

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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ANTHONY HUNTER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:12-cv-01960-GK
)	
DISTRICT OF COLUMBIA, <i>et al.</i> ,)	
)	
Defendants)	
_____)	

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

I. INTRODUCTION

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517 to address arguments raised by Defendant District of Columbia in its Motion for Dismissal of Plaintiffs’ First Amended Complaint (the “Def.’s Mot. Dismiss” or “Motion”).¹ June 3, 2013, ECF No. 65-1. In this lawsuit, Plaintiffs allege that the District of Columbia (the “District”) failed to provide its homeless shelter services and programs in compliance with title II of the Americans with Disabilities Act, as amended (the “ADA” or “title II”), 42 U.S.C. §§ 12131-34; Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794; the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601-19; and D.C. law. First Amended Complaint (“First Am. Compl.”) ¶ 101, May 17, 2013, ECF No. 59. Plaintiffs allege a knowing and willful failure to accommodate and a failure to maintain appropriate and accessible shelter units for persons with immune system and mobility impairments. First Am. Compl. ¶ 4. Accordingly, the Plaintiffs, a

¹ Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

father and his minor daughter, seek declaratory and compensatory relief, and punitive damages.

As the agency charged with enforcing title II, Section 504,² and the FHA, and issuing regulations implementing the ADA, 42 U.S.C. §§ 12133-34, the Department of Justice (the “Department”) has a strong interest in enforcement these statutes. In this case, Plaintiffs allege that the District, a public entity, is liable under title II, Section 504, and the FHA. The District argues that, through its contractual relationships with private entities, it is not liable under title II or Section 504. Def.’s Mot. Dismiss 5-8. It also argues that the FHA does not apply to its shelter program. *Id.* at 11-16. The Court’s decision on these issues will directly affect the United States’ enforcement authority.

The United States respectfully urges this Court to deny Defendant’s Motion to dismiss Plaintiffs’ title II, Section 504, and FHA claims to allow consideration of these claims on their merits.³

II. STATUTORY AND REGULATORY BACKGROUND

The ADA is a comprehensive civil rights law enacted, “to provide a clear and

² Section 504, like title II, prohibits disability-based discrimination. 29 U.S.C. § 794(a) (“No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .”). In all ways relevant to this discussion, title II and Section 504 are generally construed to impose similar requirements. *See, e.g., Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1261 n.2 (D.C. Cir. 2008); *Harrison v. Rubin*, 174 F.3d 249, 253 (D.C. Cir. 1999). This principle follows from the similar language employed in the two acts. It also derives from the Congressional directive that implementation and interpretation of the two acts, “be coordinated to prevent[] imposition of inconsistent or conflicting standards for the same requirements under the two statutes.” *Baird ex rel. Baird v. Rose*, 192 F.3d 462, 468-69 (4th Cir. 1999) (citing 42 U.S.C. § 12117(b)) (alteration in original) (internal quotation marks omitted).

³ The United States takes no position as to the Defendant’s Motion regarding claims under the District of Columbia Human Rights Act of 1977 (the “DCHRA”) or the District of Columbia Homeless Services Reform Act (the “HSRA”), or as to claims of negligence. *See* Def.’s Mot. Dismiss 16-27.

comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). Title II of the ADA, at issue in this case, provides that, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

Title II does not simply prohibit outright denial of services; it also prohibits unequal participation in such services. As defined by title II’s implementing regulation, a public entity may not deny a qualified individual with a disability, “an opportunity to participate that is not equal to that afforded others,” nor may it, “otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity” enjoyed by others receiving the services. 28 C.F.R. § 35.130(b)(1)(iii), (vii). If a requested modification is needed to ensure full and equal enjoyment by a person with a disability, then the modification is necessary to prevent discrimination on the basis of disability. 42 U.S.C. § 35.130(b)(7).

The Fair Housing Act, originally enacted in 1968, and substantially expanded by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, declares that: “It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” 42 U.S.C. § 3601.

The 1988 amendments, among other things, added “handicap” as a prohibited basis for discrimination.⁴ In describing the need for protection for this class of persons, the House Judiciary Committee report on the legislation stated that:

The Committee understands that housing discrimination against handicapped persons is not limited to blatant, intentional acts of discrimination. Acts that have the effect of

⁴ Throughout this Statement of Interest, the United States uses the term “disability” instead of “handicap.” For purposes of the FHA, the terms have the same meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998).

causing discrimination can be just as devastating as intentional discrimination. . . . In *Alexander v. Choate*, 469 U.S. 287 (1985), the Supreme Court observed that discrimination on the basis of handicap is “most often the product, not of invidious animus, but rather of thoughtlessness and indifference – of benign neglect.”

H.R. Rep. No. 100-711, at 25 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2186.

III. SUMMARY OF FACTS

A. The Plaintiffs

Plaintiff Anthony Hunter sued the District of Columbia on his own behalf and on behalf of A.H., his minor daughter. First Am. Compl. ¶ 6. Plaintiffs make the following allegations:

A.H. is an individual with several disabilities, including cri-du-chat syndrome, spina bifida, and related medical conditions.⁵ *Id.* These conditions significantly impair her in the major life activities of standing, walking, bathing, dressing, and eating. *Id.* A.H. is therefore dependent on her caregivers to meet her basic daily needs. *Id.* ¶ 35. In addition to the fact that A.H. requires the use of a wheelchair and accessible facilities, she is highly susceptible to infection due to her medical conditions and therefore requires a climate-controlled and lightly populated living environment. *Id.*

On December 7, 2011, Mr. Hunter applied at the Virginia Williams Family Resource Center (the “Center”), which is operated by the Coalition for the Homeless,⁶ for placement in a homeless shelter. *Id.* ¶¶ 12, 37. He explained his daughter’s disabilities and requested

⁵ Cri-du-chat syndrome, “is a chromosomal condition that results when a piece of chromosome 5 is missing.” *Cri-du-chat syndrome*, Genetics Home Reference (Jul. 8, 2013), <http://ghr.nlm.nih.gov/condition/cri-du-chat-syndrome>. It is, “characterized by intellectual disability and delayed development, small head size (microcephaly) . . . and weak muscle tone (hypotonia) in infancy.” *Id.* “Spina bifida is a condition in which the bones of the spinal column do not close completely around the . . . spinal cord.” *Spina bifida*, (Jul. 8, 2013), <http://ghr.nlm.nih.gov/condition/spina-bifida>. Spina bifida may result in “permanent nerve damage[,] . . . weakness or paralysis of the feet or legs, and problems with bladder and bowel control.” *Id.*

⁶ This Court entered the order granting the settlement between Plaintiffs and Defendant Coalition for the Homeless on May 31, 2013. ECF No. 58.

reasonable accommodations for those disabilities.⁷ *Id.* ¶ 37. Staff at the Center prepared a written reasonable accommodation request but failed to record Mr. Hunter’s request for a non-communal environment with a private bathroom. *Id.* ¶ 39.

Mr. Hunter and A.H. were placed in Building 12 of the D.C. General Shelter and were told that they would receive a private room. *Id.* ¶ 41. However, though it was wheelchair accessible, the most private bathroom available was a shared bathroom and did not meet Plaintiffs’ needs relating to A.H.’s immune system. *Id.* Additionally, the ramp leading to the front door of Building 12 was inaccessible; A.H. was unable to use it without assistance. *Id.* ¶¶ 45-46. Furthermore, all fifty families that resided in Building 12 ate meals in one room, which increased A.H.’s exposure to possible infections. *Id.* ¶ 50. On multiple occasions, the staff refused to allow Mr. Hunter and A.H. to eat in a separate room. *Id.*

Mr. Hunter immediately discovered that Building 12 did not meet his daughter’s disability-related needs and asked his case manager to move him and A.H. to an accessible and non-communal placement. *Id.* ¶ 51. His case manager demanded verification from A.H.’s doctors before processing this request. *Id.* On December 21, 2011, Mr. Hunter renewed his reasonable accommodation request and submitted medical verification. *Id.* ¶ 53. On December 29, 2011, he was informed that he and A.H. would be moved to the Girard Street Apartments, which are operated by Defendant Community of Hope. *Id.* ¶ 56, 62.

⁷ The requirement of title II is that public entities make, “reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability...” 42 U.S.C. § 12132(2); 29 C.F.R. § 35.130(b)(7). The District has decided to refer to such requests as requests for “reasonable accommodations.” As this language has also been adopted by Plaintiffs, we use “reasonable accommodations” to mean “reasonable modifications” under title II. This practice has been accepted and embraced by other courts. *E.g., McGary v. City of Portland*, 386 F.3d 1259, 1266 n.3 (9th Cir. 2004) (citing *Wong v. Regents of Univ. of California*, 192 F.3d 807, 816 n.26 (9th Cir. 1999)) (“Although Title II of the ADA uses the term ‘reasonable modification,’ rather than ‘reasonable accommodation,’ these terms create identical standards.”).

During the time Mr. Hunter and A.H. lived there, the Girard Street Apartments building was inaccessible to wheelchair users. *Id.* ¶ 56. Neither the ramp leading to the entrance door nor the entrance door itself met accessibility guidelines. *Id.* ¶ 72. Upon entering, there were three stairs up to the lobby. *Id.* ¶ 73. Although there was a lift for wheelchair users, it was out of service for the duration of the three months that the Hunter family resided at the Girard Street Apartments. *Id.* Furthermore, the Hunters were assigned to the third floor (Unit 303), but the only access to the third floor was by way of two flights of stairs; there was no elevator. *Id.* ¶ 74. Finally, the hallways in Unit 303 were too narrow to accommodate A.H.'s wheelchair. *Id.* ¶ 75.

On January 3, 2012, Mr. Hunter filed with shelter staff another reasonable accommodation request for a wheelchair accessible room. *Id.* ¶ 76. This request was not responded to. *Id.* On February 10, 2012, Mr. Hunter and A.H. were transferred to the first floor (Unit 106). *Id.* ¶ 86. Although Unit 106 was more accessible, the staff at the Girard Street Apartments never provided a working wheelchair lift to access the first floor of the building. *Id.*

During the Plaintiffs' residence at the Girard Street Apartments, Mr. Hunter submitted a reasonable accommodation request that a nursing student be allowed to visit in order to assist him with the care of A.H. *Id.* ¶ 81. Though A.H.'s health conditions required occasional respite care and Mr. Hunter's case manager recommended that he request respite care, Community of Hope staff only allowed one visit. *Id.*

B. The District's Record of Discrimination

In 2007, the Department of Justice Civil Rights Division conducted an ADA compliance review of the accessibility of the D.C. homeless shelter system. First Am. Compl. ¶ 58. Fifteen shelters were inspected, including the D.C. General Shelter and Girard Street Apartments. *Id.* As a result of that review, the United States found that none of the fifteen shelters complied with the ADA and a settlement agreement was subsequently entered in December 2008, detailing

seventy-one pages of ADA violations at the fifteen shelters. Settlement Agreement Between the United States of America and the District of Columbia Under the Americans with Disabilities Act ¶ 20(a) (Dec. 10, 2008) (the “Settlement Agreement”) (Attachment # 1). The District was aware that the D.C. General Shelter and Girard Street Apartments did not meet the requirements of the ADA. *Id.* As part of the 2008 Settlement Agreement, the District was required to, “create and implement procedures for ensuring that any contractor or subcontractor of the District providing services in the Shelter Program is providing these services in compliance” with title II of the ADA. First Am. Compl. ¶ 59; Settlement Agreement ¶ 24(a). This provision expired on December 10, 2011. Settlement Agreement ¶ 39.

IV. ARGUMENT

A. Legal Standard for a Rule 12(b)(6) Motion to Dismiss

A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint; it is not a mechanism to decide the merits. *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). Indeed, the purpose of the complaint is merely to, “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Accordingly, to survive a Rule 12(b)(6) motion to dismiss, the complaint need not include, “detailed factual allegations,” but it must provide, “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible when the pleaded facts allow a, “reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* A court considering a Rule 12(b)(6) motion must construe all inferences in the light most favorable to the plaintiff, including accepting as true all reasonable factual inferences that can be derived from the facts alleged in the complaint. *Stewart v. Nat’l*

Educ. Ass'n, 471 F.3d 169, 173 (D.C. Cir. 2006); *In re Navy Chaplaincy*, 850 F. Supp. 2d 86, 101 (D.D.C. 2012); *Tressler v. AMTRAK*, 819 F. Supp. 2d 1, 4 (D.D.C. 2011).

When viewed in that light, the Hunters' complaint sufficiently sets forth plausible violations of title II of the ADA and its implementing regulations, Section 504, and the FHA. Thus, the Court should deny the District's Motion on the title II, Section 504, and FHA grounds.

B. Deference is Due to Department of Justice Interpretations of Title II

Congress explicitly delegated to the Department of Justice the authority to promulgate regulations under title II. 42 U.S.C. § 12134(a); 28 C.F.R. Part 35. Accordingly, the Department's regulations and interpretation thereof are entitled to substantial deference. *See, e.g., City of Arlington v. FCC*, 133 S.Ct. 1863, 1868 (2013) ("Statutory ambiguities will be resolved, within the bounds of reasonable interpretation, not by the courts but by the administering agency."); *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984) ("We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations."); *see also Auer v. Robbins*, 519 U.S. 452, 461 (1997) (concluding that an agency's interpretation of its regulations is "controlling unless plainly erroneous or inconsistent with the regulation") (internal quotation marks omitted).

C. Alleged Violations of Title II of the Americans with Disabilities Act

1. The District is Liable under Title II of the ADA for the Actions of Private Entities with which it has Contracted

a. The District has previously agreed that it has responsibility for ensuring that contractors provide services in compliance with title II.

The District entered into a comprehensive Settlement Agreement with the United States in December 2008 to resolve the Department's concerns regarding allegations of discrimination (similar to those alleged here) in the D.C. homeless shelter program. *See Settlement Agreement*

(Attachment # 1). In this Settlement Agreement, the District agreed that it would create and implement procedures for ensuring that any contractor of the District providing shelter services would provide those services in compliance with title II of the ADA. Settlement Agreement ¶ 24(a).

The Department is currently reviewing its enforcement options under this Settlement Agreement, separate from this Statement of Interest.

b. The ADA and accompanying Regulations expressly prohibit title II entities from escaping liability through contract.

The District of Columbia is liable for the discriminatory actions of the private entities with which it contracted to provide homeless shelter services. Title II of the ADA prohibits public entities (*i.e.*, “any State [or] local government,” or any “instrumentality of a State or . . . local government”) from discriminating against persons with disabilities. 42 U.S.C. §§ 12131(1)(A)-(B), 12132. The ADA Regulations explicitly state that, “[a] public entity, in providing any . . . service, may not, directly *or through contractual . . . arrangements*, [discriminate] on the basis of disability” 28 C.F.R. § 35.130(b)(1) (emphasis added). Furthermore, Appendices A and B which provide guidance on the Regulations (the “Guidance”) and the Department’s Title II Technical Assistance Manual (“TA Manual”), clearly state that a public entity is obligated to ensure compliance with its title II obligations, even if a private entity provides services on behalf of the state. *See Henrietta D. v. Bloomberg*, 331 F.3d 261, 286 (2d Cir. 2003) (explaining the Department’s interpretation of Section 504 that public entities remain liable for the actions of private entities with which they contract); *Kerr v. Heather Gardens Ass’n*, Civ. A. No. 09-cv-00409-MSK-MJW, 2010 WL 3791484, at *9 (D. Colo. Sept. 22, 2010) (“Both the Regulations and the [TA] Manual suggest that even if a public entity allows others to provide services, programs and activities, the public entity remains obligated to ensure

compliance with Title II.”); Appendix A to Part 35—Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. Pt. 35, App. A, at 634 (2012) (“[A]ll governmental activities of public entities are covered, even if they are carried out by contractors.”) (internal quotation marks omitted); Appendix B to Part 35—Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services Originally Published July 26, 1991, 28 C.F.R. Pt. 35, App. B, at 661 (2012) (“All governmental activities of public entities are covered, even if they are carried out by contractors.”); TA Manual, 42 U.S.C. § 12206(c)(3), Part II—1.3000 (explaining that private entities may be subject to title II if they, “have a close relationship,” with a public entity).

