of Dr. David A. Lenrow, a physician in the field of rehabilitation medicine. His testimony emphasized that one must consider the totality of the circumstances in deciding whether a person needed the features of an accessible unit.

Although it was initially anticipated that the residents of the disputed units would be called as witnesses, the parties stipulated that written statements by those residents would be admissible in lieu of courtroom testimony. It was also stipulated that the disabled resident of each disputed unit would have testified that he or she "was personally interviewed by a representative of his [or her] landlord prior to placement in accessible housing."

II.

The central issue before us is whether PHA has violated that provision of the Settlement Agreement which requires it to "take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit in accordance with 24 C.F.R. § 8.27."

Under Pennsylvania law, enforceability of a settlement agreement is governed by principles of contract law. See Cambria v. Ass'n of Flight Attendants, AFL-CIO, No. Civ.A. 03-5605, 2005 WL 821082, *1 (E.D. Pa. Apr. 5, 2005). The burden of proof is on the party attempting to enforce the settlement agreement. Id. The party seeking to demonstrate the breach must do so by a preponderance of the evidence. See Mountbatten Surety Co. v. Jenkins, No. Civ.A. 02-8421, 2004 WL 2297405, *6 (E.D. Pa. Oct. 13, 2004) (citing Raganar Benson, Inc. v. Bethel Mart Assocs., 454 A.2d 599, 602 (Pa. Super. 1981)).

III.

In order to apply for public housing under the aegis of the PHA, applicants complete and return a "pre-application" or "admissions application." These pre-applications are used by PHA in compiling a city-wide waiting list.[2] When the applicant reaches the top of the waiting list, PHA contacts that person and invites him or her, as "head of household," to come in for a

2. This list is separate from the "Section 8" housing waiting list. Section 8 provides a subsidy to lease private housing.

"screening" interview. At that interview, the PHA application review specialist confirms information and helps complete the "application" or "application packet." PHA gathers information about the applicant's income, credit standing, and criminal history, if any. If the applicant qualifies for public housing, he or she is offered a public housing lease, when available. This offer sometimes takes place on "home selection day," where applicants get three days to select a unit from a list.

For all PHA sites, applicants are asked, beginning with the pre-application, whether anyone in the household uses a wheelchair or otherwise has a disability. The applicant may provide more information as to any disability by completing a "Notice of Disability Accommodation," also called an accommodation request form ("notice").[3] This form may be completed at the screening interview. When accessible units,[4] or units in compliance with UFAS, become available, PHA is required pursuant to 24 C.F.R. § 8.27(a) to "jump" down the waiting list

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3. The Notice of Disability Accommodation form asks: whether any household member uses a wheelchair or has a mobility impairment; whether the applicant requests an "accessible unit (wheelchair)," a "mobility impaired unit, describe needs," "special features/needs" [includes space to describe, if applicant desires], hearing impaired unit, or vision impaired unit; grab bars; handheld shower; tub seat; raised toilet seat; or grab bar(s) at toilet.

4. As set forth in UFAS, "accessible" means a unit is located on an accessible route, or a continuous unobstructed path connecting accessible elements and spaces and complying with the space and reach requirements of UFAS, and can be approached, entered, and used by individuals with handicaps. 24 C.F.R. § 8.3.

to find tenants who may require the accessibility features. This practice is also called "mining" the waiting list.

As part of the screening process for applicants who have requested accommodations for disabilities, PHA uses a third party "Verification of Need for Disability Accommodation" form ("verification") to ensure the requests are legitimate.[5] The

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5. The verification, signed under penalty of perjury, asks:

1. Is the applicant disabled?
2. If the applicant is disabled, does he/she have a physical disability that results in the need for accessible housing features or accommodations?
3. If you answered yes to question 1 or 2, is the disability expected to last continuously for at least 12 months or be of indefinite duration?
4. Please indicate below any features or accommodations required by the applicant:

SPECIAL UNIT TYPE NEEDED - CIRCLE ALL THAT APPLY:
Accessible Unit (zero-step entry, can accommodate a wheelchair user)
Unit on One Level (steps at entry only)
Unit with Limited Steps (max. number of flights of stairs ____)
Hearing Impaired Unit (with strobe light smoke alarm and doorbell)
Vision Impaired Unit (with Braille stove and thermostat markings)

ACCESSIBLE UNIT FEATURES NEEDED - CIRCLE ALL THAT APPLY:
32" wide doors throughout
Accessible kitchen with maneuvering space for a wheelchair
Lowered kitchen sink/counter - base cabinets removed for a wheelchair
Lowered kitchen sink/counter (special need at ____ inch height
Lowered kitchen wall cabinets
Accessible bathroom with maneuvering space for a wheelchair
Closets with lowered rods/shelves
Lowered electrical wall switches/controls

ACCESSIBLE BATHROOM FEATURES NEEDED - CIRCLE ALL THAT APPLY:
Grab bar(s) in bathtub

(continued...)

applicant is asked to sign a release and to name a "medical provider," to whom PHA mails the form directly. The applicant is not given the form. When the medical provider returns the form, the head of PHA's admissions unit or the "second head" (the more junior person who works under the head) reviews the verification. PHA makes the determination of eligibility based on a review of documents provided by the applicant and provider as well as on any interviews with or phone calls concerning that resident. It does not do any independent medical analysis.

PHA does not inquire as to the nature and extent of an applicant's disability, as it believes it is precluded by 24 C.F.R. § 100.202 from doing so. Section 100.202(c) states "it

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5.(...continued)

Hand held shower
Tub seat
Raised toilet
Grab bar(s) at toilet

SPECIAL ACCOMMODATIONS NEEDED - CIRCLE ALL THAT APPLY:

Live-in aide
Separate bathroom for disabled person (explain in detail below)
Special location within the City (explain in detail below)
Other features/equipment/needs (explain in detail below)

5. Please provide further information that would assist us to determine the accessible housing features and/or accommodations in housing required by the applicant (i.e., features to accommodate devices and equipment used by the applicant, particular needs not addressed by the features listed above, etc.). We do not require details or information about the nature or extent of the disability.

The form also provides space for PHA or AME personnel to make notes.

shall be unlawful to make an inquiry to determine whether an applicant for a dwelling ... has a handicap or to make inquiry as to the nature or severity of a handicap of such a person."[6] Instead, it uses the notice of disability accommodation and third party verification to determine need for particular accommodations.

PHA application review specialists are trained by PHA's Accessibility Coordinator, Ms. Margaret Fahringer, concerning the procedures for processing applicants for accessible housing. They are instructed on policy and accommodations under § 504 of the Rehabilitation Act of 1973 and a United States Department of Housing and Urban Development ("HUD") document entitled "Things You Should Know," which states, among other things, that applicants giving false information will be evicted and may be fined or imprisoned. They are given training regarding the Notice/Accommodation Request Form and third-party disability

6. We note that § 100.202 "does not prohibit" inquiries, when made to all applicants regardless of whether they have a handicap, to determine "whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap," and "whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap." 24 C.F.R. §§ 100.202(c)(2)&(3). Further, the United States Department of Housing and Urban Development ("HUD") Accessibility Notices state "PHA may verify a person's disability ... to the extent necessary to ensure that applicants are qualified for the housing to which they are applying ... [and] may require documentation of the manifestation of the disability that causes a need for specific accommodation or accessible unit."

verification, transfer applications, and lease riders.[7] They are trained on interviewing persons seeking accessible units and on data entry for applicants requesting accessible units and are instructed that illegible or incomprehensible forms must be clarified. Ex. D235. Although PHA's application review specialists do not seek diagnoses or information regarding the extent of an applicant's disability, they seek information about the manifestation of the disability and what accessible features are needed.

Although it is "not required," PHA "would like" all heads of household who move into an accessible unit to sign a lease rider or lease addendum, whether or not the person has a disability. The lease riders provide that if there is no disabled resident in the household, the leaseholder agrees to move upon request of PHA or the AME.

As noted above, PHA uses AMEs as leasing agents at several of the sites counted under the Settlement Agreement rather than undertaking the leasing itself. Each AME also processes applications for public housing separately and distinctly from the PHA processing, and each is responsible for selecting residents and maintaining its own "site-based waiting list." As is true for the PHA process, applicants submit a pre-application to an AME, but this pre-application is AME-site-

7. A non-disabled resident who is assigned an accessible unit is asked to sign a lease rider, agreeing to move if a mobility impaired applicant is found.

specific. To address the requirements that the units be leased to persons needing the particular features, AMEs utilize the notice and verification forms, described above, in the application process.

AME staff members are trained by PHA in how they should fill accessible units. PHA retained Mullin & Lonergan Compliance ("M&L"), a consulting firm with expertise in the requirements of the Fair Housing Act and other similar regulations, to train AME staff on compliance with § 504 of the Rehabilitation Act. Additionally, there is one-on-one training by PHA of new AME employees. In 2002, PHA and M&L conducted training for the four outside companies that run the AMEs: Pennrose Management, Interstate Realty, The Community Builders, and the Philadelphia Asset & Property Management Corporation. This training covered § 504 of the Rehabilitation Act, occupation of accessible units, outreach to the members of the disabled community, and procedures for compliance with HUD regulations. Management at each site was informed the site was required to maintain a waiting list of applicants who required any kind of mobility-impaired unit. Also distributed at the AME training was a document entitled "Section 504 Compliance and Accessible Units." This document explained PHA's policies about what questions may be asked. It also noted that all applicants should be given the notice of disability accommodations form, that AMEs should conduct yearly outreach to disabled individuals, that site-based waiting lists should be maintained and may be "mined," and that all non-disabled

residents in accessible units should sign lease riders agreeing to move if a mobility impaired applicant is found.

PHA instructs the AMEs to conduct outreach in order to maintain a well-balanced applicant pool that is separate and distinct from the general PHA waiting list. As cited by defendants, § 5A of the Housing Act of 1937 permits public housing authorities to maintain site-based waiting lists as long as they specify they will do so in their annual plans, which are approved by HUD. 42 U.S.C. § 1437c-1(d)(3). PHA's contractual relationship with each of the AMEs provides for site-based waiting lists and these contracts are approved by HUD.

PHA retains control over the AMEs, at least with respect to the implementation of the Settlement Agreement. In at least one instance, PHA directed an AME located at the ML King site to move tenants from an accessible unit who did not qualify for the unit under 24 C.F.R. § 8.27.

Seventy-five out of 149 of the existing settlement units are managed by PHA. In its efforts to fill the accessible units subject to the Settlement Agreement, PHA first offered them to current occupants of other units in the same projects or comparable projects under PHA control whom PHA determined had disabilities requiring the accessibility features of the new units and were occupying units without such features. See 24 C.F.R. § 8.27. Unfilled units were then offered to applicants on the waiting list whom PHA had determined had disabilities requiring the features of the new units and who had been

determined to qualify for public housing. Id. As noted above, on at least one occasion, PHA did require an AME to remove an improperly placed household from an accessible unit.

PHA began taking steps in approximately October, 2001, prior to the signing of the Settlement Agreement, to fill the settlement units. It began by reviewing its list of residents who had requested accommodations requiring transfers to accessible units ("transfer list"). In addition, the PHA Accessibility Coordinator kept what she called a "working list" of people who had requested transfers and had either gone through the formal transfer screening process or who had informed her that they intended to do so. The working list tracked requests for the type of unit and location within the city. The working list was also used to track paperwork and to coordinate with housing managers. Before it could transfer a household on the transfer or working lists, PHA often had to re-certify the household because of some change in status, such as a child reaching the age of majority or the acquisition of a live-in aide.

Once the paperwork was completed, PHA would match the households to settlement units with a suitable number of bedrooms. At that point, Ms. Fahringer and Ms. Denise Faulk of PHA's Admissions Department began to "pencil-in" or assign families into settlement units using a spreadsheet. This spreadsheet came into use as early as February, 2003 and was updated at weekly meetings between Ms. Fahringer and Ms. Faulk.

Emergency situations required transferring some households into settlement units out of order, pursuant to § 8.27 and PHA Policy Governing Admissions and Continued Occupancy.

Because PHA would soon have a large number of accessible units, it also looked to new applicants. Concurrent with its search through the transfer and working lists, it began searching its existing waiting list for families requiring accessible housing. Beyond its existing lists, PHA conducted outreach consisting of mailings to between 40 and 70 disabled housing outreach groups.

Applicants on the waiting list who had requested accessible units were coded in the computer system as "M1" applicants. PHA's first search in early 2003 found approximately 350 applicants who were coded as M1. Prior to 2002, the only pre-application question pertaining to mobility impairments asked about wheelchair use, so nearly all of the applicants found in this search had claimed to have a family member who used a wheelchair.

The first pool of applicants was sent letters informing them that they were at the top of the waiting list. Each received the full application and another notice of disability accommodation form. PHA then called applicants in for interviews. Each contested PHA resident was personally interviewed by a PHA staff member before a lease was extended as confirmed by a stipulation entered into among counsel. Applicants who did not actually need accessible units were

dropped from the list. For applicants who remained eligible for accessible housing, PHA mailed a medical verification form to their medical providers.

Most of the third-party verifications for PHA housing completed by applicants' medical providers in these early stages were reviewed by Ms. Fahringer during her weekly meetings with Ms. Faulk. In any case, when the application process including the interview had been completed, the head of admissions or other supervisory-level staff member had to approve the housing applicant's eligibility for accessible housing. This approval was given only after a review of the following information in the applicant's file: application stating there was a disabled family member; documents showing the disabled individual received SSI or SSDI; medical verification form and other medical information on file; and information on the applicant's disability information ("DI") screen in PHA's computer system. At times, additional information gathered from social workers, nurses, live-in aides, doctors, and other care-givers was also considered.

In its evidence and argument to the court, PHA uses the phrase "snapshot in time." It contends that its decision to place any particular family into an accessible unit was an attempt to make a reasonable accommodation for a specific individual in a non-discriminatory manner using the housing stock available at a particular point in time. Applicants were pulled from the waiting list and offered units in the order they had

applied. PHA made its determination based on whether or not an individual was eligible for an accessible unit but did not compare applicants' disabilities to one another.

Not all applicants decided to take the units that were offered to them. In those cases, PHA continued to work its way down the waiting list. In one case, eleven applicants rejected a particular unit. Applicants decide to reject units for a variety of reasons, such as unit size or location. Each rejection, of course, delays the occupancy of the unit.

Seventy-four of the existing 149 settlement units are managed by AMEs. The AMEs followed procedures similar to those of PHA. The first AME settlement units were ready for occupancy in October, 2003. Beginning in March and April of 2003, the AMEs began their outreach efforts, which consisted of: mailings directly to individuals on PHA's transfer and waiting lists and to disabled housing advocacy groups; open houses to which disabled housing advocacy groups were invited to bring their constituents; newspaper advertisements; advertisements on signs at the individual AME sites; a shopping mall kiosk; and direct mailings to particular zip codes. A typical mailing to advocacy groups included information regarding the availability of accessible units. Interested individuals were told they should apply directly to the AME site with an enclosed application. One AME mailed notices to persons on PHA's waiting list that its site would be accepting applications. At least one AME site manager

contacted Ms. Fahringer when an accessible unit became available, allowing PHA to conduct outreach on behalf of the AME site.

The AMEs also used their site-based waiting lists to find applicants who claimed a family member with a mobility disability. AME site managers personally interviewed the head of household for every applicant placed in a settlement unit. In all but one case, the head of household was also the disabled individual. Additionally, Ms. Fahringer was available to the site managers for questions regarding whether an applicant was appropriate for a particular unit. Each decision to fill an AME settlement unit was reviewed by Ms. Fahringer within four months after the decision was made. As previously stated, in the case of one AME, Ms. Fahringer discovered a non-disabled household had been placed in settlement units and instructed the site to remove the household and place mobility impaired persons in the units.

IV.