For example, a TA Manual illustration explains that when a private corporation operates group homes for individuals with mental disabilities under contract with a State agency, the State must ensure that its contracts are carried out in accordance with title II. *Id.* at Illustration Four. Another illustration explains that the State is, “obligated to ensure by contract,” that a privately owned restaurant operating in a State park meets the State’s title II obligations, “even though the restaurant is not directly subject to title II.” *See id.* at Illustration One.

In sum, the Department of Justice interprets the ADA and its Regulations to prohibit title II entities, such as the District of Columbia, from escaping liability for discrimination in services for which it is responsible by contracting away the provision of those services.

c. Case law supports a finding that the District is liable for the discriminatory actions of its contractors.

In addition to the clear statements in the Regulations, the Guidance, and the TA Manual, several courts have confirmed that a title II entity is liable for the unlawful actions of private entities with which it has contracted.

In *Armstrong v. Schwarzenegger*, state prison inmates with disabilities were denied accommodations under the ADA and sued the State. 622 F.3d 1058, 1062 (9th Cir. 2010). The State unsuccessfully argued that the Regulations were unreasonable and, since it had contracted away all incarceration services to the prison, that it should have no responsibility to ensure that prisoners with disabilities receive accommodations. *See id.* (“That argument, and defendants’ other arguments contesting their obligations to their prisoners and parolees housed in county jails, are without merit.”). The Ninth Circuit ruled that the Regulations “reflect the fairest reading of the statute,” and that they explicitly prohibit public entities from avoiding title II obligations through contractual relationships. *Id.* at 1062, 1067.

Additionally, several cases clarify that public entities are required to ensure that their contractors comply with title II requirements. In *Henrietta D.*, the Second Circuit points out that the basic common law of contracts supports this view. 331 F.3d at 286. The court quotes Farnsworth on Contracts: “An ‘obligor . . . cannot rid itself of a duty merely by making an effective delegation.” *Id.* (quoting E. Allan Farnsworth, III Farnsworth on Contracts § 11.10 p. 126 (1998)). “Thus, once a party has made a promise, it is responsible to the obligee to ensure that performance will be satisfactory, even if the promising party obtains some third party to carry out its promise.” *Id.* The court goes on to acknowledge that the “Justice Department’s interpretation . . . strongly supports this view,” and quotes the Guidance to the ADA Regulations: “All governmental activities of public entities are covered, even if they are carried out by contractors.”⁸ *Id.* (quoting the Guidance, 28 C.F.R. pt. 35, App. A, at 517 (2002)); *see also Kerr*, 2010 WL 3791484, at *8 (quoting the same).

⁸ The Guidance note that public entities contract for countless other social services to be run by private entities, “all of which must be operated in accordance with title II requirements.” 28 C.F.R. pt 35, App. A, at 634 (2012). They go on to list some examples, “medical and mental

Similarly, in *Hahn ex rel. Barta v. Linn County*, the court explained that a public entity must, “ensure that the private entities with which it contracts comply with the public entity’s Title II obligations.” 191 F. Supp. 2d 1051, 1054 n.2 (N.D. Iowa 2002). The court in *James v. Peter Pan Transit Management* also held that public entities must ensure that private entities comply with title II, even if the private entity is an independent contractor. *See* No. 5:97-CV-747, 1999 WL 735173, at *9-10 (E.D.N.C. Jan. 20, 1999).

Here, the District contracted its homeless shelter services and programs to the other Defendants that are private entities, such as Community of Hope. First Am. Compl. ¶ 100. Since a public entity may not escape liability by signing a contract, it is the District’s responsibility to ensure that its contractors follow title II when providing the services. In sum, the District cannot escape liability and is ultimately responsible under title II for any service that it contracts away to a private entity.

2. Plaintiffs Properly State a Cause of Action Under Title II of the ADA

a. Defendants conflate the standard for compensatory damages with required elements for liability.

The District argues that to state a claim under title II or Section 504, Plaintiffs must show that the District was deliberately indifferent to such discrimination. Def.’s Mot. Dismiss 5. This assertion is unsupported by law. Defendants have conflated the elements necessary to state a cause of action under title II with the legal standard used to determine awards of compensatory damages. To state a claim under title II of the ADA, a plaintiff must prove three elements: (1) that he is a qualified individual with a disability, (2) that he was discriminated against by being excluded from or denied the benefits of a public entity’s services, and (3) that he was discriminated against because of his disability. *Am. Council of the Blind v. Paulson*, 525 F.3d

health services, food services, laundry, prison industries, vocational programs, and drug treatment and substance abuse programs.” *Id.*

1256, 1266 (D.C. Cir. 2008) (setting forth these elements in the analogous Section 504 context); *Equal Rights Ctr. v. District of Columbia*, 741 F. Supp. 2d 273, 283 (D.D.C. 2010); *see also Hale v. King*, 642 F.3d 492, 499 (5th Cir. 2012); *Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1193 (10th Cir. 2007); *Kiman v. New Hampshire Dep't of Corr.*, 451 F.3d 274, 283 (1st Cir. 2006). Once liability is established under this framework, then a plaintiff must prove that a defendant acted with discriminatory intent to succeed on a claim for compensatory damages.⁹ *See Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 342 (11th Cir. 2012) (“To recover compensatory damages under § 504, the [Plaintiffs] must show that . . . [the Defendant] violated their rights . . . with discriminatory intent.”); *Delano-Pyle v. Victoria Cnty.*, 302 F.3d 567, 575 (5th Cir. 2002) (“However, in order to receive compensatory damages for violations of the [ADA], a plaintiff must show intentional discrimination.”); *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001) (“To recover monetary damages under Title II of the ADA . . . a plaintiff must prove intentional discrimination”); *Wilkins-Jones v. Cnty. of Alameda*, 859 F. Supp. 2d 1039, 1044 (N.D. Cal. 2012) (“In a disability action seeking monetary relief, a plaintiff must additionally prove intentional discrimination”). Proving knowledge of intentional discrimination, however, is irrelevant to the principal question in this Motion: whether, under

⁹ There are two competing standards for intentional discrimination, “deliberate indifference” or the stricter “discriminatory animus” standard. *See Liese*, 701 F.3d at 344. Most jurisdictions have applied the “deliberate indifference” standard. *See id.* at 345. Though the District confusingly urges the court to apply the “intentional discrimination” standard (presumably intending “discriminatory animus”), it is the position of the United States that the “deliberate indifference” standard is applicable in this case. The United States takes no position here on whether deliberate indifference is the appropriate standard for compensatory damages in all cases brought under title II. This Statement of Interest does not address the standards that the Department of Justice and other federal agencies use in resolving administrative complaints or the regulations each agency enforces, or the standards applicable in any other cause of action subject to a deliberate indifference standard outside of the facts of this case.

title II, the Plaintiffs have alleged sufficient facts to survive a motion to dismiss by the District, which denies liability for the discriminatory actions of its contractors.

b. Homeless shelter service contractors are agents of the District.

The District concedes that a public entity can be liable for compensatory damages, “based on the deliberate indifference of others,” and that this applies at least to employees and agents. Def.’s Mot. Dismiss 6, n.5. Their argument, advanced in a footnote and relying heavily on Federal Tort Claims Act (the “FTCA”) cases instead of ADA and Section 504 cases, is that the District’s contractors are independent contractors and therefore unable to give rise to the indirect liability of the District.¹⁰ *See id.* This argument disregards basic agency law and the clear guidance of the Regulations.¹¹

A basic principle of agency law is that principals are responsible for the actions of their agents. *See* Restatement (Third) Of Agency § 1.01 (2006). Generally, an employer is not liable for physical harm caused by its independent contractor. *Cooper v. United States Gov’t & Gen. Servs. Admin.*, 225 F. Supp. 2d 1, 5 (D.D.C. 2002). However, the mere fact that the District ascribes the independent contractor label to the homeless shelter service providers “does not end the inquiry.” *Schwieger v. Farm Bureau Ins. Co. of Nebraska*, 207 F.3d 480, 483 (8th Cir. 2000) (performing independent contractor analysis in the analogous Title VII context).

¹⁰ The cases cited by the District holding that the United States cannot be held indirectly liable under the FTCA for the actions of foreign independent contractors are wholly irrelevant to the instant inquiry: whether a city can be held indirectly liable for the actions of private entities with which it collaborates to provide social care services under the ADA.

¹¹ The case the District most heavily relies on explicitly contradicts their argument. *See Wood v. Barwood Cab Co.*, 648 A.2d 670, 671 (D.C. 1994), holding that even when a taxi driver is an independent contractor, if a passenger is injured due the driver’s negligence, the “taxi company is estopped from denying liability . . . on the ground that it did not own the vehicle” *Id.*

An independent contractor is defined as “a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other’s right to control with respect to his physical conduct in the performance of the undertaking.” Restatement (Second) of Agency § 2(3) (1958).¹² In other words, the essential element of an agency relationship is the right of the principal to control the performance of the agent. *See Miller v. D.F. Zee’s, Inc.*, 31 F. Supp. 2d 792, 806 (D. Or. 1998). A leading case in the District characterizes the right to control as, “the *right* to control an employee in the performance of a task and in its result, and not the actual exercise of control or supervision.” *Safeway Stores Inc. v. Kelly*, 448 A.2d 856, 860 (1982) (citing *Dovell v. Arundel Supply Corp.*, 361 F.2d 543, 545 (1966)) (emphasis added); *see also Giles v. Shell Oil Corp.*, 487 A.2d 610, 611 (1985) (“[T]he right of control . . . [is] the right to direct the manner in which the work shall be done.”). However, “[i]t does not matter whether the putative principal actually exercises control; what is important is that it has the *right* to do so.” *D.F. Zee’s, Inc.*, 31 F. Supp. 2d at 806 (emphasis added).

Federal law, federal regulations, D.C. law, the contract between the District and the homeless shelter service providers, and the previous Settlement Agreement with the United States all require that homeless shelter service contractors in the District of Columbia fulfill the District’s title II requirements under the ADA. 42 U.S.C. § 12131(1)(A)-(B); 28 C.F.R. § 35.130(b)(1); D.C. Code § 4-754.11(2); Settlement Agreement ¶ 24(a); First Am. Compl. ¶¶ 8, 10, 29, 59. Similarly, the District was required to monitor the activities of its contractors to ensure that they comply with all applicable laws. Settlement Agreement ¶ 24(a). The District,

¹²The current Restatement (Third) of Agency abandons the term, “independent contractor,” but retains the inherent concept of this particular principal-agent relationship. Restatement (Third) of Agency § 1.01, cmt. c (2006); *see id.* at § 7.07.

therefore, has the right and the obligation to make certain that its contractors provide their services in compliance with title II. This establishes for the purposes of this Motion, an agency relationship, based on the right to control, between the District and its contractors, regardless of the presence of the “independent contractor” label.

c. Deliberate indifference does not require a showing of actual knowledge of the discriminatory acts.

The District argues that, “[w]hether the District is deliberately indifferent depends on the District’s knowledge, not what the other Defendants knew or should have known.” Def.’s Mot. Dismiss 6. Proving deliberate indifference requires, “both knowledge that a harm to a federally protected right is substantially likely and a failure to act upon that likelihood.” *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001) (applying deliberate indifference standard from *City of Canton v. Harris*, 489 U.S. 378, 389 (1988), a § 1983 case, to a title II claim).

However, a finding on whether the District was deliberately indifferent, at this stage, is premature. As explained above, a deliberate indifference inquiry should only be employed to determine the availability of compensatory damages. *See supra* Part IV.C.2.a. Additionally, deliberate indifference is a question of fact, and thus best submitted to a jury. *See, e.g., Barnes v. District of Columbia*, 793 F. Supp. 2d 260, 284 (D.D.C. 2011) (“[O]rdinarily the question of whether a municipality has a deliberately indifferent policy or custom is for the jury . . .”). Here Plaintiffs not only seek compensatory damages, but also declaratory and injunctive relief, the availability of which does not rely on a finding of deliberate indifference. First Am. Compl. ¶ 38. While a finding on deliberate indifference, therefore, is not only premature, it would only address compensatory damages and not other relief sought by the Plaintiffs.

Further, contrary to the District’s assertion, the deliberate indifference inquiry does not require proof of actual knowledge by the District, only, “some form of notice . . . and the

opportunity to conform to statutory dictates” *Harris*, 489 U.S. at 395 (O’Connor, J., concurring) (emphasis added). In fact, as little as “benign neglect” of a city’s statutory duty to monitor private contractors is sufficient to state an ADA claim. *Deck v. City of Toledo*, 56 F. Supp. 2d 886, 895 (N.D. Ohio 1999). “When the plaintiff has alerted the . . . entity to his need for accommodation (or where the need for accommodation is obvious, or required by statute or regulation), the . . . entity is on notice that an accommodation is required.”). *Duvall*, 260 F.3d at 1139. The District was on notice that harm to a federally protected right was likely because of the District’s previous Settlement Agreement with the United States resolving similar complaints, the Hunters had filed multiple accommodation requests with staff of the homeless shelter operators, the need for accommodation was obvious based on A.H.’s disabilities, and the accommodation was required by statute and regulation. *See* 42 U.S.C. § 12131(1)(A)-(B); 28 C.F.R. § 35.130(b)(1); D.C. Code § 4-754.11(2); *Duvall*, 260 F.3d at 1139; Settlement Agreement ¶ 7; First Am. Compl. ¶ 3.

d. Even though not required, Plaintiffs have alleged actual knowledge by the District.

Even though it is not necessary to prove actual knowledge, the Hunters do allege actual knowledge by the District. In this case, the homeless shelter operators had actual knowledge and authority to address the alleged discrimination. Therefore, as agents of the District, their knowledge is imputed to the District. *See BCCI Holdings (Luxembourg), S.A. v. Clifford*, 964 F. Supp. 468, 480 n.7 (D.D.C. 1997) (“A principal cannot be allowed to ‘avoid, by acting vicariously, burdens to which he would become subject if he were acting for himself. The so-called presumption that the principal knows what the agent knows is irrebuttable’”); *see supra* Part IV.C.2.b.

Furthermore, the court in *Liese* clarifies the holding in *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998), by explaining that, “the purpose of the ‘official’ requirement is to ensure that an entity is only liable for the deliberate indifference of someone whose actions can fairly be said to represent the actions of the organization.” *Liese*, 701 F.3d at 350. As explained above, the homeless shelter operators, as agents of the District, “can fairly be said to represent” the District in their provision of shelter services. *Id.*; *see supra* Part IV.C.2.b.

The District’s argument that actual knowledge of intentional discrimination is necessary to state a claim against the District is incorrect. Regardless, their argument fails because the plaintiffs have alleged sufficient facts in their complaint that the District was deliberately indifferent. In conclusion, the service providers with which the District contracts are agents of the District, are obligated to provide their services in compliance with title II requirements, and give rise to indirect liability by the District when they violate title II.

D. The Court Should Not Dismiss Alleged Violations of the Fair Housing Act

Plaintiffs allege that the District’s actions violated the FHA. 42 U.S.C. § 3604(f)(1)-(f)(3); First Am. Compl. ¶ 108.

Section 3604(f) provides that it is unlawful:

- (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, dwelling to any buyer or renter because of a handicap of—
 - (A) that buyer or renter
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—
 - (A) that person; or
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that person.
- (3) For purposes of this subsection, discrimination includes—

...

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . .

42 U.S.C. § 3604(f)(1)-(3).

The District argues that Plaintiffs' FHA claims should be dismissed because: (1) shelters are not "dwellings" under the FHA; and (2) shelter residents are not protected by the FHA because they are not "buyers" or "renters" of dwellings.¹³ Def.'s Mot. Dismiss 11-16. As explained below, these arguments are without merit.

1. Shelters are "Dwellings" Under the Fair Housing Act

The FHA defines the term "dwelling" to include, "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families." 42 U.S.C. § 3602(b). This definition is broadly construed to effectuate the purposes of the FHA. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008) ("[T]he Supreme Court has repeatedly instructed us to give the Fair Housing Act a broad and inclusive interpretation . . .") (internal quotation marks omitted).

The Department of Housing and Urban Development ("HUD"), which shares enforcement authority for the FHA with the Department of Justice, has issued an implementing regulation that expressly states that the term "dwelling" includes accommodations in homeless shelters, defining the term "dwelling unit" to include, "dormitory rooms and sleeping

¹³The District makes a third argument that Plaintiffs fail to allege specific facts on the element of "intent" to survive a motion to dismiss. However, it is well-settled that plaintiffs need not plead facts on each element of a "prima facie case" to survive a motion to dismiss a discrimination claim. *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 510 (2002) ("[W]e hold that an employment discrimination complaint need not include [] facts [showing elements of a prima facie case.]"). In any event, as explained in Plaintiffs' Memorandum of Law in Opposition to District of Columbia's Motion to Dismiss ("Opp. D.C. Mot. Dismiss"), plaintiffs allege a reasonable accommodation claim, which does not require proof of intent. Opp. D.C. Mot. Dismiss 25-26, Jul. 3, 2013, ECF No. 74.

accommodations *in shelters intended for occupancy as a residence for homeless persons.*” 24 C.F.R. § 100.201 (emphasis added). HUD’s regulation is its reasonable interpretation of the Act and is therefore entitled to deference. *See Meyer v. Holley*, 537 U.S. 280, 287-88 (2003) (explaining that because HUD was, “the federal agency primarily charged with the implementation and administration of the [FHA],” courts, “ordinarily defer to [its] reasonable interpretation of [the] statute.”); *see supra* Part IV.B. That HUD has spoken on the meaning of “dwelling” in the FHA alone disposes of the District’s argument.

The District argues that shelters cannot be “dwellings” because the “length of stay” at shelters is temporary.¹⁴ Def.’s Mot. Dismiss 13-14. HUD has stated expressly that the “length of stay” is only one factor to be considered in determining whether a particular building is a “dwelling” covered by the Act:

Other factors to be considered include: (1) Whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (2) Whether the terms and length of occupancy will be established through a lease or other written agreement; (3) What amenities will be included inside the unit, including kitchen facilities;(4) How the purpose of the property will be marketed to the public; (5) Whether the resident possesses the right to return to the property; and (6) Whether the resident has anywhere else to which to return.

Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. 15,740, 15,746 (March 23, 2000).

¹⁴The District relies primarily on inapposite cases against commercial entities involving one or two-day stays, such as motels, or on cases involving correctional facilities. *See* Def.’s Mot. Dismiss 13 (citing *Garcia v. Condarco*, 114 F. Supp. 2d 1158 (D.N.M. 2000) (detention center); *Patel v. Holley House Motels*, 483 F. Supp. 374, 381 (S.D. Ala. 1979) (motel)). One court has expressly rejected this comparison. *See United States v. Univ. of Nebraska at Kearney*, --- F. Supp. 2d ---, No. 4:11-CV-3209, 2013 WL 1694603, at *4-5 (D. Neb. Apr. 19, 2013) (explaining that the comparison of a university dorm to a jail is not “apt”). Defendant’s reliance on the district court’s decision in *Intermountain Fair Hous. Council v. Boise Rescue Mission Ministries*, 717 F. Supp. 2d 1101 (D. Idaho 2010), is also misplaced. On appeal, the Ninth Circuit expressly declined to affirm the district court’s decision that a shelter did not meet the definition of a “dwelling,” and affirmed instead on a separate ground that the shelter at issue qualified under the “religious exemption” in the FHA. *Intermountain Fair Hous. Council v. Boise Rescue Mission Ministries*, 657 F.3d 988, 995 (9th Cir. 2011).

HUD's interpretation is consistent with that of courts. The statute defines "dwelling" to include, "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a *residence* by one or more families," but does not define the key term "residence." 42 U.S.C. § 3602(b). As multiple courts have noted, the ordinary meaning of "residence" is: "a *temporary* or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit." (emphasis added). *United States v. Hughes Mem. Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975) (quoting Webster's Third International Dictionary (1931)); *see also United States v. Columbus Country Club*, 915 F.2d 877, 881 (3d Cir. 1990) (on denial of rehearing *en banc*), *cert. denied*, 501 U.S. 1205 (1991); *Schwarz*, 544 F.3d at 1214; *Lakeside Resort Enters., L.P. v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154, 157 (3d Cir. 2006), *cert. denied*, 549 U.S. 1180 (2007); *United States v. Univ. of Nebraska at Kearney*, --- F. Supp. 2d ---, No. 4:11-CV-3209, 2013 WL 1694603, at *3 (D. Neb. Apr. 19, 2013); *Woods v. Foster*, 884 F. Supp. 1169, 1173 (N.D. Ill. 1995).

Therefore, contrary to the District's contention, numerous courts have held that "dwellings" encompass a range of temporary residences, including a children's home, *Hughes*, 396 F. Supp. at 548-49; a hospice for terminally ill patients, *Baxter v. City of Belleville*, 720 F. Supp. 720, 731 (S.D. Ill. 1989); seasonal housing, *Columbus Country Club*, 915 F.2d at 881; a nursing home, *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1102 (3d Cir. 1996); group homes for individuals recovering from drug and alcohol addictions, *e.g.*, *Lakeside*, 455 F.3d at 154-60; *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d 123, 131-35 (D. Conn. 2001); *Schwarz*, 544 F.3d at 1213-16; dormitories, *Univ. of Nebraska at Kearney*, 2013 WL 1694603, at *8; and seasonal housing for migrant workers, *e.g.*, *Lauer Farms, Inc. v. Waushara Cnty. Bd. of*

Adjustment, 986 F. Supp. 544, 557-59 (E.D. Wis. 1997); *Villegas v. Sandy Farms, Inc.*, 929 F. Supp. 1324, 1327-28 (D. Or. 1996).

The “length of stay” was not the decisive factor in these cases. In *Schwarz*, the average stay was six to ten weeks, 544 F.3d at 1207, and in *Lakeside Resort Enterprises*, the average stay was 14.8 days, 455 F.3d at 158-59. See also *Connecticut Hosp.*, 129 F. Supp. 2d at 132 (one to three months); *Project Life Inc. v. Glendening*, No. WMN-98-2163, 1998 WL 1119864, at *2 n.4 (D. Md. Nov. 30, 1998) (one month). In addition to “length of stay,” these courts considered whether: (1) the occupants intend to return to (or remain in) the building, and (2) whether the occupants, “treat [the] building like their home,” albeit a temporary one, by “cook[ing] their own meals, clean[ing] their own rooms and maintain[ing] the premises, do[ing] their own laundry, and spend[ing] free time together in common areas.” *Schwarz*, 544 F.3d at 1215; accord *Lakeside*, 455 F.3d at 159-60.

For example, in *Woods v. Foster*, the court found the term “dwelling” applicable to a homeless shelter. The court explained that the homeless “are not visitors or those on a temporary sojourn in the sense of motel guests. Although the Shelter is not designed to be a place of permanent residence, it cannot be said that the people who live there do not intend to return – they have nowhere else to go.” *Woods*, 884 F. Supp. at 1173. The court rejected defendants’ contention that the shelter was not a dwelling because occupants’ stays were limited to 120 days, ruling that the length of stay was not the determining factor. “Because the people who live in the Shelter have nowhere else to ‘return to,’ the Shelter is their residence in the sense that they live there and not in any other place.” *Id.* at 1173-74; see also *Jenkins v. New York City Dep’t of Homeless Servs.*, 643 F. Supp. 2d 507, 518 (S.D.N.Y. 2009) (concluding, on motion to dismiss,

that homeless shelters, “could well fall within the definition of dwelling,” where the plaintiff, “intends to stay at the shelter as long as he can, . . . and has no other home to go to.”).

So too here. Plaintiffs allege sufficient facts to show that D.C. General Building 12 and the Girard Street Apartments provide temporary housing for those who, “have nowhere else to ‘return to,’” *Woods*, 884 F. Supp. at 1173, and who treat the shelter “like their home.” *Schwarz*, 544 F.3d at 1215. With respect to D.C. General Building 12, the First Amended Complaint alleges that there is no, “time limit on how long residents can remain;” that each family has, “their own room,” where “they return...each day, [and] where they keep their belongings;” and that residents are responsible for “cleaning their own rooms.” First Am. Compl. ¶ 43.

Similarly, Plaintiffs allege that Girard Street Apartments is a “traditional apartment building, with approximately 20 separate keyed apartment units for residents containing kitchens, bedrooms, living areas and bathrooms;” that residents, “decorate their units and place personal items in them;” that residents are responsible for, “cleaning [their] apartments;” that all residents are provided a “Resident Handbook” and “receive[] a key to their apartment;” that residents must pay, “30% of their income into an escrow account;” and that residents have the right to make “maintenance requests” and “receive notice” before staff enter their apartments. *See* First Am. Compl. ¶¶ 63-68. Accordingly, Plaintiffs have alleged sufficient facts to show that Building 12 and the Girard Street Apartments are “dwellings” under the FHA.

2. The FHA Applies to Discriminatory Conduct Against Shelter Residents

The District also argues that Plaintiffs cannot bring an FHA claim because they do not pay and therefore are not “renters” under 42 U.S.C. § 3604(f)(1)-(3) of the FHA. Def.’s Mot. Dismiss 10-11. This argument fails for several reasons.

First, the text of the FHA is not limited only to sale or rental transactions involving owners or paying tenants.¹⁵ For example, 42 U.S.C. § 3604(f)(2) states that it is unlawful to discriminate against:

any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of – (A) that person; or (B) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (C) any person associated with that person.

42 U.S.C. § 3604(f)(2).

Section 3604(f)(2) protects “any person” from discrimination, and the phrases, “terms, conditions, or privileges of sale or rental,” and, “provision of services or facilities,” encompass activities that extend beyond the sale or rental transaction, including benefits that are ongoing in nature, such as the use of common areas, maintenance, access to facilities, and rules of enforcement. Indeed, HUD regulations provide that unlawful conduct under this section includes, “[l]imiting the use of privileges, services or facilities associated with a dwelling because of . . . handicap . . . of an owner, tenant *or a person associated with him or her.*” 24 C.F.R. § 100.65(b)(4) (emphasis added).

Second, courts have applied the FHA to encompass a wide variety of conduct that does not involve a refusal to sell or rent housing to owners or tenants.¹⁶ *See, e.g., Comm. Concerning*

¹⁵The District’s reliance on *Jenkins v. New York City Dep’t of Homeless Servs.*, 643 F. Supp. 2d 507 (S.D.N.Y.) – a *pro se* case challenging plaintiffs’ placement in a mental health shelter – is misplaced. On appeal, the Second Circuit ruled that the, “[d]istrict court erred in reaching the question of whether (1) the shelter is a ‘dwelling’ and (2) Jenkins is a ‘renter’ under § 3604(f).” *See* 391 F. App’x. 81, 83 (2d Cir. 2010). The court of appeals affirmed on a separate ground; that plaintiff’s, “tenancy would constitute a direct threat to the health or safety of other individuals.” *Id.*

¹⁶These cases were brought under 42 U.S.C. § 3604(a). Section 3604(a) makes it unlawful, “[t]o refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” In the 1988 Amendments to the FHA, Congress added “disability” as a protected class. 42 U.S.C. § 3604(f)(1)-(3). In promulgating implementing regulations after the amendments, HUD made clear that persons with disabilities should be afforded the same protections available to persons of other protected classes: “[t]he Department believes that the legislative history of the Fair

Cnty. Improvement (CCCI) v. City of Modesto, 583 F.3d 690, 711-15 (9th Cir. 2009) (holding that CCCI and residents of predominantly Latino neighborhoods stated valid FHA claim against the City when they alleged that the City had denied them adequate municipal services); *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287, 297-301 (7th Cir. 1992), *cert. denied*, 508 U.S. 907 (1993) (homeowners insurance); *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 941 (2d Cir. 1988) (holding that residents and NAACP established FHA claim against the City when evidence showed that City restricted multi-family housing construction to an “urban renewal” area); *United States v. City of Black Jack*, 508 F.2d 1179, 1188 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975) (municipal zoning ordinance prohibiting construction of multi-family housing).

For example, in *Woods v. Foster*, the court rejected the contention that defendants assert here, namely that the FHA does not apply to a homeless shelter that provides housing without charge to the occupants. 884 F. Supp. at 1175. The court explained:

The FHA was passed in order to ‘provide, within constitutional limitations, for fair housing throughout the United States’ . . . As such, there is no reason to conclude that the scope of the FHA should be limited to those who pay for their own housing, rather than extended to all victims of the types of discrimination prohibited by the Act.

Id. (internal citation omitted).

Third, shelter occupants are “renters” under the FHA. The FHA defines the term “to rent” to include, “to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.” 42 U.S.C. § 3602(e). Notably, under this definition, the term “to rent” is an act performed by the owner, not the occupant of the dwelling.

Housing Act and the development of fair housing law after the protections of that law . . . support the position that persons with handicaps . . . must be provided the same protections as other classes of persons.” Implementation of the Fair Housing Amendments Act of 1988, 54 Fed. Reg. 3236 (Jan. 23, 1989).

Nothing in the definition requires that the “consideration” be paid by the occupant. *See Woods*, 884 F. Supp. at 1175 (holding that the defendants’ receipt of funds from HUD was, “undoubtedly ‘consideration’ granted for the right to occupy the premises of the Shelter.”). Nor does the statutory definition of “to rent” require the exchange of money, as long as “consideration” is exchanged for the right of occupancy.¹⁷ In the shelter context, courts and HUD have construed the requirement of “consideration” to include, among other things, receipt of funds by a shelter or chores and other responsibilities performed by shelter occupants. *See, e.g., id.* at 1175 (\$125,000 federal HUD grant to shelter sufficient consideration); *Anonymous v. Goddard Riverside Cmty. Ctr., Inc.*, No. 96 CIV. 9198 (SAS), 1997 WL 475165 at *5, n.4 (S.D.N.Y. July 18, 1997) (receipt of federal funds sufficient consideration); Brief of the Secretary of the United States Department of Housing and Urban Development as Amicus Curiae in *Intermountain Fair Hous. Council v. Boise Rescue Mission*, No. 10-35519 (9th Cir. Apr. 29, 2011) (requiring shelter residents to abide by rules of conduct and perform daily chores may be “consideration”).

Finally, limiting the protections of the FHA to tenants who pay their own rent would create a large gap in coverage, permitting landlords to discriminate against anyone whose rent is paid by family members or others. *Cf. Giebler v. M. & B. Assocs.*, 343 F.3d 1143, 1157 (9th Cir. 2003) (applying reasonable accommodation requirement of Fair Housing Act to claim of disabled plaintiff whose rent would be paid by his mother, and noting that “[r]entals by parents for children are not unusual in most rental markets”); *United States v. S. Mgmt. Corp.*, 955 F.2d 914 (4th Cir. 1992) (applying Fair Housing Act to landlord’s refusal to rent apartments to community services board for use by individuals in drug and alcohol rehabilitation program).

¹⁷“Consideration” means, “[s]omething (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act.” Black’s Law Dictionary 347 (9th ed. 2009).

Accordingly, for the foregoing reasons, this Court should reject the District's argument that the FHA does not protect shelter residents.

V. CONCLUSION

For the reasons stated above, the Court should deny Defendant's Motion on the title II, Section 504, and FHA grounds. With permission from the Court, counsel for the United States will be present and prepared to argue the present Statement of Interest at any upcoming hearings regarding this Motion, should such argument be helpful to the Court.

DATED: July 26, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2013, a copy of the foregoing was served on all counsel of record via the Court's electronic filing system.

/s/ David W. Knight

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SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE DISTRICT OF COLUMBIA
UNDER THE AMERICANS WITH DISABILITIES ACT

DJ # 204-16-96

BACKGROUND AND PARTIES

1. The parties to this Settlement Agreement ("Settlement") are the United States of America and the District of Columbia (the "District"). The "District" shall mean the subordinate agency or employee of the District of Columbia government under the administrative control of the Mayor with authority to undertake the action required, exclusive of District contractors, subcontractors, or agents.
2. The Attorney General initiated this matter as a review of the accessibility of the District of Columbia's homeless shelter program (the "Shelter Program") to individuals with disabilities under title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131-12134, and the Attorney General's implementing regulation, 28 C.F.R. Part 35. The review was initiated after the Attorney General received individual complaints alleging widespread ADA violations in the Shelter Program. The District denies that there are widespread ADA violations in the Shelter Program.
3. The ADA applies to the District because it is a "public entity" as defined by title II of the ADA. 42 U.S.C. § 12131(1).
4. The Attorney General is authorized under 28 C.F.R. Part 35, Subpart F, to determine compliance with title II of the ADA and the Attorney General's title II implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA should the Attorney General fail to secure voluntary compliance pursuant to Subpart F.
5. In order to avoid the burdens and expenses of possible litigation, the parties enter into this Settlement. Nothing in this Settlement shall constitute an admission of liability by the District or any other party.