As stated above, plaintiffs currently contest 36 households which they contend do not include an individual whose disability requires the accessability features of the unit. Six of these units are managed by PHA and the rest by AMEs.

A. PHA UNITS

**C.C. - 845 N. 20th Street**

C.C.'s verification[8] states C.C. has a long-term physical disability that requires accessible housing features or accommodations and that C.C. needs a unit all on one level with minimal steps at entry only and grab bars in bathtub. The medical provider's notes state, "C.C. has difficulty with steps and difficulty maintaining balance when in one place for extended period of time. One-level home and grab bar in tub would suit particularly." According to PHA notes, C.C. uses a cane, is 50 years old, and has been relocated from other PHA housing, which was scheduled for imminent demolition. At the time, the accessible unit in which C.C. was placed was the only unit available with the features he required.

**E.H. - 2326 N. 13th Street**

E.H.'s notice of disability accommodation ("notice") states that no member of E.H.'s household used a wheelchair or had a mobility impairment. Yet, the notice requests bathroom grab bars, handheld shower, tub seat, and raised toilet seat ("bathroom accommodations").

E.H.'s verification, on the other hand, specifies E.H. has a long-term physical disability that requires accessible housing features or accommodations and needs a unit on one level

8. As we previously noted, a medical provider was required to fill out the verification of need for disability accommodation or accessible unit features form ("verification").

with minimum steps at entry only and hearing impaired features. E.H. has a live-in aide. A consultation report adds that E.H. has "multiple levels of disc degeneration" and "levels of advanced facet joint degeneration," and that E.H. is a 61-year-old with lower back, buttock, and left leg pain. Additionally, in the "for office use only" box on the verification, is written "Margaret F. has call into [sic] doctor, Nurse Jeane clarified need for grab bars and all equipment previously requested on DI screen in bathroom." Other PHA notes for E.H. state the following: "cane, 'seizures,' elderly, shakey [sic] (has daily home health aide for 2 hrs ____."

E.H.'s personal statement reports that E.H. has had three strokes and has a major seizure disorder causing six different kinds of seizures, including epileptic seizures. E.H. has had brain surgery. E.H. has diabetes, asthma, and is deaf in one ear and 60% deaf in the other. In addition, E.H. has severe arthritis of the knees and legs and horrible pain in the hips and back. E.H. has a history of falling and has been told that another fall could cause paralysis. Both of E.H.'s knees have been replaced. However, E.H. wants to stay out of a wheelchair. E.H. needs the lower counters and cabinets in the kitchen and the bathroom accommodations.

Ms. Fahringer was personally involved in placing E.H. into an accessible unit after E.H.'s social worker explained to her that E.H. could not be released from the hospital unless she was placed in an accessible unit. As stated in PHA notes, E.H.

is a frail, elderly woman who uses a cane, has a seizure condition, and suffers from other illnesses.

**R.C. - 2336 N. 13th**

R.C. reports on his notice that no one in the household uses a wheelchair or has a mobility impairment. The medical provider verification states that R.C. is disabled with a disability [not specified to be physical resulting in the need for accessible housing features or accommodations] expected to last continuously for at least 12 months or indefinitely and requires a unit with limited flights of stairs (max number of flights is one) and bathroom accommodations. The medical provider also comments, "Pt. needs lower-level facility or no more than 1 flight of stairs. Pt. would benefit from grab bars in order to promote stability in situation where pt. is wet or prolonged standing."

R.C. has provided a personal statement which reads that he was injured from a fall at age 19 and suffers increasingly worse back and hip pain at age 62. R.C. has arthritis in his legs, has a heart condition, and uses a cane. He sits at the lowered kitchen sink to prepare meals. R.C. cannot walk up steps and needs a wheelchair but cannot pay for one. R.C. utilizes other accessible features such as the controls and closet rods. R.C. lives with disabled granddaughter, V.C., who suffered a stroke at age 11 months and who cannot walk up steps.

In addition, R.C. was scheduled to have knee surgery which would subsequently require R.C.'s use of a wheelchair.

Further, R.C.'s household was underhoused, meaning that more people lived in their previous unit than were adequately housed in the number of bedrooms, and PHA needed to create two households from what was previously one household. The settlement unit was close to the unit where the rest of R.C.'s family was being placed. Being underhoused and needing a "split family transfer" are both priorities under PHA's transfer policy.

**A.G. - 2249 N. 2nd Street**

There is no complete verification submitted for A.G. There is a form from Comprehensive Medical Services, Inc., which reads, "This pt. needs aide in remembering daily to take meds, reminder about other appointments, etc." There is also a form from PAMM Human Resources Center, Inc., but the handwriting is illegible and the form has been redacted. PHA notes state "epileptic, 58 y.o. needs caregiver assist for _____." The unit in which A.G. resides was offered and rejected 11 times before it was accepted by A.G. A.G. is disabled and has epilepsy. A.G. also was overhoused and wanted to move closer to her daughter. However, the Family Member's Disability Screen from PHA's computer system states A.G. needs a mobility impaired unit and bathroom accommodations.

**L.H. - 2007 W. Diamond Street**

In her verification, L.H.'s medical provider states that L.H. has a physical disability resulting in the need for accessible housing features or accommodations that is expected to last continuously for at least 12 months or is of indefinite

duration and L.H. either needs an accessible unit (zero-step entry, can accommodate wheelchair user) or unit on one level (steps at entry only) with bathroom accommodations. Further, L.H. has "severe peripheral vascular disease that limits range of motion and intensity of activity. Coupled with her cardiac history, this patient should not be overly strained." L.H. requested a medical transfer to a first floor unit with the specified features after having surgery. This request was also made by L.H.'s physician.

In addition, L.H.'s personal statement describes her as suffering from neuropathy in both feet, causing difficulty walking, and from peripheral vascular disease, causing a reduction in her range of motion and level of activity. L.H.'s unit has a lift for the front door and she makes use of the lower counters and cabinets.

**J.M. - 1257 N. 15th Street**

J.M. uses a scooter. His verification requests a unit with limited steps and bathroom accommodations. His medical provider also stated on his verification that J.M. has "multiple sclerosis and generalized muscle _____."

B. AME Units

**R.A. - 752 S. 13th Street**

R.A.'s verification states R.A. has a long-term physical disability that requires accessible housing features or accommodations. All three options of unit type - accessible, one-level, and limited steps - are circled. Also requested are

lowered kitchen wall cabinets, grab bars, tub seat, and handheld shower. The medical provider affirms that R.A. has arthritis in the hands, legs, and lower back and tendonitis of the shoulder.

R.A.'s statement reports that R.A. has severe arthritis in the shoulders, low back, knees, and arms. R.A. can only walk very short distances and only with a cane. R.A. also has bronchitis and asthma and sees a breathing doctor. Walking causes R.A. shortness of breath. R.A. has chronic severe pain and cannot bend or reach. R.A. can no longer work because of the disabilities.

**A.B. - 917 Poplar Street**

A.B.'s medical provider writes that A.B. has a long-term physical disability that requires accessible housing features or accommodations and that A.B. requires a unit on one level with minimum steps at entry only. A.B. requires grab bars in bathtub and at toilet, handheld shower, and raised toilet. The verification reads that A.B. has a live-in aide and requires a separate bedroom for disabled person.

As part of the exhibits provided by RAB, there is an email exchange between Margaret Fahringer and Jason Driscoll, of PHA Asset Management, in which Mr. Driscoll describes that A.B. was offered an accessible unit because it had the features her medical provider indicated she needed. A.B. was dissatisfied with the lower shelf heights and demanded they be changed. In the email exchange, Ms. Fahringer states she would not consider A.B. for an accessible unit unless her doctor said she must have

one, that vertigo (which A.B. apparently has) is not considered a physical disability requiring the features of an accessible unit, and that all units are adaptable to add grab bars, handheld showers, and tub benches. Ms. Fahringer also notes that she would like to meet immediately with Mr. Driscoll to explain accommodation and review eligibility for accessible units.