6. In consideration of, and consistent with, the terms of this Settlement, the United States agrees to refrain from filing a civil suit in this matter regarding all matters contained within this Settlement, except as provided in the section entitled "Implementation and Enforcement."
7. In consideration of, and consistent with, the terms of this Settlement, the United States hereby releases and discharges the District from any claims, causes of action, costs, attorneys fees, demands and damages of any kind, known or unknown, relating to any allegations brought forth in the following complaints filed in the United States District Court for the District of Columbia: Anita Brown v. The Community Partnership for the Prevention of Homelessness and Families Forward, Inc., Docket # 08-01166 (ESH); Elaine Camp v. The Community Partnership for the Prevention of Homelessness and Families Forward, Inc., Docket # 08-01244 (RJL); and Norris and Dontieia Green v. The Community Partnership for the Prevention of Homelessness, Docket # 08-1243 (RJL).
8. This Settlement addresses the right of individuals with disabilities to equally access the Shelter Program. No provision of this Settlement shall be construed to create an entitlement to Shelter (either direct or implied) on the part of any individual or family.
9. No provision of this Settlement shall be construed to require the District to take any action with respect to its existing facilities where it can demonstrate that the action would result in a fundamental alteration in the nature of the Shelter Program or in undue financial and administrative burdens on the District.
10. The District expressly states that its contractors and subcontractors are not parties to this Settlement.

DEFINITIONS

11. "Auxiliary aids and services" shall have the definition set forth in the implementing regulation for title II of the ADA. *See* 28 C.F.R. § 35.104.
12. "Disability" shall have the definition set forth in the implementing regulation for title II of the ADA. *See* 28 C.F.R. § 35.104.
13. "Family" shall have the definition set forth in the Homeless Services Reform Act of 2005, DC Code § 4-751.01 (2005).
14. "Hypothermia Shelter" shall have the definition set forth in the Homeless Services Reform Act of 2005, DC Code § 4-751.01 (2005).

15. "Shelter" means "severe weather shelter," "low barrier shelter," and "temporary shelter" as those terms are defined in the Homeless Services Reform Act of 2005, DC Code 4-751.01 (2005).
16. "Shelter Program" means the services, programs, and activities for Shelter residents provided by the District directly or through contractual arrangements.
17. "Shelter Staff" means individuals who (a) provide services directly to individuals and families seeking Shelter and/or (b) administer the Shelter Program.

REMEDIAL ACTION

18. ADA Coordinator

- a. The District shall have at least one ADA Coordinator with responsibility for working with District officials and the Shelter Program to achieve ADA compliance in the Shelter Program. The ADA Coordinator(s) shall have prior relevant experience that demonstrates expertise and knowledge about the ADA.
- b. The ADA Coordinator(s), along with designated District officials, will coordinate the District's effort to comply with and carry out its responsibilities under this Settlement. These responsibilities shall include the investigation of any complaint communicated to the ADA Coordinator(s) alleging a failure to satisfy requirements under title II of the ADA in the Shelter Program. The District will make available to any interested individuals the name(s), office address(es), and telephone number(s) of the ADA Coordinator(s).

19. Notification

- a. Within ninety (90) days of the effective date of this Settlement, the District's Office of Disability Rights ("ODR") will revise the District's ADA notice to ensure that it provides sufficient notice of rights under title II of the ADA. ODR shall, at a minimum, ensure that the revised notice includes information on the complaint procedures available to an individual who wishes to allege a violation of title II of the ADA. The revised notices shall be posted in conspicuous locations in Shelters and in places frequented by individuals who are likely to use the Shelter Program, including District offices that provide benefits and services to low-income District residents. Copies shall also be provided to persons hired as Shelter Staff within ten (10) days of the commencement of their employment as Shelter Staff. The District will refresh the posted copies and update the contact information contained on the notice, as necessary, for the term of this Settlement. Copies of the notice shall be made available to any person upon request.

- b. Within one-hundred and twenty (120) days of the effective date of this Settlement, the District will require the Shelter Program to develop written procedures for providing information to Shelter clients concerning their rights and the District's obligations under title II of the ADA, and the District will provide a copy of these procedures to the United States.

20. Physical Accessibility of the Shelter Program

- a. The United States surveyed fifteen Shelters, including ten Shelters that the District identified as accessible to individuals with disabilities. The United States contends that none of the Shelters complied with the ADA Standards for Accessible Design (the "ADA Standards"). See Attachment 1.
- b. Within ninety (90) days of the effective date of this Settlement, the District will draft an interim physical access plan ("Interim Plan") for the Shelter Program. The Interim Plan shall identify those items described in Attachment 1 and in the District's own assessments that the District can address to increase access to the Shelter Program between the effective date of this Settlement and such time as the United States provides written notification to the District that the comprehensive physical access plan, described below, has been fully implemented. The District will provide the United States with a progress report on the Interim Plan no later than one-hundred and eighty (180) days after the effective date of this Settlement.
- c. Within (90) days of the effective date of this Settlement, the District shall draft a comprehensive physical access plan for the Shelter Program ("Comprehensive Plan"). The Comprehensive Plan shall detail the steps the District will take to ensure that the Shelter Program is readily accessible to and usable by individuals with physical disabilities within two (2) years of the District's initial implementation of the Comprehensive Plan, addressed in Paragraph 20(j) below. At a minimum, the Comprehensive Plan shall detail the steps the District will take to ensure that existing Shelters are modified,¹ or that new Shelters are created in

¹ Any Shelter facility that is designated for use by clients with physical disabilities under the Comprehensive Plan shall, at a minimum: (a) satisfy the requirements of Section 9.5.2(2)(a)-(f) of the ADA Standards, regardless of whether the facility has been altered; (b) have at least one of each type of common area at the facility readily accessible to and usable by individuals with physical disabilities; and (c) have at least one of each type of amenity offered to Shelter clients readily accessible to and usable by individuals with physical disabilities.

If satisfying these requirements at a Shelter facility designated for use by clients with physical disabilities under the Comprehensive Plan would be technically infeasible or would result in undue financial and administrative burdens to the District, then the Comprehensive Plan shall (a) provide a detailed written explanation of why that is the case, and (b) provide a detailed description of the alternative method(s) that the Shelter Program will utilize to ensure that all services, programs, and activities available to clients at that facility are readily accessible to and usable by clients with physical disabilities.

compliance with the ADA Standards, so that within two (2) years of the District's initial implementation of the Comprehensive Plan, addressed in Paragraph 20(j) below, individuals with physical disabilities have access to Shelters that are at least equivalent to those available to individuals who do not have physical disabilities. Thus, if the Comprehensive Plan does not require every Shelter to be in compliance with the ADA Standards, it must ensure that:

- i. the locations of the accessible Shelters are at least equivalent to the locations of the inaccessible Shelters with regard to the Shelters' proximity to various forms of public transportation and non-Shelter services that are frequently used by individuals residing at Shelters including, but not limited to, meal programs, employment assistance programs, health clinics, legal clinics, and government offices that administer or distribute benefits to low-income residents of the District;
 - ii. individuals with physical disabilities are not subjected to Shelter rules or requirements more burdensome than those used at inaccessible Shelters;
 - iii. individuals with physical disabilities have access to the Shelter Program in the most integrated setting appropriate to the needs of such individuals; and
 - iv. individuals with physical disabilities otherwise have equivalent access to the services, programs, and activities of the Shelter Program.
- d. Within ninety (90) days of the effective date of this Settlement, the District shall make the Comprehensive Plan available to interested persons including Shelter residents and organizations that represent Shelter applicants and residents. The District will seek comments and suggestions to improve the Comprehensive Plan for a minimum of forty-five (45) days (the "Comment Period").
- e. The District shall provide interested persons, including Shelter residents and organizations that represent Shelter residents, with advance written notice of the Comment Period. Methods of providing notice shall include prominent postings at Shelters and e-mail notification to organizations that represent Shelter residents. During the Comment Period, the District shall accept written comments in any form (including but not limited to e-mails) and maintain copies of all comments.
- f. The District will also hold at least one public hearing on the Comprehensive Plan during the Comment Period. The District will provide interested persons, including Shelter residents and organizations that represent Shelter residents, with

at least two weeks written notice of the hearing(s). Methods of providing such notice shall include prominent postings at Shelters and e-mail notification to organizations that represent Shelter residents. The proceedings of the hearing shall be transcribed.

- g. Within sixty (60) days of the end of the Comment Period the District shall review all public comments and, where appropriate, modify the Comprehensive Plan in response to those comments.
- h. Within sixty (60) days of the end of the Comment Period the District shall have the First Revised Comprehensive Plan sent to the United States by e-mail (or another mutually acceptable electronic format.) Along with the First Revised Comprehensive Plan the District shall forward to the United States by e-mail (or another mutually acceptable electronic format) the version of the Comprehensive Plan that was submitted for public comment, copies of all public comments, and a transcript of the public hearing(s).
- i. The United States will provide the District with a written response to the District's First Revised Comprehensive Plan. The District, within sixty (60) days of its receipt of the United States' response to the First Revised Comprehensive Plan, shall have a Second Revised Comprehensive Plan hand-delivered to the United States and sent to the United States by e-mail (or another mutually acceptable electronic format). The District shall include with the Second Revised Comprehensive Plan a detailed explanation of any disagreement or concern with the United States' response to the First Revised Comprehensive Plan.
- j. The United States will provide the District with a written response to the District's Second Revised Comprehensive Plan. Within sixty (60) days of its receipt of the United States' response, the District shall begin implementing all portions of the Second Revised Comprehensive Plan upon which the parties agree. If the United States and the District have been unable to reach agreement on all aspects of the Second Revised Comprehensive Plan within ninety (90) days of the United States' final response, then the provisions of Paragraph 32 shall apply as if the United States had provided the thirty (30) days notice required by that paragraph.
- k. If any portion of the Comprehensive Plan is affected by application of the historic property provision, *see* 28 C.F.R. § 35.150(a)(2), the District will include in the Comprehensive Plan a detailed written explanation that demonstrates how that provision applies.

1. The United States may, for good cause, provide written extensions of the deadlines set forth in this paragraph. The United States shall not unreasonably deny a request for such an extension.

21. Reasonable Modification of Shelter Policies and Procedures

- a. Within one-hundred and twenty (120) days of the effective date of this Settlement, the District will ensure that Shelter Program policies, practices, and trainings are created or modified to achieve the following:
 - i. Notification of Right to Request Reasonable Modification
 - (1) Each individual applying for Shelter shall be notified of his or her right to request a reasonable modification to a rule, policy, practice, or procedure because of his or her disability.
 - (2) Intake forms provided to applicants shall include notification of the individual's right to request reasonable modification.
 - ii. Processing of Reasonable Modification Requests
 - (1) Any request for an exception, change, or adjustment to a Shelter Program rule, policy, practice, or procedure - on the basis of an individual's disability - shall be treated as a reasonable modification request. Such a request may be made to Shelter Staff by the individual requesting a reasonable modification, or by a representative authorized to act on the individual's behalf. An individual's request for reasonable modification shall not be denied on grounds that the individual failed to adhere to the District's procedures or forms for making such requests.
 - (2) In response to a request for a reasonable modification, Shelter Staff shall only request disability-related information that: (1) is necessary to verify that the individual meets the ADA's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities), or, (2) describes the needed modification, or (3) shows the relationship between the individual's disability and the need for the requested modification.
 - (3) When a requesting individual's disability is known to Shelter Staff, or is readily apparent, information about the disability shall not be requested unless it is necessary to evaluate the disability-related

need for the modification. Depending on the individual's circumstances, information verifying this need can usually be provided by the individual himself or herself. A doctor or other medical professional, a peer support group, a nonmedical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide such verification, consistent with federal privacy laws. In most cases, an individual's medical records or detailed information about the nature of an individual's disability are not necessary for this inquiry.

- (4) Once Shelter Staff have established that an individual meets the ADA's definition of disability, the request for documentation should seek only the information that is necessary to evaluate if the reasonable modification is needed because of a disability. Consistent with federal privacy laws, such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable modification request or unless disclosure is required by law.
- (5) The District will create a mechanism so that it is notified of all Shelter Program decisions on reasonable modification requests within twenty four (24) hours.

iii. Timing of the Shelter Program's Response to a Reasonable Modification Request

- (1) The Shelter Program issues decisions on reasonable modification requests promptly.
- (2) Reasonable modification requests shall be granted immediately where the denial of the request is reasonably likely to cause serious harm to an individual with a disability.

iv. Recordkeeping for Reasonable Modification Requests

- (1) All documents related to reasonable modification requests filed after the effective date of this Settlement are retained for the term of this Settlement.

v. Miscellaneous

- (1) When Shelter Staff believe that an individual seeking Shelter or residing at a Shelter poses a direct threat to the health or safety of others due to a mental or physical disability, reasonable modifications which could eliminate that threat should be offered prior to denying Shelter to that individual.
- (2) Shelter Staff shall not require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under title II of the ADA which that individual chooses not to accept.

b. Examples of reasonable modifications may include, but are not limited to:

- i. modifying a Shelter's rules concerning food storage or kitchen access for an individual who has special dietary needs due to a disability, if the individual requests such a modification;
- ii. modifying a Shelter's rules so that an individual with a disability can be in close proximity to an individual who provides him or her with medical assistance, if the individual with a disability requests such a modification;
- iii. modifying the placement of an individual's bed due to that individual's disability-related needs, if the individual requests such a modification; and
- iv. providing non-communal Shelter to a family who cannot reside in a communal Shelter due to a family member's disability, if the family requests such a modification.

c. Nothing in this Settlement shall be construed as requiring the District to ensure that the Shelter Program grants a reasonable modification request where the District or the Shelter Program can demonstrate that doing so will result in a fundamental alteration to the nature of the Shelter Program, an undue financial or administrative burden on the District, or in a direct threat to the health or safety of others.

22. Effective Communication

- a. Within ninety (90) days of the effective date of this Settlement the District will ensure that the Shelter Program takes the following actions to facilitate effective communication with Shelter applicants and clients who have disabilities related to speech, vision or hearing:

- i. obtain the necessary equipment, establish the written procedures, and provide the training necessary to ensure that the Shelter Program furnishes appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the Shelter Program;
 - ii. enter into contracts or make other arrangements with qualified sign language and oral interpreters to ensure their availability when required for effective communication with individuals who are deaf or hard of hearing; and
 - iii. require that whatever written information is provided to Shelter applicants or clients will also be provided in alternate formats - including large print or audio recording - upon request.
- b. In providing effective communication neither the District nor the Shelter Program is required to take any action that the District or the Shelter Program can demonstrate would result in a fundamental alteration in the nature of the Shelter Program or in undue financial and administrative burdens on the District. *See* 28 C.F.R. § 35.164.
 - c. In determining what type of auxiliary aid and service is necessary, the District shall ensure that the Shelter Program gives primary consideration to the requests of the individual with disabilities. The Shelter Program shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under 28 C.F.R. § 35.164.
 - d. The District shall ensure that the Shelter Program documents all oral and written requests for auxiliary aids and services by Shelter applicants and clients, as well as any action taken by the Shelter Program in response to such requests.

23. Accessible Transportation To and Between Shelters

- a. Within ninety (90) days of the effective date of this Settlement, the District will ensure that the Shelter Program creates and implements a written plan to ensure that individuals with disabilities are not denied the services, programs and activities of the Shelter Program due to a lack of fully operational wheelchair accessible transportation vehicles, including the vehicles used to transport individuals to and between Hypothermia Shelters.

24. District Oversight of Contractors and Subcontractors that Provide Services for the Shelter Program
 - a. Within one-hundred and twenty (120) days of the effective date of this Settlement, the District will create and implement procedures for ensuring that any contractor or subcontractor of the District providing services in the Shelter Program is providing those services in compliance with this Settlement and title II of the ADA. Such oversight procedures shall include, but not necessarily be limited to:
 - i. review of contractors or subcontractors written rules and procedures;
 - ii. scheduled and unscheduled visits to intake sites and Shelters. Such visits shall include inspection of clients' files and interviews with Shelter clients and applicants;
 - iii. review of Shelter denials;
 - iv. strict time limits for corrective action for any deficiencies discovered during monitoring; and
 - v. sanctions for contractors or subcontractors.
 - b. The District shall promptly document all of its oversight activities.
 - c. Documents the District creates or reviews under the requirements of this paragraph shall be subject to the requirements of Paragraphs 27 and 28 below.
25. Miscellaneous Accessibility Issues
 - a. Within one-hundred and twenty (120) days of the effective date of this Settlement, the District will ensure that the Shelter Program creates and implements written procedures to achieve the following:
 - i. that individuals and families are not excluded from the Shelter Program or subjected to differential treatment in the provision of Shelter services based on an individual's disability, e.g., mental impairment, HIV disease, AIDS, or history of drug abuse (if the individual is not using drugs currently); and

- ii. that individuals are not denied meaningful access to medication necessitated by their disability. Shelters should provide a safe and secure location where medications can be stored, refrigerated (if necessary), and accessed by Shelter clients.