A.B. has written a statement detailing that she has a severe and chronic equilibrium problem and is unable to lower her head or bend down as a result. She also underwent a left-sided mastectomy and cannot reach with her left arm. Her mobility is further restricted by back pain. She cannot stand for long periods of time, and she has a live-in aide. She requested an accessible unit with lower counters and cabinets to accommodate these difficulties. After inspecting the unit prior to moving in, she requested that the shelves be moved up because she cannot lower her head and bend.

**C.B. - 801 N. 12th Street**

C.B.'s notice of disability accommodation reports that no member of the household uses a wheelchair, but that a member has a mobility impairment and needs a unit on one floor. No complete verification is provided.

C.B.'s statement describes that C.B. lives in accessible housing with an 18-year-old daughter. C.B. applied for accessible housing because of terrible arthritis. C.B. uses a cane and has balance problems. When C.B. stands or walks, her knees and ankles swell greatly and it hurts for her to stand.

She needs to lean on walls or whatever is available for balance. The bathroom accommodations are a great help to C.B.

**H.C. - 921A Poplar Street**

H.C.'s verification describes H.C. as having a long-term physical disability that requires accessible housing features or accommodations. Two unit types are circled: accessible unit (zero step entry, can accommodate a wheelchair user) and unit on one level (minimum steps at entry only). All the accessible bathroom features are requested. PHA notes also contain the following: "cane, elderly, shakey [sic] 'can't walk to Girard,' was relocation with J.O."

H.C.'s statement explains H.C. is 74 years old. Six years ago, H.C. fell and suffered severe injuries to the spine and has since been under the treatment of a neurologist and a surgeon. H.C. has painful arthritis in the ankles, knees, shoulders, and back. H.C. also has a painful disc in his or her back and right-sided numbness from hips to toes. H.C. needs a cane to walk and still is shaky. H.C. lives with a 38-year-old son with Downs Syndrome who also walks with significant difficulty. H.C. cannot walk up or down steps and requires the bathroom modifications. The lower kitchen counters are necessary for H.C. to prepare meals. Moreover, the lower cabinets and light switches greatly aid H.C.

**L.C. - 744A S. 13th Street**

L.C.'s verification states L.C. has a long-term physical disability that requires accessible housing features or

accommodations. All three options of unit type - accessible, one-level, and limited steps - are circled. Also requested are lowered kitchen sink/counter - base cabinets removed for wheelchair, special need at ____ inch height, lowered kitchen wall cabinets, closets with lowered clothes rods/shelves, lowered electrical wall switches/controls, grab bars in bathtub and at toilet, handheld shower. L.C. has small cell lung cancer and has had a laryngectomy, necessitating "a TYY device" for her phone because she would otherwise be unable to communicate in case of emergency.

L.C.'s personal statement reads that she has been diagnosed with cancer of the lungs, larynx, and tonsil. Her voice box has been removed and she cannot talk. There is an open hole in the front of her throat. L.C. has extreme difficulty walking and cannot walk up steps. L.C. has shortness of breath and severe pain in her back for which she takes "2 morphines a day and also 8 percosets a day." She is grateful for all the accessible features of her accessible unit - the lowered countertops which she can lean on and sit next to to prepare food, and the hand holds. A letter from L.C.'s physician to counsel for RAB is also included in the materials provided to the court. The letter documents essentially what is written in L.C.'s statement.

**T.C. - 919 Poplar Street**

T.C.'s verification states T.C. has a long-term physical disability that requires accessible housing features or

accommodations. Two unit types are circled: accessible unit (zero step entry, can accommodate a wheelchair user) and unit on one level (minimum steps at entry only). T.C. also requests bathtub grab bars. The verification explains "severe arthritis both knees - ground floor apartment is very _____." The PHA notes for T.C. state "W[heel] C[hair], walker, 4 prong cane, 2 _____ (just had one, not using WC at present)."

T.C.'s statement explains that T.C. has had knee replacement surgery on both knees and still has great difficulty walking. T.C. cannot walk more than a few steps outside the front door of the home and often falls. T.C. also has heart problems and high blood pressure.

**W.F. - 673 N. 42nd Street**

The verification submitted on behalf of W.F. notes that W.F. has a long-term physical disability which requires accessible housing features or accommodations and a unit with limited flights of stairs (maximum one to two flights). W.F. also needs grab bars in the bathtub. W.F.'s medical provider further states that W.F. "Can not [sic] climb steps and cannot see."

W.F. has submitted a statement which informs us that W.F. is 65 years old, suffers from congestive heart failure, diabetes, and kidney failure. W.F. cannot see more than shadows because of diabetic retinopathy. W.F.'s left toes have been amputated as a consequence of diabetes and W.F. is faced with the possibility of having the entire left foot amputated, which will

necessitate the use of a wheelchair. W.F. uses a four-prong cane and orthopedic adaptive shoes and is fighting to stay out of a wheelchair. When the fire alarm goes off at the day program W.F. attends, W.F. must remain with people who use wheelchairs because W.F. cannot leave the building with people who are able to walk.

**H.G. - 3407 Capital View**

H.G.'s verification states H.G. has a long-term physical disability that requires accessible housing features or accommodations and a one-level unit with no steps. H.G. requires 32" doorways throughout the unit, bathroom accommodations, and a separate bedroom for disabled person. It states that H.G. would like to be in the Schuylkill Falls development and if possible, would like an elevator.

The legible PHA notes state, "Per interview, uses walker, needs everything on one floor, legally blind, approved by D.V. for WC unit."

**M.H. - 3412 Capital View Drive**

M.H.'s verification describes M.H. as having a long-term physical disability that requires accessible housing features or accommodations and needs a unit on one level with steps at entry only and bathroom accommodations. The medical provider wrote handwritten notes on the verification stating that M.H. is extremely obese.

M.H.'s statement says M.H. is 67 years old with terrible arthritis of the back, hips, and knees, which causes M.H. great pain and affects M.H.'s ability to walk. M.H. cannot

reach up and benefits from the lowered kitchen cabinets. M.H. sits to prepare food. M.H. depends on the unit's elevator because M.H. cannot use steps. The bathroom accommodations are very helpful to M.H.

**V.H. - 814A N. 11th Street**

V.H.'s verification contains a statement that V.H. has a long-term physical disability that requires accessible housing features or accommodations and needs an accessible unit and bathroom accommodations. She "uses a wheeled walker in and out of her apartment." V.H.'s notice of disability accommodation, dated the same day as the verification, states she uses a wheelchair. PHA notes confirm that V.H. uses a walker.

V.H.'s statement adds that her knees are badly deteriorated, and she cannot climb stairs unless someone lifts her legs for her. She cannot put her body weight on her left leg. She usually uses a walker, but she uses a cane with feet in the kitchen because it is too small for a walker. V.H. is resisting using a wheelchair because she wants to stay on her feet, but she falls a lot. V.H. has high cholesterol and blood pressure and emphysema. She uses pain medications. V.H.'s right arm is semi-paralyzed and has a hard time reaching shelves in the kitchen.

Also provided is a letter from the Family Health Services of Drexel University. The letter explains that V.H. must use a rolling walker with a seat, moves very slowly, and has to stop frequently to rest even when crossing the street. She

cannot get up when she falls and has to wait for someone to help her.

**S.H. - 666 N. 41st Street**

S.H.'s verification states S.H. has a long-term physical disability that requires accessible housing features or accommodations and needs an accessible unit or a one-level unit with minimum steps at entry only. She has "unsteadiness of gait which causes her to fall" and needs a unit with minimal steps.

S.H.'s statement details that she has central degenerative syndrome complex with a herniated disc. She has pulmonary hypertension and is being treated for a heart condition. She has a mass on her liver and kidney. She has numbness and pain in her appendages and suffers from severe scleroderma. She has been told her symptoms are consistent with Lupus. S.H. uses a cane for stability and frequently falls. She cannot use steps safely and applied for a home without stairs.