MISCELLANEOUS PROVISIONS

26. This Settlement shall not be construed to require the District to divulge confidential information relating to the current or future location of any confidential domestic violence shelters, beyond what is otherwise required by applicable law or what is necessary for the United States to effectively enforce this Settlement.
27. The District shall retain all records relating to the District's implementation of this Settlement and shall provide copies of such documents to the United States upon reasonable notice to the District. If the United States requests copies of records which the District seeks to withhold on the basis of confidentiality, attorney-client privilege, or work product privilege, the District shall provide the United States with a description of such records that complies with Rule 26(a)(5)(A) of the Federal Rules of Civil Procedure. In the event a third party requests records relating to the District's implementation of this Settlement from the United States, the United States will assert all applicable exemptions from disclosure permitted by law.
28. Except as otherwise specified in this Settlement, six (6) months after the effective date of this Settlement the District will submit written reports to the United States summarizing the actions the District has taken pursuant to this Settlement. The District will submit a second report one year after the effective date of this Settlement, and then annually thereafter for the term of this Settlement. The reports will include detailed photographs showing measurements, architectural plans, work orders, notices posted, and copies of adopted policies. The reports will also include current copies of the specific documents the District is required to maintain under this Settlement.
29. Throughout the term of this Settlement, consistent with 28 C.F.R. § 35.133(a), the District will maintain all accessible features of the Shelter Program required by law and will take whatever actions are necessary (such as routine testing of accessibility equipment and routine accessibility audits of its programs and facilities) to do so. This provision does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).
30. Training
 - a. Within one-hundred and twenty (120) days of the effective date of this Settlement, the District's Office of Disability Rights shall either create or approve a training program for Shelter Staff with a written curriculum, objectives, and

training schedule (the "Training"). The purpose of the Training will be to teach Shelter Staff about the District's duties, responsibilities, the Shelter Program's District-approved reasonable modification policy, and the Shelter Program's procedures under this Settlement, the ADA, and the ADA's implementing regulations.

- b. Training topics shall include, but not be limited to:
- i. an overview of title II of the ADA as it pertains to the Shelter Program;
 - ii. definition of the terms "disability" and "individuals with disabilities;"
 - iii. a discussion of mental and physical disabilities that are frequently encountered by Shelter Staff;
 - iv. the District's complaint procedure for the Shelter Program;
 - v. the provision of alternative facilities under the District's Interim Plan (while the Interim Plan is in effect);
 - vi. definition of the term "reasonable modification," and the District's obligation to ensure that reasonable modifications are made;
 - vii. the Shelter Program's District-approved reasonable modification policy, and the Shelter Program's procedures for requesting reasonable modifications and responding to such requests;
 - viii. the Shelter Program's District-approved effective communication policy and procedures, including procedures for providing auxiliary aids and services, including qualified interpreters;
 - ix. the Shelter Program's District-approved service animal policy and implementing procedures;
 - x. the Shelter Program's District-approved policy and procedures for accessible transportation to and between Shelters; and
 - xi. the District's obligations under this Settlement.
- c. The Training shall include group discussion of various scenarios that address the reasonable modification issues addressed above in Paragraph 21, including but not limited to the reasonable modification examples in Paragraph 21(b).

- d. The Shelter Program will provide the Training to newly hired staff, or have the newly hired staff review a video of a past Training, within 60 days of their entry date of service.
 - e. The District shall ensure that the Shelter Program maintains a list of Shelter Staff and the date they received the Training.
31. All references to "days" shall mean calendar days, unless otherwise specified.

IMPLEMENTATION AND ENFORCEMENT

32. The United States may review compliance with this Settlement at any time. If the United States believes that the District has failed to comply in a timely manner with any requirement of this Settlement without obtaining sufficient advance written agreement with the United States for a modification of the relevant terms and/or that the District has violated title II of the ADA, the United States will so notify the District in writing and it will attempt to resolve the issue or issues in good faith. If the United States is unable to reach a satisfactory agreement with the District to resolve the issue or issues raised within thirty (30) days of the date it provides notice to the District, it may institute a civil action in federal district court to enforce the terms of this Settlement, or it may initiate appropriate steps to enforce title II of the ADA. Nothing in this paragraph shall be interpreted as limiting the United States' ability to take appropriate steps to enforce title II of the ADA where the United States can demonstrate that the District's actions are reasonably likely to cause immediate and serious harm to an individual with a disability and the United States has made a reasonable attempt to reach a satisfactory agreement with the District.
33. For purposes of the immediately preceding paragraph, it is a violation of this Settlement for the District to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the United States for an extension of the relevant time frame imposed by this Settlement.
34. The United States shall be permitted to review the accessibility of any Shelter upon reasonable notice to the District's counsel.
35. Failure by the United States to enforce this entire Settlement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Settlement.
36. A copy of this document will be made available by the District or the United States on request by any interested person.

37. This Settlement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Settlement (including its Attachments, which are hereby incorporated by reference), will be enforceable. This Settlement is enforceable only by the parties, no person or entity is intended to be a third party beneficiary of the provisions of this Settlement for purposes of any civil, criminal, or administrative action, and, accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Settlement in any civil, criminal, or administrative action. This Settlement does not purport to remedy any other potential violations of the ADA or any other federal law. This Settlement does not affect the District's continuing responsibility to comply with all aspects of the ADA.
38. This Settlement does not affect or limit the United States' ability to enforce title III of the ADA against private entities which are affiliated with the District's Shelter Program.
39. This Settlement will remain in effect for three (3) years, except that Paragraph 20 and each paragraph related to the enforcement of Paragraph 20 shall remain in effect for five (5) years as to any Shelter facility where work required under the Comprehensive Plan has not been completed within three (3) years of the effective date of this Settlement.
40. The deadlines set forth in this Settlement shall be tolled for any Force Majeure Event. "Force Majeure Event" means any of the following that directly cause obligations under the Settlement not to be performed in a timely manner: An act of God, fire, earthquake, flood, explosion, war, invasion, acts of terrorism, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, laws or orders of government or of civil, military or naval authorities, or any other federal or local governmental acts or omissions, or any other cause that is not within the reasonable control of the District or caused by the fault or negligence of the District.
41. The person signing for the District represents that he or she is authorized to bind the District to this Settlement.
42. The effective date of this Settlement is the date of the last signature below.

For the District of Columbia:

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Attorney General for the
District of Columbia

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Date: 12/10/08

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Date: 12/10/08

Items in Shelters Identified by the Department of Justice as Not in Compliance with title II of the Americans with Disabilities Act

Of the District's thirty-six Shelters, the District identified ten that were accessible to individuals with disabilities.¹ The Department's survey of these ten Shelters uncovered numerous violations of the ADA Standards for Accessible Design (28 C.F.R. Part 36, Appendix A) ("the Standards"). These violations are listed in Part I below. The Department surveyed five additional Shelters² that the District did not identify as accessible, and violations of the Standards at these Shelters are listed in Part II below. All section and figure references are to the Standards unless otherwise noted.

I. Violations in Shelters the District Identified as Accessible to Individuals with Disabilities

A. District of Columbia General Hospital Hypothermia Shelter 1900 Massachusetts Avenue, S. E. Washington, D.C. *Residents: Families with Children* *Surveyed: July 23, 2007*

1. Unit 4204 (an example of a three bedroom unit with en suite toilet and lavatory)

This unit contains three bedrooms plus a small room near the entrance containing a lavatory and another small room beyond that containing a toilet. A coat/hat rack

¹ Request 14 of the Department's first request for information to the District requested a list of Shelters "accessible to individuals with disabilities." It appeared from the District's series of written responses to Request 14 that the District was identifying the following ten Shelters as accessible: 801 East Shelter (12 Hour Beds); District of Columbia General Hospital Hypothermia Shelter; Community for Creative Non-Violence Shelter (at the Federal City Shelter Building); Open Door 12- Hour Shelter (at Federal City Shelter Building); Open Door 24-Hour Shelter (at Federal City Shelter Building); John Young Center, Low Barrier Shelter (at Federal City Shelter Building); John Young Center, Severe Weather Shelter (at Federal City Shelter Building); Harriet Tubman Shelter; New York Avenue Shelter (Level One); and Community of Hope, Inc. Although the District also identified the New Transitions program at 611 N Street N.W. as accessible, this is a transitional housing program that was not within the scope of the Department's investigation. *See* Definition of "Shelter" in this Agreement. Likewise, although the District identified DC Village as accessible, the Department later learned, and confirmed with District officials, that in October of 2007 the District would discontinue its use of DC Village as a shelter. Thus, the Department did not survey DC Village. Finally, although an attachment to the District's earliest responses to Request 14 seemed to identify as accessible a small program at St. Luke's Church, the District's final response to Request 14 did not identify this Shelter as accessible. Nor did the District provide further information on the accessibility of this Shelter, as it did for each of the other Shelters identified in its responses to Request 14. Thus, the Department did not survey St. Luke's Church.

² The Department reviewed the following Shelters that were not identified as accessible by the District: Emery Working Man's Shelter; Park Road Shelter; 801 East Shelter [TRP and Project Rise]; House of Ruth; and My Sister's Place Domestic Violence Shelter.

that is a protruding object hazard is located near the entrance door to the room containing the lavatory.

The toilet, the lavatory and the rooms in which they are located are completely inaccessible. No accessible toilet is provided as required by §§4.16 and 4.23.4. No accessible lavatory is provided as required by §§4.19 and 4.22.6. The mirror and paper towel dispenser are mounted too high. See §§4.19.6, 4.22.7 and 4.27.3. There is no turning space as required by §§4.2.3 and 4.23.3. Nor is there the required clear floor space at the lavatory or at the toilet - see §§4.19.3 and 4.16.2.

Additionally, the entrance door to the rooms containing first the lavatory and then the toilet only provides 21" clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

This door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The pull side maneuvering clearance at this door is only 5½" wide contrary to §4.13.6 and Fig. 25 (a) which requires it to be at least 18" wide x 60" deep and preferably 24" wide.

This door swings into the clear floor space required at the lavatory contrary to §4.23.2.

The lavatory is not mounted so that there is a clearance of at least 29" above the finished floor ("AFF") to the bottom of the apron - the clearance is 27½" AFF contrary to §4.19.2 and Fig. 31. Additionally, there is only 24½" AFF of clearance at a point eight inches back from the leading edge of the lavatory apron contrary to §4.19.2 and Fig. 31 which require the clearance at that point to be at least 27" AFF.

The hot water supply and drain pipes are not insulated or otherwise configured to protect against contact contrary to §4.19.4.

The bottom of the reflecting surface of the mirror is mounted 49½" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

The paper towel dispenser is mounted 61" AFF with no clear floor space contrary to §§4.27.2 and 4.27.3 which require it to be no higher than 54" AFF if clear floor space for a side approach (at least 48" wide x 30" long) is provided or no higher than 48" AFF if clear floor space for a front approach (at least 48" long x 30"

wide) is provided.

There is no visual fire alarm in the room although there is an audible fire alarm system in the building and there are visual alarms in the corridors. See §§4.1.3 and 4.28.1 which require there to be visual alarms in all enclosed spaces if there is an audible alarm system in the facility.

The framed doorless opening into the room containing the toilet provides only 26½" clear passage width contrary to §4.13.5 which requires that doorways have a minimum clear opening of 32".

The top of the toilet seat is 15½" AFF which is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

There are no grab bars at the side or rear of the toilet contrary to §4.16.4 and Fig. 29.

The far edge of the toilet paper dispenser is 43" from the rear wall contrary to §4.16.6 and Figs. 29 and 30 (d) which require it to be within reach maximum 36" from the rear wall.

A coat/hat rack that is a protruding object hazard is located near the entrance door to the room containing the lavatory. The round rod holder is 11½" deep at 60" AFF contrary to §4.4.1 and Fig. 8 (a) which require objects projecting from walls with their leading edges between 27" AFF and 80" AFF to protrude no more than 4".

2. Unit 4219A (an example of a one bedroom unit that has a lavatory in the bedroom and also shares a toilet and lavatory with the next unit)

This one bedroom unit contains a lavatory in the bedroom and it also shares a toilet and lavatory with the next room along the corridor.

The shared toilet and lavatory and the room in which they are located are completely inaccessible as is the lavatory in the bedroom of Unit 4219A. No accessible toilet is provided as required by §§4.16 and 4.23.4. No accessible lavatory is provided as required by §§4.19 and 4.22.6. The mirror is mounted too high. See §§4.19.6, 4.22.7 and 4.27.3. There is no turning space as required by §§4.2.3 and 4.23.3. Nor is there the required clear floor space at the lavatory or at the toilet - see §§4.19.3 and 4.16.2.

The lavatory in the bedroom of Unit 4219A is not mounted so that there is a clearance of at least 29" AFF to the bottom of the apron - the clearance is 20¼"

AFF contrary to §4.19.2 and Fig. 31.

The entrance door from Unit 4219A to the shared toilet room provides 21" clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

This door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The lavatory in the shared toilet room is not mounted so that there is a clearance of at least 29" AFF to the bottom of the apron - the clearance is 20¼" AFF contrary to §4.19.2 and Fig. 31.

The bottom of the reflecting surface of the mirror in the shared toilet room is mounted 52" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

The top of the toilet seat in the shared toilet room is 16½" AFF which is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

The centerline of the toilet in the shared toilet room is 13½" from the side wall contrary to Fig. 28 which requires an accessible toilet to be located with its centerline exactly 18" from the side wall.

There are no grab bars at the side or rear of the only toilet in the shared toilet room contrary to §4.16.4 and Fig. 29.

There is no visual fire alarm in either the shared toilet room or in the bedroom of Unit 4219A although there is an audible fire alarm system in the building and there are visual alarms in the corridors. See §§4.1.3 and 4.28.1 which require there to be visual alarms in all enclosed spaces if there is an audible alarm system in the facility.

3. Unit 4223 (an example of a one bedroom unit, without a lavatory in the bedroom, that shares a toilet and lavatory with the next unit)

This one bedroom unit shares a toilet and lavatory with the next room along the corridor.

The shared toilet and lavatory and the room in which they are located are completely inaccessible. No accessible toilet is provided as required by §§4.16

and 4.23.4. No accessible lavatory is provided as required by §§4.19 and 4.22.6. The mirror is mounted too high. See §§4.19.6, 4.22.7 and 4.27.3. There is no turning space as required by §§4.2.3 and 4.23.3. Nor is there the required clear floor space at the lavatory or at the toilet - see §§4.19.3 and 4.16.2.

The entrance door from Unit 4223 to the shared toilet room provides 21" clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

This door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The lavatory in the shared toilet room is not mounted so that there is a clearance of at least 29" AFF to the bottom of the apron - the clearance is 20¼" AFF contrary to §4.19.2 and Fig. 31.

The bottom of the reflecting surface of the mirror in the shared toilet room is mounted higher than 40" AFF contrary to §4.19.6.

The top of the toilet seat in the shared toilet room is 16" AFF which is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

The centerline of the only toilet in the shared toilet room is 15" from the side wall contrary to Fig. 28 which requires an accessible toilet to be located such that its centerline is exactly 18" from the side wall.

There are no grab bars at the side or rear of the only toilet in the shared toilet room contrary to §4.16.4 and Fig. 29.

There is no visual fire alarm in either the shared toilet room or in the bedroom of Unit 4223 although there is an audible fire alarm system in the building and there are visual alarms in the corridors. See §§4.1.3 and 4.28.1 which require there to be visual alarms in all enclosed spaces if there is an audible alarm system in the facility.

4. Staff Toilet/Shower Room 4207

This single - user toilet/shower room is entered through two hinged doors in series. Both of these doors have knob hardware. Knob hardware requires tight grasping and twisting of the wrist contrary to §4.13.9. Both doors swing into the space between the doors - the outer door, from the corridor, opens in and the inner door

to the toilet and lavatory area opens out. There are only a few inches between the two doors when both are open. This is contrary to §4.13.7 and Fig. 26 which require that there be at least 48" plus the width of any door swinging into the space between two hinged doors in series. Section 4.13.7 also requires that doors in series either swing in the same direction or swing away from the space between the doors. These doors swing into the space between the doors.

The threshold at the inner door to the toilet/lavatory area is 3/4" high and it is neither beveled nor ramped. See §4.13.8 and 4.5.2 which that thresholds at doors that are not exterior sliding doors be no higher than 1/2".

The top of the toilet seat of the only toilet in this room, at 15" AFF, is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

The centerline of the only toilet in this room is 17" from the side wall contrary to Fig. 28 which requires an accessible toilet to be located with its centerline exactly 18" from the side wall.

There are no grab bars at the side or rear of the only toilet in this room contrary to §4.16.4 and Fig. 29.

The only lavatory in this room is mounted with its rim higher than 34" AFF contrary to §4.19.2 and Fig. 31. The rim is mounted 36 3/8" AFF. Additionally, the lavatory is not mounted so that there is a clearance of at least 29" AFF to the bottom of the apron - the clearance is 28 3/4" AFF contrary to §4.19.2 and Fig. 31.

The mirror is mounted too high for a person using a wheelchair for mobility to be able to see their reflection in it. The bottom of the reflecting surface is mounted 52 3/8" AFF contrary to §4.19.6.

The only shower stall in this room does not comply with §4.21, including the requirement for an accessible shower stall to be one of the two sizes illustrated in Fig. 35, to have a seat as illustrated in Fig. 36 and grab bars as illustrated by Fig. 37 and to not have a curb higher than 1/2" (only allowed in the case of a 36" x 36" shower - a roll-in shower may not have a curb of any height).

The shower stall has a curb that is 5" high. It has no seat. The inside, finished dimensions of this shower stall are 34 1/2" x 34 1/2". See Fig. 35 which requires a transfer shower to be exactly 36" x 36" (inside, finished dimensions) and a roll-in shower to be at least 30" wide x 60" long. This shower stall has only one 36" long grab bar that is mounted diagonally. See Fig. 37 which illustrates the lengths of grab bars to be mounted in a transfer shower and in a roll-in shower - all of which are mounted parallel to the floor, not diagonally. A transfer shower (which is the

closest size to this shower stall of the two showers shown in Fig. 35) requires two grab bars - one 18" long on the side wall and the other on the front wall under the shower spray unit. The shower spray unit is a fixed shower head only and without a hose. See §4.21.6 which requires that the shower spray unit provided in an accessible shower be able to be used both as a fixed shower head and as a hand-held shower and have a hose that is at least 60" long. The controls are not near the outside edge of the shower stall as illustrated in Fig. 37. The controls are very near the inside of the shower stall 24" from the outside edge of the shower.

There is no visual fire alarm in this toilet/shower room although there is an audible fire alarm system in the building and there are visual alarms in the corridors. See §§4.1.3 and 4.28.1 which require there to be visual alarms in all enclosed spaces if there is an audible alarm system in the facility.

5. Female Toilet/Shower Room 4224

The pull side maneuvering clearance of the entrance door is only 4½" wide contrary to §4.13.6 and Fig. 25 (a) which requires it to be at least 18" wide x 60" deep.

The lavatory is mounted with its rim higher than 34" AFF contrary to §4.19.2 and Fig. 31. The rim is mounted 36" AFF. Additionally, the lavatory is not mounted so that there is a clearance of at least 29" AFF to the bottom of the apron - the clearance is 28½" AFF contrary to §4.19.2 and Fig. 31.

The bottom of the reflecting surface of the mirror is mounted higher than 40" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

The top of the toilet seat of the only toilet in this room, at 16½" AFF, is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

The centerline of the only toilet in this room is 17½" from the side wall contrary to Fig. 28 which requires an accessible toilet to be located with its centerline exactly 18" from the side wall.

There are no grab bars at the side or rear of the only toilet in this room contrary to §4.16.4 and Fig. 29.

The only shower stall in this room is a molded acrylic shower stall with a curb that is 10½" high. This shower stall has only one 30" long grab bar that is mounted in the middle of the long wall. See Fig. 37 which illustrates the lengths and locations of grab bars to be mounted in a roll-in shower. The shower spray unit is a fixed shower head only and without a hose. See §4.21.6 which requires

that the shower spray unit provided in an accessible shower be able to be used both as a fixed shower head and as a hand-held shower and have a hose that is at least 60" long. The shower spray unit is mounted on one of the end walls, not on the long wall as required by Fig. 37 (b). The shower has two fixed seats but neither of them are the dimensions and height as illustrated in Fig. 36. Nor does either of the seats extend the full depth of the shower. See §4.21.3.

There is no visual fire alarm in this toilet/shower room although there is an audible fire alarm system in the building and there are visual alarms in the corridors. See §§4.1.3 and 4.28.1 which require there to be visual alarms in all enclosed spaces if there is an audible alarm system in the facility.

6. Male Toilet/Shower Room 4227

The pull side maneuvering clearance of the entrance door to this room is only 5½" wide contrary to §4.13.6 and Fig. 25 (a) which requires it to be at least 18" wide x 60" deep.

The entrance door has no hardware but the round hole where hardware should be requires tight grasping and twisting of the wrist contrary to §4.13.9.

The only lavatory in this room is mounted with its rim higher than 34" AFF contrary to §4.19.2 and Fig. 31. The rim is mounted 36" AFF. Additionally, the lavatory is not mounted so that there is a clearance of at least 29" AFF to the bottom of the apron - the clearance is 28½" AFF contrary to §4.19.2 and Fig. 31.

The bottom of the reflecting surface of the mirror is mounted at 52¼" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

The top of the toilet seat of the only toilet in this room, at 16" AFF, is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

The centerline of the only toilet in this room is 18½" from the side wall contrary to Fig. 28 which requires an accessible toilet to be located with its centerline exactly 18" from the side wall.

There are no grab bars at the side or rear of the only toilet in this room contrary to §4.16.4 and Fig. 29.

The only shower stall in this room is a molded acrylic shower stall with a curb that is 10½" high. This shower stall has only one 30" long grab bar that is mounted in the middle of the long wall. See Fig. 37 which illustrates the lengths and locations of grab bars to be mounted in a roll-in shower. The shower spray

unit is a fixed shower head only and without a hose. See §4.21.6 which requires that the shower spray unit provided in an accessible shower be able to be used both as a fixed shower head and as a hand-held shower and have a hose that is at least 60" long. The shower spray unit is mounted on one of the end walls, not on the long wall as required by Fig. 37 (b). The shower has two fixed seats but neither of them are the dimensions and height as illustrated in Fig. 36. Nor does either of the seats extend the full depth of the shower. See §4.21.3.

There is no visual fire alarm in this toilet/shower room although there is an audible fire alarm system in the building and there are visual alarms in the corridors. See §§4.1.3 and 4.28.1 which require there to be visual alarms in all enclosed spaces if there is an audible alarm system in the facility.

7. Room 4201A - Chief Executive Officer's Office

The entrance door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

8. Room 4202 - Dining Room

The entrance door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The lavatory is not mounted so that there is a clearance of at least 29" AFF to the bottom of the apron - the clearance is 27½" AFF contrary to §4.19.2 and Fig. 31. Additionally, there is only 25½" AFF of clearance at a point eight inches back from the leading edge of the lavatory apron contrary to §4.19.2 and Fig. 31 which require the clearance at that point to be at least 27" AFF.

The bottom of the reflecting surface of the mirror is mounted at 50" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

The paper towel dispenser and soap dispenser can only be approached from a front approach. They are each mounted higher than 48" AFF. See §§4.27.3 and 4.2.5 and Fig. 5 which require that controls, dispensers, receptacles and other operable equipment be mounted no higher than 48" AFF if a person using a wheelchair or other mobility aid approaches such a device using a front approach.

9. Pay Phones

During the site visit there were two pay phone enclosures (from which the telephones had been removed for the summer) located in the corridor of the story which the Hypothermia Shelter occupies. The enclosures suggest that when the

phones are installed they would be two single units. Therefore, one of the single unit pay phones must comply with §4.31.2 - 4.31.8 (see §4.1.3 (17) (a)). Both of the pay phones must have volume control - see §4.1.3 (17) (b) - and a sign displaying the International Symbol for Hearing Loss - see Fig. 43 (d).

**B. 801 East Shelter (12 Hour Beds)³
801 Making Life Better Lane, S. E.
Washington, D.C. 20032
Residents: Single Men
Surveyed: July 23, 2007⁴**

1. Parking Lot

The parking lot contains six van accessible parking spaces. However, only three of these spaces have post-mounted signs and none of the existing post-mounted signs contain the additional sign saying that the space is "Van Accessible". See §4.6.4.

2. Curb Ramp from Parking Lot to the Accessible Building Entrance

The running slope of this curb ramp is 10.1% which exceeds the maximum 8.3% or 1:12 required by §§4.7.2 and 4.8.2.

3. Toilet/Shower Room Undergoing Alterations on Level One

Please note that only the entrance door and toilet/shower area nearest to the building entrance door could be surveyed during the site visit on July 23, 2007 since the other half of this room was under construction and blocked off by a plywood barrier.

A permanent room identification sign is mounted on the toilet room entrance door nearest to the building entrance. See §4.30.6 which requires such signs to be mounted on the wall adjacent to the latch side of the door with its centerline exactly 60" AFF.

³ It appears that the District intended to identify as accessible the 12 Hour Bed Program at 801 East, but not the TRP/Project Rise Shelter in that building. Thus the violations in TRP/Project Rise are listed in Part II rather than in Part I.

⁴ While surveying the 801 East Shelter and the various Shelters located in the Federal City Shelter building, the Department observed ongoing – and non-compliant – renovations of some shower and toilet rooms. On August 10, 2007, in an effort to provide the District with technical assistance on these renovations, the Department gave the District a list of violations found in the shower and toilet rooms of those shelters.

The door to the wider of the three toilet stalls is located directly in front of the toilet in that stall. See Fig. 30(a) which shows the door to the Standard Stall in front of the clear floor space beside the toilet.

The coat hook in the wider stall is 63" above the finished floor ("AFF"). See §§4.2.5/6 and Figs. 5/6 which require that elements be mounted within the reach range of a person seated in a wheelchair - no higher than 48" AFF if there is at least 30" wide x 48" long of clear floor space for a front approach to the element and no higher than 54" AFF if there is at least 48" long x 30" wide of clear floor space for a parallel approach to the element.

The mirror serving the accessible lavatory is mounted with the bottom of its reflecting surface at 42" AFF. See §4.19.6 which requires it to be no higher than 40" AFF.

The shower spray unit in the shower stall with the shower seat cannot be used as both a fixed shower head and as a hand-held shower. The hook upon which the spray unit could otherwise sit to be "fixed" was broken during the site visit. See §4.21.6 which requires that the shower spray unit be able to be used as both a fixed shower head and as a hand-held unit. Note: the exception to §4.21.6 which allows a fixed shower head only to be mounted at 48" above the shower floor in unmonitored facilities where vandalism is a consideration.

The entrance door to this room requires more than five pounds of force to operate. It has a label indicating that it is a rated fire door. Fire doors must operate with the minimum opening force allowable by the appropriate administrative authority. See §4.13.11 (1).

4. Bulletin Boards in Lobby and Entrance Corridor

There are three bulletin boards containing notices for residents in the lobby of the first story and another bulletin board, also containing notices for residents, in the entrance corridor of the first story. Each board appears to contain different notices. The centerlines of the highest of the three bulletin boards in the lobby and of the bulletin board in the entrance corridor are both 67" AFF making them too high for a person using a wheelchair to read. The centerlines of the other two bulletin boards in the lobby are also much higher than 51" AFF. See Fig. A3 which dimensions the eye level of a person seated in a wheelchair at 43" to 51" AFF.

5. Elevator

The emergency two-way communication system in the elevator cab is located in a

closed compartment. The door to this compartment requires tight grasping and pinching and more than five pounds of force to open contrary to §§4.10.14 and 4.27.4.

The requirement of §4.10.14 that the emergency intercommunication system shall not require voice communication appears not to be met by this elevator. During the site visit on July 23, 2007, the telephone receiver located in the closed compartment rang for at least fifteen rings but was never answered. Therefore, it could not be ascertained if the communication system requires that the stranded passenger be able to speak. Indeed, the non-response suggests that there is no system in place to respond to an emergency in this elevator.

6. Storage Lockers Provided in Sleeping Areas

Lockers are provided for the secure storage of residents' personal possessions. The traditional twist-type combination locks require tight grasping, pinching and twisting of the wrist contrary to §§4.25.4 and 4.27.4 which require that hardware for accessible storage facilities be operable with one hand and not require tight grasping, pinching or twisting of the wrist.

The storage areas on the inside of the lockers are too high or low for a person seated in a wheelchair to reach. See Figs. 5 and 6 and §§4.2.5 and 4.2.6. See also §4.25.3 which requires that accessible storage spaces be within at least one of the reach ranges specified in §§4.2.5 and 4.2.6.

C. Community for Creative Non-Violence Shelter (at the Federal City Shelter Building)

425 2nd Street, N.W.

Washington, D.C. 20001

Residents: Single Men and Women

Surveyed: July 18, 2007⁵

1. Parking Lot

The parking lot at the rear of the Community for Creative Non-Violence Shelter (the "CCNV Shelter") is an unpaved gravel lot that does not contain any accessible parking spaces. See §4.1.2 (5) which requires that if parking spaces are

⁵ While surveying the 801 East Shelter and the various Shelters located in the Federal City Shelter building, the Department observed ongoing – and non-compliant – renovations of some shower and toilet rooms. On August 10, 2007, in an effort to provide the District with technical assistance on these renovations, the Department gave the District a list of violations found in the shower and toilet rooms of those shelters.

provided for employees or visitors, or both, then accessible spaces complying with §4.6 shall be provided in each such parking area in conformance with the chart set out in §4.1.2 (5) (a).

2. No Accessible Route from Parking Lot to an Accessible Building Entrance

Section 4.3.2 (1) requires at least one accessible route within the boundary of the site to be provided from public transportation stops, accessible parking, and accessible passenger loading zones and public streets or sidewalks to an accessible building entrance. The accessible route must, to the maximum extent feasible, coincide with the route for the general public.

3. Ramp from 2nd Street, N.W. into the Main Entrance to the CCNV Shelter

The ramp from 2nd Street, N.W. into the main entrance to the CCNV Shelter is covered as it nears the entrance door. The portion of this ramp closest to the street is not covered.

(a) Covered Portion of the Ramp nearest to the Entrance Door

There is no landing at the top of this ramp. The top part of the ramp (within five feet of the doorway) is sloped with a running slope of 9.6% contrary to §4.8.4 which requires that the top and bottom landing of a ramp be "level".

A doorway is located at the top of this ramp; however, the area in front of the doorway does not comply with §4.13.6 and the left floor plan of Fig. 25 (a) - the pull side maneuvering clearance is not at least 18" wide as required by §4.8.4 (4).

The threshold at the entrance door from the ramp to the entrance lobby is 1 ½" high and unbeveled contrary to §4.13.8 and 4.5.2 which requires that thresholds at doors that are not exterior sliding doors be no higher than ½". Thresholds or other level changes between ¼" and ½" must be beveled at 1:2 maximum.

The running slope of the covered portion of the ramp further down the ramp (more than five feet from the entrance door) is 9.1% contrary to §4.8.2 which requires that the maximum slope of a ramp be 1:12 or 8.3% unless, in existing facilities, space limitations prohibit the use of a slope that is 1:12 or less.

The tops of the gripping surfaces of the handrails are 41" above the ramp surface contrary to §4.8.4 which requires that the top of handrail gripping surfaces be between 34" and 38" above the ramp surface.

The space between the wall and the handrail is more than the exactly 1 ½" required by §§4.8.5(3) and 4.26.2 and Fig. 39 (a) and (c). The width of the space between the wall and the handrail varies between 3 ½" and 5".

(b) Open Portion of the Ramp Closest to 2nd Street, N.W.

The space between the wall and the handrail is more than the exactly 1 ½" required by §§4.8.5(3) and 4.26.2 and Fig. 39 (a) and (c). The width of the space between the wall and the handrail is 2 7/8".