**N.J. - 677B N. Broad Street**

N.J.'s verification states that N.J. has a long-term physical disability that requires accessible housing features or accommodations and needs a one-level unit with minimum steps or a unit without any flights of stairs. N.J. requires the bathroom features. N.J.'s medical provider notes that N.J. is unsteady on his or her feet and is at risk for falling.

N.J.'s statement reports that N.J. cannot use the six steps leading to the front door without falling. N.J. has memory problems and is often confused. Walking is difficult for N.J.,

and N.J. relied on a walker until it was stolen. N.J. now uses a four-prong cane, but this does not prevent falling. N.J. has also had surgery on the right knee. One leg is shorter than the other. N.J. has seizures, asthma, and high blood pressure.

**J.J. - 1311A Catherine Street**

J.J.'s medical provider comments in her verification that J.J. has a long-term physical disability that requires accessible housing features or accommodations. All three unit types are circled. Accessible features needed are: 32" wide doors throughout; accessible kitchen with maneuvering space for a wheelchair; lowered kitchen wall cabinets; accessible bathroom with maneuvering space for a wheelchair; bathroom grab bars; handheld shower; tub seat; and spare bedroom for medical equipment. A live-in aide is indicated. PHA notes state "in hospital, very ill per Manager Windle." There is a typewritten note from the same physician writing on behalf of J.J. requesting a live-in care-giver because she has multiple medical conditions, including GERD, exercise induced ventricular tachycardia, and diabetes and requires constant supervision.

J.J.'s personal statement informs us that she has "spinal stenosis, bone spurs in both feet, COPD/heart condition, pulmonary hypertension, degenerative joint disease, severe asthma, diabetes, acid reflux, ... sleep apnea.... [and] interstitial cystitis." Her pulmonary problems require her reliance on a nebulizer machine which she always keeps nearby. At night, J.J. uses a breathing machine with oxygen. Her

breathing problems make her extremely weak. Going from one room to another, J.J. must stop and lean on the wall or on furniture to rest. Further, her spinal stenosis, deteriorated discs, and bone spurs cause J.J. great pain and walking is often painful. Although she has a walker and a cane, she tries not to use them so as to keep her muscles as strong as possible. She does not go up or down steps. Because of her interstitial cystitis, she must catheterize herself and utilizes the bathroom accessibility features when doing so. At her old residence, which had an upstairs, J.J. was confined to the downstairs and could not reach a bathroom or the second floor bedroom. She was forced to use a portable toilet in the living room and also sleep in the living room for two years. She is able to sit in the kitchen and prepare food.

**T.J. - 3410 East Falls Lane**

T.J.'s verification states T.J. has a long-term physical disability that requires accessible housing features or accommodations and requires an accessible unit (zero-step entry, can accommodate a wheelchair user). Thirty-two inch wide doorways, lowered kitchen features, lowered closet rods, and lowered electrical switches/controls are not sought, but accessible bathroom features are requested. A form filled out by T.J. requests grab bars and states she cannot walk steps.

**G.M. - 754A Fawn Street**

G.M.'s verification states G.M. has a long-term physical disability that requires accessible housing features or

accommodations. All three unit types are circled. Also requested are lowered kitchen sink/counter, lowered kitchen wall cabinets, closets with lowered rods/shelves, bathroom grab bars, handheld shower, and tub seat. The medical provider also explains that G.M. has asthma, bilateral frozen shoulders, and arthritis of spine, hips, and knees.

G.M.'s personal statement says G.M. suffers from rheumatoid arthritis in the lower spine, hips, and knees, and uses a walker or cane constantly. Even with a cane or walker, G.M. can only walk short distances. G.M. cannot walk up stairs. In addition to the frozen shoulders, G.M. has had surgery to replace the left rotary cuff. Even with the bathroom grab bars, G.M. cannot get out of the bathtub without assistance. Finally, G.M. requires the lowered features in the kitchen in order to use it.

**C.M. - 1416 Clearview Street #312**

C.M.'s verification describes C.M. as having a long-term physical disability that requires accessible housing features or accommodations and requires a wheelchair accessible unit. All the accessible unit features, i.e., 32" doors, lowered kitchen features, are requested, as well as all of the accessible bathroom features. C.M. has a live-in aide. PHA notes state "scooter, cane, oxygen."

C.M.'s statement explains that C.M. has had a major stroke which created the mobility impairment. C.M. also has congestive heart failure and uses oxygen frequently. The stroke

caused paralysis on the right side and both legs are extremely weak. C.M. can barely walk and must use a wheeled walker. C.M. cannot use stairs. C.M. requires the lowered kitchen features because C.M. must sit to prepare food. C.M. is also "very heavy" and is an insulin dependent diabetic. Further, C.M. has cancer of the "carotid gland."

**J.M. - 915 Poplar Street**

J.M.'s verification states J.M. has a long-term physical disability that requires accessible housing features or accommodations and requires a unit on one level with minimum steps at entry only. J.M. requires an accessible bathroom with maneuvering space for a wheelchair and other accessibility accommodations. The medical provider gives no further details about J.M. PHA notes state "arthritis, asked for 1st fl, bath equip."

J.M. writes in her statement that she is 74 years old with severe arthritis in both knees and terrible back pain. She needs a cane to walk even short distances, and her knees tend to give out. She is frequently dizzy and has poor balance. She has high blood pressure, a heart condition, and asthma. All of her limbs have swelling, and she cannot bend or reach because of her arthritis. She is short of breath and uses nitroglycerine. In the kitchen, she must lean on the counters or sit at the lower counters. The bathroom accommodations are also of use to J.M.

**D.M. - 908A N. 10th Street**

D.M.'s medical provider states in D.M.'s verification that D.M. has a long-term physical disability that requires accessible housing features or accommodations and requires a wheelchair accessible unit or a unit on one level with minimum steps at entry only. D.M. needs an accessible kitchen sink and an accessible bathroom with maneuvering space for a wheelchair. All the bathroom accessibility features are circled. Also circled is a separate bedroom for disabled person. The medical provider's notes add that D.M. "has severe respiratory disease (not W/C)." PHA notes state "crutches, cane, sometimes 'kept falling,' hit by car 1989, has disc problems."

D.M.'s personal statement reports that D.M. has degenerative arthritis in all of her joints. D.M. also has an enlarged heart and anemia. D.M.'s feet, ankles, and knees swell greatly, and D.M. suffers from back pain and disc problems. D.M. uses a cane or crutches, but can barely walk even with these aids, and stays close to home. D.M. has difficulty rising from a seated or reclining position because of pain. D.M. cannot walk up or down steps. D.M. makes use of the lowered countertops and closet rods.

**S.M. - 746A S. 13th Street**

S.M.'s verification reads that S.M. has a long-term physical disability that requires accessible housing features or accommodations. All three unit type options are circled. Other features requested are lowered kitchen sink/counter and bathroom

features. S.M.'s medical provider confirms S.M. has screws in ankles and difficulty walking. S.M.'s admission application states S.M. has severe arthritis and needs a first floor unit. PHA notes state S.M. is "older, used cane (manager states has never seen before)."

S.M.'s statement explains that S.M. has arthritis causing lower back problems accompanied by pain, uses a cane, and often cannot walk at all. S.M. always leans on something in the house and cannot use steps. S.M. cannot stand in the shower. S.M. has three screws in one ankle from an accident.

**H.N. - 714A N. Warnock Street**

H.N.'s notice of disability accommodation form requests bathroom accommodations and a one-floor unit. His verification states no steps, first floor, and also requests the bathroom accommodations. The medical provider's handwritten notes are illegible. There is a note from the Health Center of the Philadelphia Department of Public Health stating H.N. has pain in the lower extremities and lower back and needs the handicap features of the accessible unit as per his statement.

H.N.'s statement details that H.N. is 70 years old, is unstable on his feet, uses a cane and grab bars, but sometimes falls anyway. H.N. has "a problem with falling and blacking out," and has trouble reaching up and losing his balance. H.N. mainly stays home because of his difficulty walking. He goes shopping once a month in good weather if he has saved enough money to take a taxi. He makes his own food and is able to use

the kitchen because he can lean on the lowered counters. The bathroom accommodations are also necessary.