The handrail on the left of the ramp (looking down towards the street) is not continuous contrary to §4.8.5.

The ends of both of the handrails are not rounded or returned smoothly to the ground, a wall or a post contrary to §4.8.5 (6).

The handrails do not extend at least 12" beyond the top and bottom of the ramp segment contrary to §4.8.5 (2).

4. Ramp to the Entrance to the Unity Health Care, Inc. Clinic at the Side of the Building Housing the CCNV Shelter

The running slope of the ramp is 9.6% contrary to §4.8.2 which requires that the maximum slope of a ramp be 1:12 or 8.3% unless, in existing facilities, space limitations prohibit the use of a slope that is 1:12 or less.

There are no handrails on this ramp contrary to §4.8.2 which requires that if a ramp run has a rise greater than 6" or a horizontal projection greater than 72" it must have handrails on both sides.

Both the wall-mounted standpipe connection, which is 7 ½" deep and mounted at 48 ½" above the ramp surface, and the metal barrier directly below it are protruding object hazards contrary to §4.4.1 and Fig. 8 (a). Section 4.4.1 and Fig. 8 (a) require that objects projecting from walls with their leading edges between 27" and 80" AFF protrude no more than 4" into walks, halls, corridors, passageways or aisles.

5. Recently Altered Staff Toilet Room on Level Three, South

Department staff were advised by CCNV staff that renovations to the CCNV's toilet and shower rooms began in this area of the facility while the toilet and shower room in the CCNV's infirmary, addressed in section 10 below, was among the last scheduled for renovation.

This toilet room contains three urinals, three toilet stalls and four lavatories.

The entrance door to this toilet room requires 17 pounds of force to operate. Unless it is a fire door, an interior door must operate with no more than 5 pounds of force. See §4.13.11 (2) (b). Fire doors must operate with the minimum opening force allowable by the appropriate administrative authority. See §4.13.11 (1).

There are two vending machines blocking the required minimum 18" wide maneuvering clearance on the latch, pull side of the entrance door to this toilet room - see §4.13.6 and Fig. 25 (a).

There is no accessible route into the widest toilet stall in this toilet room. The row of three toilet stalls is located across from the counter containing four lavatories. The widest of the three stalls is located at the end of the row. The stall door of the widest stall swings out and is approached from the hinge side of the stall, not the latch side as is required by Fig. 30 (a) - Standard Stall. The maneuvering space at the latch side, pull side of the stall door is not at least 18" as required by the floor plan on the left side of Fig. 25 (a) and §§4.17.5 and 4.13.6.

The height of the toilet in the widest toilet stall is 19 ½ " measured to the top of the toilet seat. See §4.16.3 and Fig. 30 (d) - the top of the seat must be at least 17" but no higher than 19", measured to the top of the toilet seat.

The centerline of the toilet in the widest toilet stall is 15 ½" from the side wall, not the exactly 18" it is required to be by Fig. 30(a) and §4.16.

The control for the flush valve in the toilet in the widest toilet stall is not mounted on the wide side of the toilet area contrary to §4.16.5.

The far edge of the toilet paper dispenser in the widest stall is 41 1/4" from the rear wall contrary to §4.16.6 and Fig. 30(d) of the Standards which require it to be no more than 36" from the rear wall.

The toilet paper dispenser in the widest toilet stall does not permit continuous paper flow contrary to §4.16.6. It dispenses one sheet of paper at a time. At the time of the survey the toilet paper dispenser was not loaded with paper and instead a roll of toilet paper had been set on the side grab bar.

One of the urinals in this toilet room is mounted slightly lowered than the other two urinals. However, the elongated rim of this lower urinal is, at 21 ¼" above the finished floor ("AFF") still higher than the maximum 17" AFF that §4.18.2 requires for the height of the elongated rim of an accessible urinal. The flush control on the lower urinal is 47 ½" AFF contrary to §4.18.4 which requires the

flush control on an accessible urinal to be no higher than 44" AFF.

The bottom edge of the apron at the counter containing the four lavatories is 28 3/4" AFF which is lower than the minimum 29" AFF required by §4.19.2 and Fig. 31.

The hot water and drain pipes under each of the four lavatories are not insulated or otherwise configured to protect against contact contrary to §4.19.4.

The visual alarm signal appliance is located in the ceiling contrary to §4.28.3 which requires it to be placed 80" above the highest floor level within the space or 6" below the ceiling, whichever is lower. None of the fire alarms were tested during the site visit. However, during the site visit Mr. Abdul Nurridin, Executive Director of the CCNV Shelter, stated that the fire alarm system at the CCNV Shelter was not working.

6. Recently Altered Resident Toilet and Shower Room on Level Three, South

This toilet room contains 13 urinals, 8 toilet stalls and two lavatory counters and two gang shower rooms. It can be entered through two separate entry doors on opposite sides of the room.

The entrance doors to this toilet room require 20 and 27 pounds of force, respectively, to operate. Unless it is a fire door, an interior door must operate with no more than 5 pounds of force. See §4.13.11 (2) (b). Fire doors must operate with the minimum opening force allowable by the appropriate administrative authority. See §4.13.11 (1).

Two of the urinals are mounted slightly lowered than the other urinals. However, the elongated rims of these lower urinals are still higher than the maximum 17" AFF that §4.18.2 requires for the height of the elongated rim of an accessible urinal. One of the urinals is mounted with its elongated rim at 20" AFF and the other has its elongated rim at 20 1/2" AFF.

The centerline of the toilet in each of the two wider toilet stalls is 14 3/4" from the side wall, not the exactly 18" it is required to be by Fig. 30(a) and §4.16.

The same type of toilet paper dispenser that dispenses only one sheet of paper at a time is installed in the two wider toilet stalls in this room, also. Again, the far edge of each of the toilet paper dispensers is 42" from the rear wall contrary to §4.16.6 and Fig. 30(d) of the Standards which requires it to be no more than 36" from the rear wall.

The visual alarm signal appliance is mounted 86" above the highest floor level in the toilet room and 3" below the ceiling contrary to §4.28.3 which requires it to be placed 80" above the highest floor level within the space or 6" below the ceiling, whichever is lower.

The toilet seat cover dispenser is mounted above the toilet in the two wider toilet stalls in this room. The toilet therefore blocks the clear floor space required at dispensers by §4.27.2.

Both of the gang shower rooms are elevated 1 ½" above the level of the toilet room. The transition at both of the doorless openings into the gang shower rooms is not ramped contrary to §4.5.2 which requires changes in level greater than ½" to be accomplished by means of a ramp that complies with §4.7 or §4.8.

The two gang shower rooms each provide several shower spray units including one with a shower seat with grab bars and a handheld shower spray unit in the far corner of the gang shower room. However, the locations of these showers with the seats, grab bars and hand held spray units in the far corners of the gang shower rooms means that there is no accessible route to those showers. See §4.5.1 which requires that the floor surfaces along accessible routes be slip-resistant. When the other showers in the gang shower are in use the tile floor to the gang shower will become wet resulting in it not being slip-resistant.

7. Resident Toilet and Shower Room on Level Two, South

This toilet/shower room had not been renovated on July 18, 2007. The toilet stalls, showers, and lavatories provided in this room are completely inaccessible. No Standard Stall is provided as required by §§4.17.3 and 4.22.4. No accessible shower is provided as required by §§4.21 and 4.23.8. No accessible lavatory is provided as required by §§4.19 and 4.22.6. No urinal is lowered with its rim no higher than 17" AFF as required by §§4.18 and 4.22.5.

8. Resident Toilet and Shower Room on Level One, South

This toilet/shower room had not been renovated on July 18, 2007. The toilet stalls, showers, urinals and lavatories provided in this room are completely inaccessible. No Standard Stall is provided as required by §§4.17.3 and 4.22.4. No accessible shower is provided as required by §§4.21 and 4.23.8. No urinal is lowered with its rim no higher than 17" AFF as required by §§4.18 and 4.22.5. No accessible lavatories are provided as required by §§4.19 and 4.22.6.

9. "Small" Elevator Unsafe for Operation

Section 35.133 of the Title II Regulation provides that a public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Americans with Disabilities Act of 1990 ("the Act") or by §35.133. The Act requires that, to the maximum extent feasible, facilities must be accessible to, and usable by, individuals with disabilities. Section 35.133 recognizes that it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not maintained in a manner that enables individuals with disabilities to use them. Inoperable elevators are neither "accessible to" nor "usable by" individuals with disabilities.

During the site visit on July 18, 2007 there was an emergency notice dated April 12, 2007 posted from James Burton, Director of Maintenance. This notice says that the small elevator is out of order and that the bearings are completely destroyed in the motor which makes the elevator unsafe for operation.

10. Toilet and Shower Room in the Infirmary on the Basement Level

This toilet/shower room had not been renovated on July 18, 2007. The four toilet stalls, three showers, two urinals and lavatories provided in this room are completely inaccessible. No Standard Stall is provided as required by §§4.17.3 and 4.22.4. No accessible shower is provided as required by §§4.21 and 4.23.8. Neither urinal is lowered with its rim no higher than 17" AFF as required by §§4.18 and 4.22.5. No accessible lavatories are provided as required by §§4.19 and 4.22.6. In addition to there being no accessible fixtures in the Infirmary Toilet/Shower Room there is a level change up to the level of the Toilet/Shower Room from the rest of the Infirmary. This level change is sloped with a running slope of 11.8% contrary to §4.8.1 which requires which requires that any part of an accessible route with a slope greater than 1:20 (which equates to 5%) be a ramp and comply with §4.8.

11. Pay Phone in Infirmary

The coin slot for the only pay phone in the infirmary is 59" AFF contrary to §4.31.3 which requires the highest operable part of the telephone to be within the reach ranges specified in §§4.2.5 or 4.2.6. The highest of those reach ranges is 54" AFF which is specified as the maximum high side reach allowed.

12. Sleeping Area in the Infirmary on the Basement Level

None of the beds in the sleeping area of the Infirmary have maneuvering space

that is at least 36" clear wide along both sides of the bed contrary to §§9.5.2 (2) (b) and 9.2.2 (1).

13. Doors with Hardware that Requires Tight Grasping and Twisting of the Wrist

The following doors have knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9:

- * Classroom on Level Three, North;
- * CCNV Administration Office (Donald Page's Office);
- * Office #14 (Dr. Brown's office); *
- * The Case Management Offices in Module One; *
- * The Case Management Offices in Module Two; **
- * The door with the sign that says, "Notice Don't Block Door" on the route to the rear stairwell to Clean and Sober, etc.;
- * The Door to Deborah Tibbs' Office (she is the assistant to the Executive Director); and
- * Doors within the Infirmary.

14. Interior Doors that Require More than Five Pounds of Force to Operate

The doors marked with an asterisk in Section 13 above also require more than five pounds of force to operate contrary to §4.13.11 (2) (b).

15. Interior Doors that Close Too Quickly

The sweep period of the closer of the door marked with a double asterisk in Section 13 above also takes less than three seconds to move to a point three inches from the latch from an open position of 70 degrees. See §4.13.10.

16. Drinking Fountains Too High

All of the drinking fountains at the CCNV Shelter are built into the walls with their spouts being higher than the required maximum height of 36" AFF - see §4.15.2.

17. No Text Telephones

There are no text telephones at the CCNV Shelter. See §4.1.3(17) (c) (i) which requires that if a total number of four or more public pay phones is provided at a site and at least one is in an interior location, than at least one interior public text telephone shall be provided.

18. No Shelf and Electrical Outlet at Banks of Three or More Pay Phones

The two banks of three public pay phones at the CCNV Shelter do not have a shelf and electrical outlet complying with §4.31.9 (2). See §4.1.3(17) (d) which requires that where a bank of telephones in the interior of a building consists of three or more public pay phones at least one public pay phone in each such bank shall be equipped with a shelf and outlet in compliance with §4.31.9 (2).

19. Inaccessible Laundry Room Entrance Doors

The entrance doors to the laundry rooms are too narrow for people using mobility aids to pass through, require too much force to open and have high thresholds. For example, the door to the laundry room on Level Three, South provides only 28" of clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

The entrance door to the laundry room on Level Three, South also requires 24 pounds of force to operate. Unless it is a fire door, an interior door must operate with no more than 5 pounds of force. See §4.13.11 (2) (b). Fire doors must operate with the minimum opening force allowable by the appropriate administrative authority. See §4.13.11 (1).

The threshold at the entrance door to the laundry room on Level Three, South is 1 ½" high contrary to §4.13.8 and 4.5.2 which requires that thresholds at doors that are not exterior sliding doors be no higher than ½".

20. Inaccessible Food Service Line in Kitchen

During the site visit on July 18, 2007 we were told that one meal per day is delivered from the D.C. Central Kitchen and distributed at a food service line and tray slide in a kitchen on each of the three levels of the CCNV Shelter. For other meals residents may store and cook food themselves.

None of the food service lines in the three kitchens provide the required minimum clear width of 36" required by §5.5. For example, the food service line in the kitchen on Level Three, South provides 32" of clear width.

None of the tray slides in the three kitchens are mounted no higher than 34" AFF as required by §5.5 and Fig. 53. For example, the tray slide in the kitchen on Level Three, South is mounted at 36" AFF.

None of the sinks in the kitchens are mounted with their rim 34" AFF or lower contrary to §4.24.2. For example, the large sink in the kitchen on Level Three, South is mounted with its rim at 36" AFF.

None of the sinks in the kitchens have knee space under them contrary to §4.24.3. For example, the large sink in the kitchen on Level Three, South has a large garbage disposal mounted directly under it leaving only 6" deep of knee clearance under that sink. See §4.24.3 which requires that knee clearance that is at least 27" high x 30" wide x 19" deep be provided under accessible sinks. The small sink in the same kitchen has knee clearance under it but the sink is too low to comply with §4.24.3. The bottom edge of the small sink is 20 3/4" AFF which does not provide the minimum 27" AFF high knee clearance required by §4.24.3.

The entrance doors to the kitchens require too much force to operate. For example, the entrance door to the kitchen on Level Three, South requires 19 pounds of force to operate. Unless it is a fire door, an interior door must operate with no more than 5 pounds of force. See §4.13.11 (2) (b). Fire doors must operate with the minimum opening force allowable by the appropriate administrative authority. See §4.13.11 (1).

The thresholds at the entrance doors to the kitchens are too high. For example, the threshold at the entrance door to the kitchen on Level Three, South is 1" high and it is not beveled contrary to §4.13.8 and 4.5.2 which requires that thresholds at doors that are not exterior sliding doors be no higher than 1/2". Thresholds between 1/4 " and 1/2" must be beveled at 1:2 maximum.

21. Storage Lockers Provided in Sleeping Areas

Full height metal lockers are provided for the secure storage of residents' personal possessions. The traditional twist-type combination locks require tight grasping, pinching and twisting of the wrist contrary to §§4.25.4 and 4.27.4 which require that hardware for accessible storage facilities be operable with one hand and not require tight grasping, pinching or twisting of the wrist.

The shelves and hooks on the inside of the lockers are too high or low for a person seated in a wheelchair to reach. See Figs. 5 and 6 and §§4.2.5 and 4.2.6. See also §4.25.3 which requires that accessible storage spaces be within at least one of the reach ranges specified in §§4.2.5 and 4.2.6.

D. Open Door Shelter (12 Hour and 24 Hour Programs at Federal City Shelter Building)⁶

425 2nd Street, N.W.

Washington, D.C. 20001

Residents: Single Women

Surveyed: July 17, 2007⁷

1. ADA Shower/Toilet Room

There is no accessible route into this room. There is a slope of 11.8% at the entrance contrary to §4.8.1 which requires that any part of an accessible route with a slope greater than 1:20 (which equates to 5%) shall be considered to be a ramp and must comply with §4.8. Section 4.8.2 requires that the maximum running slope of a ramp in new construction be 1:12 (which equates to 8.3%).

The faucets on the in the "ADA" lavatory are a round shape that requires tight grasping, pinching, or twisting of the wrist contrary to §§4.23.6 and 4.19.5.

The height of the toilet in the widest toilet stall is 20" measured to the top of the "riser" toilet seat that has been added to the toilet. See §4.16.3 and Fig. 30 (d) - the top of the seat must be at least 17" but no higher than 19", measured to the top of the toilet seat.

The centerline of the toilet in the widest toilet stall is 15 ½" from the side wall, not the exactly 18" it is required to be by Fig. 30(a) and §4.16.