**D.P. - 714 N. 10th Street**

D.P.'s verification states no member of D.P.'s household uses a wheelchair or has a mobility impairment but requests the bathroom accommodations.

D.P.'s statement, however, says D.P. has cerebral palsy which has twisted and bent D.P.'s body. D.P. has difficulty walking, especially when it is cold because D.P.'s limbs become stiff and it is impossible for D.P. to walk. D.P. is unable to stand and sits in the kitchen to prepare food. The lowered cabinets and closet rods are necessary for D.P. because D.P. cannot reach and keep balanced. D.P. falls when trying to climb stairs. D.P. does not want to be in a wheelchair and would rather risk falling than use one.

**B.P. - 1416 Clearview Street #H214**

B.P.'s verification states B.P. has a long-term physical disability that requires accessible housing features or accommodations and a one-level unit with bathtub grab bars. A PHA Asset Manager completed a telephone verification form stating there were changes in the physician's opinion of B.P.'s disabilities such that B.P. "is not currently in a chair but needs a cane and minimum steps at entry." B.P.'s disability accommodation request states "difficulty w/steps, balance, walks w/cane" and requests bathroom grab bars and handheld shower. PHA notes add "cane, nurse in am, comode [sic]."

B.P. states in the submitted personal statement that B.P. is 83 years old and lives in a portion of the building reserved for elderly and disabled. B.P. has had strokes and a heart attack, has bad arthritis, and terrible circulation in his or her feet. B.P. is very weak, can barely get around the apartment, and stays there all the time. B.P. is too weak to use a wheelchair and B.P.'s fingers are "locked up," preventing the use of a motorized wheelchair. B.P. can walk a little with a walker when feeling strong enough. B.P.'s meals are delivered by Meals on Wheels and B.P.'s doctors come to B.P.'s apartment. The construction of the apartment is helpful to B.P. because B.P. can sit at the counters and use the bathroom grab bars.

**B.S. - 701 N. Marvine Street**

B.S.'s medical verification states B.S. has a long-term physical disability that requires accessible housing features or accommodations. All three unit types have been circled, as have all the unit accessibility features and all the bathroom features. Also requested is a separate bedroom for disabled person. An earlier verification requests a first floor apartment and bathroom accommodation features, and a PHA statement that "applicant requires all accommodations." B.S.'s notice of accessibility accommodation requests a unit on first floor with bathroom features and states no member of the household uses a wheelchair or has a mobility impairment. A recent handwritten note from B.S.'s physician states that B.S. has congestive heart failure, abdominal cancer, sleep apnea, hypertension, severe

degenerative joint disease, and severe obesity of more than 500 lbs., and that B.S. is on oxygen and her ability to move around is markedly impaired. Further, B.S.'s son is an insulin dependent diabetic and mentally retarded or autistic.

B.S.'s personal statement reports much of the same information included in the letter from her physician. B.S. must use a walker or a cane to walk and must drag the oxygen machine. B.S. has a very hard time bending and standing up and is unstable on her feet. Her knees are constantly in pain, and she cannot stand long or walk far. B.S. is fearful of getting a wheelchair, although her doctor recommends she do so, because she thinks she will never walk again if she does. Because she needs to sit to prepare meals, the lowered counters and cabinets in the kitchen are helpful to B.S. The bathroom features are also helpful. B.S. rarely leaves the house.

**C.V. - 1901 Spring Garden**

C.V.'s verification notes that C.V. has a long-term physical disability that requires accessible housing features or accommodations. Two unit types are circled: accessible unit (zero step entry, can accommodate a wheelchair user) - "preferred" - and unit on one level (minimum steps at entry only) - "this is also ok." Also circled are: accessible kitchen (with maneuvering space for a wheelchair), lowered kitchen wall cabinets, grab bars in bathtub and at toilet, handheld shower, raised toilet, hearing impaired features, and separate bedroom for disabled person. The notes by the medical provider are

mostly illegible. Included in the information provided is a note from C.V.'s medical provider, which states C.V. needs a two-bedroom unit because she is disabled and needs someone to stay with her. She has multiple medical problems and needs 24-hour help. The details of her medical problems are redacted.

C.V. has submitted a personal statement which details that she suffers from heart disease and has had four stents inserted into her heart. She is about to have an operation to have a pacemaker. C.V. also has lung problems, including emphysema and asthma, and must use oxygen every day. In addition, C.V. has high blood pressure. C.V. also has herniated discs and lupus, which cause her great pain. She has trouble walking because of her arthritis and lung problems. C.V. suffers from epileptic seizures and syncope, and she frequently faints. She has daily visits from aides and her daughters. She needs the lowered kitchen accommodations in order to reach food for herself. When she tries to reach up, she often gets dizzy and faints.

**C.W. - 1728 N. 20th Street**

C.W.'s verification states C.W. is not disabled and does not need accessible housing features or accommodations but needs a one-level unit with steps at entry only. However, another form on file reports C.W. or a member of the household is disabled and requires a bathtub seat, bathroom grab bars, and handheld shower. The notice of disability accommodation requests

an accessible unit with bathroom accommodations. PHA notes state "not disabled. In hospital will sign Lease Rider."

C.W.'s personal statement provides C.W. cannot reach the second floor of the two story house. C.W. has avascular necrosis of both knees and hips and of the right ankle and right shoulder, which causes C.W. constant pain for which C.W. is prescribed oxycontin and morphine. C.W. also has pulmonary problems affecting C.W.'s breathing and strength and is told that there are nodules on her lungs. C.W. has Crone's disease, causing her stomach pain, weight loss, and weakness, for which she is repeatedly hospitalized. C.W. has only a limited ability to walk but is fighting to stay out of a wheelchair. She has poor balance. C.W. has a hospital bed in her living room to enable her to lie with her head elevated and reduce swelling. She sits at the lowered counters to prepare meals in the kitchen and the lower cabinets enable her to reach inside.

**M.R.W. - 3700A Schuylkill Falls Lane**

M.R.W.'s verification describes that she has a long-term physical disability that requires accessible housing features or accommodations. All three unit types are circled and there is a handwritten note that says "either" and arrows drawn to all three. The unit accommodations requested are lowered kitchen wall cabinets and closets with lowered rods/shelves. Grab bars in the bathtub are also requested. The handwritten notes state M.R.W. has cerebral palsy which creates difficulty ascending and descending stairs and that she has limited ability

to reach up. "A unit that is fully wheelchair accessible is not need[] at this time." The PHA notes on the verification state, "Based on the information provided from her Doctor [M.R.W.] would benefit from the features of an accessible unit. The Doctor stated on [page] 2 question (2) that [M.R.W.] has a physical disability that results in the need for accessible housing features or accommodations." Another handwritten PHA notation states "All units with accessible features are equipped for wheelchairs. We don't have any other unit to offer her with limited steps or lower cabinets etc."

B.C., M.R.W.'s grandmother, has submitted a statement on behalf of M.R.W. The statement reports that M.R.W. had a stroke at birth and was left mentally and physically disabled. Her right side is limp and deformed and she walks unsteadily and with a severe limp. She is diagnosed as having cerebral palsy. M.R.W.'s right leg is shorter and twisted the wrong way. Her right arm is not useful and does not straighten out. She has poor dexterity and cannot reach up, and she therefore benefits from the lowered kitchen cabinets and clothing rods. M.R.W. cannot care for herself and needs B.C.'s help to bathe.

**L.W. - 914A N. 10th Street**

L.W.'s verification states L.W. has a long-term physical disability that requires accessible housing features or accommodations and needs an accessible unit or a one-level unit with bathtub grab bars. Handwritten PHA notes state "WC & 1st Fl & gb." L.W.'s notice of disability accommodation requests a

mobility impaired unit and grab bars at tub. PHA notes state "had limp, young person, very heavy."

L.W.'s statement says L.W. applied to return to the Cambridge development when it was rebuilt and asked for a home with no steps to accommodate L.W.'s disability. L.W. has severe degenerative joint disease and obesity, which affect L.W.'s ability to walk. L.W. cannot use steps because L.W.'s knees give out and cause L.W. to fall. The arthritis is worst in L.W.'s knees and back, and L.W. also has carpal tunnel of the hands. L.W. was essentially trapped in a previous second floor apartment after suffering a fall down the stairs there. All of the one-level residences at Cambridge have "handicap features."

**B.W. - 1416 Clearview Street #H210**

B.W.'s verification states B.W. has a long-term physical disability that requires accessible housing features or accommodations. All three unit types are circled, but none of the accessible unit features is. Bathroom features are requested. The handwritten notes are illegible. There is a December, 2004 letter from B.W.'s physician describing her increasing left-sided weakness, difficulty walking, and occasional falling. The letter advises against B.W. moving at that time. B.W.'s disability accommodation request states "no steps, can't walk to car without cane _____ doctor will confirm need for caregiver." There is a March, 2005 follow-up summary by B.W.'s physician which states B.W. may have a "focal lesion between lower brainstem and upper cervical spinal cord"

and "vestibular cerebellum." B.W. has imbalance, left leg weakness, and a hand tremor.

B.W.'s personal statement affirms that B.W. had a stroke in 1999 and sustained permanent damage to the left side of her body, impairing her ability to walk. B.W. needs a three-pronged cane to walk and to get up from a seated position. B.W. must drag her left foot and her gait is unstable. She falls frequently and has sustained injuries. She cannot reach overhead. B.W. also has glaucoma and vision problems, which contribute to her difficulty walking. B.W. relies on the lowered cabinets and closet rods and needs to sit at the lowered counters to prepare meals. The bathroom features are also necessary for B.W. to be able to take care of her needs.

**S.N. - 1322A Bainbridge Street**

S.N.'s verification states S.N. has a long-term physical disability that requires accessible housing features or accommodations. The disability is expected to last for 12 months, and states that S.N. needs a unit on one level. The medical provider also stated that S.N. needs bathroom grab bars.

**G.A. - 918 Poplar Street**

G.A.'s verification explains that G.A. has a long-term physical disability and needs a unit on one level and bathroom grab bars. The medical provider's handwritten notes, to the extent they can be deciphered, read "walks with cane." G.A.'s notice states a household member uses a wheelchair and has a mobility impairment. The notice requests a wheelchair unit and

bathroom accommodations. PHA notes state "disabled - yes, 1st floor - G[rab]B[ars] med doc, CANE, he asked W[heel]C[hair] unit."

V.

As is obvious, many of the verifications described above have internal inconsistencies that are not resolved in the records of PHA or the AMEs, PHA's leasing agents. Furthermore, there are sometimes critical omissions. It is apparent that frequently medical providers either did not spend sufficient time in filling out the verifications carefully or did not understand the forms or their purpose. In addition, the personal interviews by PHA and its leasing agents are not always fully described. In sum, the documentation to support the placement of some occupants into the units in question is clearly inadequate. Nonetheless, recently prepared personal statements of the residents which have been introduced into evidence in lieu of their testimony fill in the gaps and make up for those inexcusable deficiencies.

With all the heated rhetoric in this action, we must not lose sight of the narrow issue before us. Our job here is not to reform the PHA, however compelling a goal that may be. Again, our focus is on whether PHA has violated § C of the Settlement Agreement which, as noted, provides: "PHA shall take reasonable non-discriminatory steps to maximize the utilization of such units by eligible households that include an individual whose disability requires the accessibility features of the particular unit, in accordance with 24 C.F.R. § 8.27." It is a

fact specific inquiry. Plaintiffs take the position that the 36 contested units do not house individuals who meet the criteria of § 8.27. Plaintiffs contend that the individuals in question, while concededly suffering from some physical handicaps, do not use wheelchairs or do not otherwise need the wider maneuvering spaces which these units provide. Plaintiffs reference the Uniform Federal Accessibility Standards ("UFAS"), which are architectural requirements for units for the disabled. 24 C.F.R. Part 40, App. A. These standards, among other things, require units to have features such as wider interior dimensions that make the units accessible to persons using wheelchairs. They also provide for grab bars and other accommodations in bathrooms, kitchen cabinets and counters, and electrical outlets at lower heights than for the non-disabled. The UFAS standards eliminate all steps. Plaintiffs would have us read into § 8.27 the requirement that a person must need the wheelchair features of an accessible unit in order to be eligible to occupy it.

It is important to emphasize that § 8.27 makes no reference to UFAS. UFAS, we reiterate, delineates the architectural standards for accessible units, while § 8.27 deals with the occupancy of those units. UFAS provides for the general design of structures so they can accommodate persons with a full range of disabilities, including those using wheelchairs. It is imperative that these units are built to accommodate wheelchairs among other needs since it is difficult, if not impossible, to modify non-accessible units for wheelchairs after they have been

constructed. However, the UFAS standards are not intended to regulate who among a group of disabled persons should be assigned to live in a particular accessible unit or who among any group of disabled persons should receive priority.

Section 8.27 says nothing about wheelchairs. It provides that owners and managers such as PHA "shall take reasonable non-discriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit." It does not limit occupancy of accessible units only to wheelchair users or to persons who would need all the units' features, and after our examination of the foregoing residents' records and statements, it is easy to see why. The hearing before this court has demonstrated the variation and indeed the uniqueness of each disabled resident's medical and physical condition. The authors of § 8.27 wisely have not attempted to draft a regulation which seeks to describe with bright line exactitude who is and who is not eligible for accessible units, or who among those who are eligible has a more compelling case than someone else. It is essential for any decision to be made based on evaluation of the individual applicant under the totality of the circumstances. Drawing a bright line in favor of wheelchair users or those who need the wider spaces to move about would be overly simplistic and would exclude innumerable other equally appropriate individuals from housing available pursuant to § 8.27. The wording of § 8.27 obviously shows an appreciation for the vast

array of mobility and other impairments and the inability to anticipate or encompass every possible situation in a regulation. We will not read a wheelchair or similar requirement into § 8.27 or impose a specific number or percentage of features that an occupant must utilize in order to qualify for a unit. Again, the rule of reason and non-discrimination is the touchstone of this regulation.

For example, E.H. does not use a wheelchair, but clearly needs a unit with accessible features. E.H. lives at 2326 N. 13th Street, has had three strokes and has a major seizure disorder which causes six different kinds of seizures. E.H. has had brain surgery, has diabetes and asthma, and is deaf in one ear. E.H. has severe knee and hip arthritis and horrible pain in the hips and back. Both knees have been replaced. E.H. has a history of falling and has been told that another fall could cause paralysis.

Another example is L.C., who also does not use a wheelchair. She lives at 744 A South 13th Street. L.C. has cancer of the lungs, larynx, and tonsil, and her voice box has been removed, preventing her from talking. She has an open hole in her throat and shortness of breath. L.C. also has severe back pain, for which she is heavily medicated. L.C. has extreme difficulty walking and cannot use steps. She also needs other features of the accessible unit.

Finally, there is V.H. who lives at 814A N. 11th Street. Again, she does not use a wheelchair. She cannot climb

stairs unless someone lifts her badly deteriorated legs for her. She usually uses a walker, but sometimes uses a cane in the house. V.H. has emphysema, high cholesterol, and high blood pressure. Her right arm is semi-paralyzed and she is on pain medications for her arthritis. V.H. falls a lot and cannot get up by herself after falling, but she does not want to be in a wheelchair. She too needs an accessible unit.

More people are seeking public housing than PHA has housing stock. There are also more applicants with disabilities than there are public housing units with accessible features. Availability of units changes from day to day as do the physical conditions of persons on the waiting lists. Circumstances do not remains static. PHA aptly describes its decisions as being made in "a snapshot in time." Trying to match particular disabled individuals and their families with particular vacant units at any particular point in time is a complex matter. PHA and its leasing agents must verify current financial eligibility as well as criminal history. They must consider the nature of the disability, accessibility features needed and family size, as well as the features and size of the available unit. Their efforts are further complicated by the fact that applicants sometimes reject a unit because of location or for other reasons. The condition of the unit and the need to transfer persons from one public housing unit to another due to demolition or to emergencies are further considerations. One can easily

appreciate the maze of difficulties PHA and its leasing agents face in making placement decisions.

We recognize that some of the accessibility features, such as grab bars in the bathrooms, can be added to non-accessible units so as to accommodate a person with disabilities. PHA has made such modifications in some cases. However, there cannot be a hard and fast rule to require such additions or modifications in every case. First, an otherwise appropriate non-accessible unit may not be available for modification at the exact time an accessible unit is available and needed. It may, for example, be in a location at a significant distance from health care providers or family members who help with a person's care or may be inconvenient to public transportation. It may need repairs which cannot be made immediately. We cannot dictate that a person is never eligible for an accessible unit simply because a non-accessible unit somewhere in the PHA system could be modified to accommodate that person. Again, we must look at the totality of the circumstances and apply a reasonableness test.

PHA and its leasing agents must necessarily make judgment calls about the need for an accessible unit based on the medical and other information including availability. It is not an exact science. They must make placements in chronological order. They cannot pass over an eligible individual simply because they may believe that someone down the waiting list may be more deserving. They must move as quickly as possible so that

units do remain vacant for as short a time as necessary. Again, they act in the real world with all its complications in a "snapshot in time." While the efforts, procedures, and oversight of PHA and its leasing agents have not always been optimal and their record keeping has often been inadequate, we find and conclude that plaintiffs have not proven that any of the occupants of the 36 units has been placed there in violation of the Settlement Agreement. Section 8.27 requires PHA to take "reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals." Each person residing in the units in issue has a disability or disabilities which "require the accessibility features of the particular unit" in which he or she is living. Virtually all the disabled occupants cannot negotiate steps, and all need at least some accessible features. Keeping in mind the totality of the circumstances including the serious medical and physical conditions and the housing needs of the occupants of the 36 units in issue, we cannot say PHA or its leasing agents have acted unreasonably in carrying out their regulatory or contractual mandate.

For the court to try to delineate in an order exactly what medical and physical conditions and other circumstances entitle an applicant to scattered site accessible public housing and who should have priority among eligible persons would require us to micromanage eligibility decisions and to act as a "super-PHA." This is neither required nor authorized under the

Settlement Agreement or § 8.27 under the present facts.[9] Unfortunately, there are simply not enough units to accommodate all the disabled applicants for public housing. This insufficiency is at the root of the problem, but it will not be solved by granting the type of procrustean relief sought by plaintiffs.

We must also address the steps PHA has taken with regard to the issue of the timeliness with which PHA created the settlement units, readied them for occupancy, and leased them. The Settlement Agreement directs that "at least 124 units shall be accessible and otherwise ready for occupancy no later than December 31, 2003 ("Phase I")." Settlement Agreement § B. "Ready for occupancy" is not defined in the Settlement Agreement.

Although the Philadelphia Department of Licenses and Inspections ("L&I") had issued certificates of occupancy for 149 settlement units prior to December 31, 2003, PHA sent plaintiffs a letter on March 4, 2004 stating that 37 of the settlement units still required "cosmetic finishing" which was expected to be completed by the end of that month. Issues such as thresholds that needed replacing or concrete pads that had to be re-poured to make them flush with entries still existed because PHA was having "problems getting the contractor to perform." Further,

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9. We note also that plaintiffs would not have the ability to bring this action today under the Rehabilitation Act to enforce HUD regulations. See Three Rivers Ctr. for Indep. Living, Inc. v. Hous. Auth. of City of Pittsburgh, 382 F.3d 412, 425 (3d Cir. 2004).

PHA encountered problems with vandalism and fires. Plaintiffs contend that no more than 75 settlement units were actually occupied prior to December 31, 2003.

We agree with PHA that actual occupancy is not the measuring stick for compliance with the "ready for occupancy" provision of the settlement. However, it is clear that many of the units were not ready for occupancy by the deadlines as required under the Settlement Agreement. We find that PHA violated the December 31, 2003 deadline for not having all 149 of the settlement units "ready for occupancy" by that time. Nonetheless, the motion to enforce was not filed for many months after the deadline, and it is now almost two years later. All of these units have long since been available for leasing. The matter is now moot. We trust that the next group of scattered site accessible settlement units will actually be made "ready for occupancy" by December 31, 2005 as called for under the Settlement Agreement. PHA should take whatever steps are necessary to ensure that there are no "cosmetic changes" or other obstacles remaining to be fixed in these units after this upcoming deadline. If these units are not ready by that date, nothing herein precludes plaintiffs from promptly seeking the aid of the court.

We turn to the issue of the long vacancies that sometimes occurred after a unit was ready for occupancy. PHA argues that it uses the same efforts to fill the settlement housing as it does its other housing and that "[i]t is not

unusual for rental housing in Philadelphia to remain vacant for more than six months between tenants." Post-Hearing Br. of Defs. at 99. PHA points out that up to 13 percent of PHA housing generally is vacant at one time. Id. Some units are turned down by successive applicants before they are accepted, and that this creates delay. Moreover, when an occupant dies and the death eliminates eligibility of the household to remain living in a unit, the PHA allows a period of bereavement before eviction. It must also make repairs and paint a unit after it becomes vacant.

We have great concerns that as much as 13 percent of public housing units sit vacant for up to six months when the need is so compelling. Yet, due to the lack of a developed record on this point, we cannot say that PHA has acted unreasonably. All we can do is to encourage PHA to act as speedily as reasonably possible to reduce the vacancy periods. December 31, 2005 is rapidly approaching, and we fervently hope that PHA is already taking steps to match appropriate applicants with this next wave of accessible settlement housing.

We further recommend that PHA direct the AME sites to look to the PHA disability waiting list if and when the AME sites have no disabled applicants on their own lists. While the AMEs may be permitted by HUD to use site-based waiting lists, our concern is with the occupancy of the settlement units. We can think of no reason why the AMEs should not consider disabled applicants on the PHA waiting list to supplement their own lists. Moreover, going forward, we urge PHA to inform all applicants and

tenants who claim a need for accessible housing that settlement units exist at both PHA and AME sites.

Plaintiffs also challenge PHA's designation of a limited number of accessible settlement housing for the elderly only. In our view, this designation is not unreasonable. There are certainly elderly persons who need units with accessible features, as this record has demonstrated. Nothing in the Settlement Agreement before us prevents this designation.

For all the above reasons, we will deny the motion of plaintiffs to enforce the Settlement Agreement.

We now address the motion of PHA to enforce the Settlement Agreement or alternatively to vacate it. PHA contends that plaintiffs' conduct has been inconsistent with its terms. We disagree. Plaintiffs have sought simply to gain information through discovery and to take action to ensure compliance with the Settlement Agreement. There is no basis to grant PHA's motion to enforce.

Finally, PHA argues that there was a mutual mistake by the parties when they entered into the Settlement Agreement. It seeks rescission. Mutual mistake exists where the parties were mistaken as to an existing material fact at the time their contract was executed. Consol. Rail Corp. v. Portlight, Inc., 188 F.3d 93, 96 (3d Cir. 1999). Among other requirements, the mistake must relate to the basis of the agreement and must materially affect the parties' performance. Id. This argument is without merit and requires no extended discussion.

Accordingly, we will also deny PHA's motion to enforce.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| ADAPT OF PHILADELPHIA, et al. | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| PHILADELPHIA HOUSING AUTHORITY, et al. | : | NO. 98-4609 |

ORDER

AND NOW, this 29th day of August, 2005, based on the court's findings and conclusion of law set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of plaintiffs ADAPT of Philadelphia, Liberty Resources, Inc., Marie Watson, Marshall Watson, and Diane Hughes to enforce the Settlement Agreement (Doc. #152) is DENIED; and

(2) the motion of defendants Philadelphia Housing Authority and Carl Greene to enforce the Settlement Agreement or, in the alternative, to vacate the Settlement Agreement (Doc. #157) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III
J.