The control for the flush valve in the toilet in the widest toilet stall is not mounted on the wide side of the toilet area contrary to §4.16.5.

The toilet paper dispenser in the widest stall is mounted on the rear wall contrary to §4.16.6 and Fig. 30(d) which require it to be mounted on the side wall, no more than 36" from the rear wall.

There is no grab bar at the rear of the toilet in the widest stall contrary to §4.17.6 and Fig. 30(a) and (c).

⁶ While the 12 hour and a 24 hour Open Door programs are each "Shelters" as that term is defined in this Agreement, we surveyed the programs together.

⁷ While surveying the 801 East Shelter and the various Shelters located in the Federal City Shelter building, the Department observed ongoing – and non-compliant – renovations of some shower and toilet rooms. On August 10, 2007, in an effort to provide the District with technical assistance on these renovations, the Department gave the District a list of violations found in the shower and toilet rooms of those shelters.

The side grab bar in the widest toilet stall is mounted too high. It is mounted 39" above the finished floor ("AFF") contrary to §4.17.6 and Fig. 30(d) which require it to be mounted with its centerline between 33" and 36" AFF.

The coat hook in the widest stall is mounted at 72" AFF. See §§4.2.5/6 and Figs. 5/6 which require that elements be mounted within the reach range of a person seated in a wheelchair - no higher than 48" AFF if there is at least 30" wide x 48" long of clear floor space for a front approach to the element and no higher than 54" AFF if there is at least 48" long x 30" wide of clear floor space for a parallel approach to the element.

The shower spray unit and controls in the shower stall with grab bars are not located on the long wall of the shower as shown in Fig. 35 (b) and contrary to §4.21.5.

The shower with grab bars has a curb/threshold contrary to §4.21.7 which requires that roll-in showers not have curbs.

The shower spray unit in the shower stall with grab bars cannot be used as both a fixed shower head and as a hand-held shower. It is a fixed shower head only. See §4.21.6 which requires that the shower spray unit be able to be used as both a fixed shower head and as a hand-held unit.

The controls in the shower stall with grab bars are a round shape that requires tight grasping, pinching, or twisting of the wrist contrary to §§4.21.5 and 4.27.4.

2. Bank of Three Pay Phones Near Entrance

The bank of three public pay phones near the entrance do not have a shelf and electrical outlet complying with §4.31.9 (2). See §4.1.3(17) (d) which requires that where a bank of telephones in the interior of a building consists of three or more public pay phones at least one public pay phone in each such bank shall be equipped with a shelf and outlet in compliance with §4.31.9 (2) is not provided

The clear floor space required by §4.31.2 is not provided at this bank of pay phones - it is blocked by two guards' desks located immediately in front of the pay phones.

None of these pay phones provides volume control contrary to §4.31.5 (2).

Each of these pay phones is mounted with its leading edge higher than 27" AFF and each protrudes more than 4" from the wall upon which they are installed causing them to be protruding object hazards to people with vision impairments

contrary to §4.4.1 and Fig. 8 (a).

3. Inaccessible Laundry Room Entrance Door Hardware

The entrance door to the laundry room has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

4. Fire Alarms

None of the fire alarms were tested during the site visit. However, during the site visit Mr. Abdul Nurridin, Executive Director of the CCNV Shelter, stated that the fire alarm system in the building that houses both the CCNV Shelter and the John Young Center was not working.

**E. John Young Center (Severe Weather and Low Barrier Shelters at Federal City Shelter Building)⁸
115 D Street, N.W.
Washington, D.C. 20001
Residents: Single Women
Surveyed: July 18, 2007⁹**

1. Residents' Shower/Toilet Room

There is no accessible route into this room. There is a level change of 1½" at the entrance to the toilet/shower room and then again at the entrance to the toilet area and then again at the entrance to the shower area contrary to §§4.3.8 and 4.5.2 which require that changes in level along an accessible route greater than ½" be accomplished by means of a ramp that complies with §4.8.

The centerline of the toilet in the widest toilet stall is more than 18" from the side wall as it is required to be by Fig. 30(a) and §4.16.

The side grab bar in the widest toilet stall is only 24" long and mounted on an angle contrary to §4.17.6 and Fig. 30(d) which require it to be at least 40" long and mounted parallel to the floor.

⁸ While the Severe Weather and Low-Barrier programs at John Young Center are each "Shelters" as that term is defined in this agreement, we surveyed the programs together.

⁹ While surveying the 801 East Shelter and the various Shelters located in the Federal City Shelter building, the Department observed ongoing – and non-compliant – renovations of some shower and toilet rooms. On August 10, 2007, in an effort to provide the District with technical assistance on these renovations, the Department gave the District a list of violations found in the shower and toilet rooms of those shelters.

The lavatories are mounted with the clearance between the floor and the bottom of the apron only 25" AFF contrary to §4.19.2 and Fig. 31 which require that clearance to be at least 29" AFF.

The shower spray unit and controls in the shower stall with grab bars are not located on the long wall of the shower as shown in Fig. 35 (b) and contrary to §4.21.5.

The shower spray unit in the shower stall with grab bars cannot be used as both a fixed shower head and as a hand-held shower. It is a fixed shower head only. See §4.21.6 which requires that the shower spray unit be able to be used as both a fixed shower head and as a hand-held unit.

The controls in the shower stall with grab bars are a round shape that requires tight grasping, pinching, or twisting of the wrist contrary to §§4.21.5 and 4.27.4.

The grab bar configuration is not as shown in Fig. 37 contrary to §4.21.4. The grab bar mounted on the wall with the shower controls and shower head is mounted at an angle. The grab bars shown in Fig. 37 are all shown mounted in a horizontal position.

2. Staff Toilet Room

There is no accessible route into this room. There is a level change of 1½" at the entrance to this room contrary to §4.13.8 which requires that thresholds be no higher than ½".

The centerline of the toilet is more than 18" from the side wall as it is required to be by Fig. 30(a) and §4.16.

The clear floor space required by Fig. 28 is not provided at the toilet.

The lavatory is mounted in a vanity cabinet so does not provide the knee space required by §4.19.2 and Fig. 31.

3. Maneuvering Space at Beds

Not all of the beds have a 36" wide maneuvering space located along both sides of the bed. See §9.5.2 (2) (b) which requires maneuvering space around the beds for persons with mobility impairments to comply with §9.2.2 (1) which requires a 36" clear width maneuvering space to be located along both sides of a bed.

4. Information Posted on Bulletin Boards

The centerlines of the bulletin boards are mounted too high for a person using a wheelchair to read. The centerlines are much higher than 51" AFF. See Fig. A3 which dimensions the eye level of a person seated in a wheelchair at 43" to 51" AFF.

5. Fire Alarms

None of the fire alarms were tested during the site visit. However, during the site visit Mr. Abdul Nurridin, Executive Director of the CCNV Shelter, stated that the fire alarm system in the building that houses both the CCNV Shelter and the John Young Center was not working.

**F. Harriet Tubman Shelter
1900 Massachusetts Avenue, S.E.
Washington, D.C.
Residents: Single Women
Surveyed: January 10, 2007 and July 23, 2007**

The Department first surveyed the Harriet Tubman Shelter on January 10, 2007, following its receipt of a complaint from a resident of that Shelter. The resident alleged that she was repeatedly falling out of her wheelchair while trying to navigate a rotted wooden ramp and dilapidated flagstone path on the route to the shelter's entrance. The violations discovered during the Department's first survey are listed below in the section entitled "Violations Noted on January 10, 2007."

Subsequent to the Department's review, and with technical assistance from the Department, the District paved the entrance route to the shelter and created a new ramp leading from the entrance route to the parking lot.

The Department returned to the Harriet Tubman Shelter on July 23, 2007 to survey the ramp and entrance route. The parking lot with the new ramp was fenced off, and a new passenger drop area had been created. The route from the new passenger drop off area to the entrance did not comply with the Standards, as detailed below in the section entitled "Violations Noted on July 23, 2007."

Violations Noted on January 10, 2007

1. No Accessible Passenger Loading Zone

The parking lot area at the Tubman Shelter does not contain a marked passenger

loading zone although we were told by a Tubman Shelter representative that city vans and/or buses discharge passengers who are about to enter the Tubman Shelter in the parking lot.

Subsection C of §4.1.2 (5) requires that if passenger loading zones are provided, then at least one passenger loading zone shall comply with §4.6.6

2. No Accessible Parking Spaces in Parking Lot

The parking lot area at the Tubman Shelter does not contain any accessible parking spaces - see §4.1.2 (5) (a) which requires that if parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with §4.6 shall be provided in each such parking area in conformance with the chart set out in §4.1.2 (5) (a).

3. No Accessible Route from Passenger Loading Zone/Parking Lot to the Accessible Building Entrance

Section 4.3.2 (1) requires at least one accessible route within the boundary of the site to be provided from public transportation stops, accessible parking, and accessible passenger loading zones and public streets or sidewalks to the accessible building entrance. The accessible route must, to the maximum extent feasible, coincide with the route for the general public.

There is no accessible route from the de facto passenger loading zone to the building entrance. There is an unramped curb separating the parking lot (which we were told by the Tubman Shelter representatives is also used as a passenger drop-off area for residents who arrive on a van operated by the District) and the path leading to the entrance to the Tubman Shelter. (* See Addendum at end of this report.) There is a damaged and weathered wooden platform in one of the parking spaces. It appears to be the remaining top portion of a ramp from which the sloped portion has been removed. This platform is several inches higher than the level of the parking lot with no sloped portion connecting it to the level of the parking lot/passenger drop-off area so could not be used to connect the passenger drop-off area to the path en route to the Tubman Shelter entrance. See §§ 4.3.8 and 4.5.2.

The route from this curb to the Tubman Shelter entrance is not firm or stable and has several places with level changes greater than ½". See §§ 4.3.6, 4.3.8, 4.5.1 and 4.5.2. This route is paved with flagstones but appears to have not been maintained for a long period of time - there are several places where the flagstones are missing, including one deep hole that has been filled in with gravel. Other

areas where the flagstone pavers are missing or damaged create level changes greater than ½" that are not ramped . See §§ 4.3.8 and 4.5.2.

4. No Accessible Route from Washington, DC Metro Bus Stop to the Accessible Building Entrance

Residents also arrive at the Tubman Shelter via the DC Metro bus. See §4.3.2 (1) which requires an accessible route from public transportation stops within the boundary of the facility site. The route from the Metro bus stop/shelter is not accessible in that it has a sidewalk only part of the way to the entrance to the Tubman Shelter. See §4.5.1 which requires an accessible route to be firm and stable. There are also several unramped steps in the sidewalk. See §4.3.8 which requires level changes greater than ½" on an accessible route to be ramped, etc. This sidewalk ends about a quarter of the way to the Tubman Shelter entrance. The rest of the route is either on grass or on the road. There is no curb ramp down to the road. On the road, there are running slopes greater than 1:20 (5%) without being a ramp. See §4.8.1. It also has several large pot holes that create level changes greater than ½" - see §§ 4.3.8 and 4.5.2.

5. Designated Accessible Toilet and Shower Room

The entrance door to this toilet/shower room requires 12 pounds of force to operate. See §4.13.11 (2) (b) which requires that interior hinged doors operate with no more than five pounds of force. The door also sticks in the frame so it may require more than 12 pounds to move the door from the frame.

The threshold at this door is ½ " high and it is not beveled. See §4.13.8 and §4.5.2 which require thresholds that are between 1/4" and ½" high to be beveled at 1:2 maximum.

The shower seat does not extend the full depth of the shower - see §4.21.3. The leading edge of the shower is 2" from the edge of the shower stall.

The shower spray unit is a fixed shower head. See §4.21.6 which requires that a shower spray unit with a hose that is at least 60" long that can be used both as a fixed shower head and as a hand-held shower be provided.

6. Food Service Area

There is a cafeteria-style area in which, we were told by the Tubman Shelter representative, food is served to the shelter residents. We were told by the Tubman Shelter representative that plates of food are set at the top of the food warming hood cover for the residents to take from there. The top of this cover is

48 1/4" above the finished floor ("AFF") as well as being obstructed by the depth of the tray slide and a small ledge about the tray slide. See Illustration C of Fig. 6 which dimensions the maximum high side reach over an obstruction as 46".

7. Storage Areas

Lockers or footlockers are provided to the residents of the Tubman Shelter for secure storage of their personal effects. The lockers are full height metal lockers. The Tubman Shelter representatives told us that the shelter provides the twist-type traditional combination locks which were on the lockers. See §§4.25.4 and 4.27.4 which require that hardware for accessible storage facilities be operable with one hand and not require tight grasping, pinching, or twisting of the wrist.

The interior of one locker was observed to contain two shelves and one hook. All are outside the reach range of a person seated in a wheelchair - see Fig. 5 and 6 and §4.2.5 and 4.2.6. The lower shelf is 7" AFF and the high shelf is 65" AFF. The hook is 64" AFF. See §4.25.3 which requires that accessible storage spaces be within at least one of the reach ranges specified in §4.2.5 and 4.2.6.

The footlockers are supplied for resident use if all of the metal lockers are in use, we were told by the Tubman Shelter representative. The lock area is 6 1/2" from the bottom of the foot locker which are placed on the floor under the bunk beds. See Illustration B of Fig. 6 which dimensions the low side reach as 9".

8. Maneuvering Space at Beds

Bunk beds are provided for residents of the Tubman Shelter to sleep in. Representatives of the Tubman Shelter told us that persons who use wheelchairs for mobility are assigned a bottom bunk. We were shown the bed that had been assigned to a resident who uses a wheelchair. The route to this bed was not at least 36" wide. See §9.5.2 (2) (e) which requires at least one route connecting the elements in §9.5.2 (2) (a) - (d) (the entrance, bed, toilet/bathroom and at least one common area) to be at least 36" wide.

Not all of the bunk beds have a 36" wide maneuvering space located along both sides of the bed. See §9.5.2 (2) (b) which requires maneuvering space around the beds for persons with mobility impairments to comply with §9.2.2 (1) which requires a 36" clear width maneuvering space to be located along both sides of a bed.

Violations Noted on July 23, 2007

The parking lot area at the Tubman Shelter which was surveyed in January of

2007 has been fenced off and a new passenger drop off area created. The new route from the new passenger drop off area does not comply with the Standards. The new route consists of three distinct segments on the route from the parking lot area where, we were told, passengers are dropped off to then make their way to the entrance to the Tubman Shelter. The first segment is a striped walkway that is part of the parking lot. The second segment is a relatively flat area where one turns the corner of the building. The third segment is a sloped, paved walkway that runs parallel to the entrance to the Tubman Shelter.

There is no accessible route from the new passenger drop off area to the entrance to the Tubman Shelter. From the new passenger drop off area people heading toward the entrance to the Tubman Shelter would first encounter a striped walkway that is part of the parking lot. This striped walkway has cross slopes that are greater than 1:50 (2%) contrary to §4.3.7. Near the bottom of this striped walkway the cross slope was measured at 5.6%. Midway up this striped walkway the cross slope was measured at 3.0%. Near the top of this striped walkway the cross slope was measured at 3.5%.

On this striped walkway there are also running slopes greater than 1:20 (5%) without the walkway being a ramp compliant with §4.8. Near the bottom of the striped walkway the running slope was measured at 7.3%. See §§4.3.7 and 4.8.1.

The third segment of the route to the entrance to the Tubman Shelter also has running slopes greater than 1:20 (5%) without that walkway being a ramp compliant with §4.8. See §§4.3.7 and 4.8.1. The running slope of the third segment was measured in two places. The running slope near the top of the third segment measured 9.0%. A little further down the third segment the running slope was measured at 6.8%.

G. New York Avenue Shelter (Level One)
1355 - 1357 New York Avenue, N. E.
Washington, D.C.
Residents: Single Men
Surveyed: July 25, 2007

1. Parking Lot

There is a small parking lot at the rear of the building that contains about seven parking spaces (some of the spaces are not striped). The designated accessible parking space has no access aisle. See §4.1.2 (5) (b).

The designated accessible space is also not on the shortest accessible route to an

accessible entrance to the New York Avenue Shelter. It is at the far end of the parking lot on the longest route to the rear entrance to the New York Avenue Shelter. See §4.6.2.

2. Ramp from Parking Lot to the Rear Building Entrance

The running slope of the ramp segment closest to the parking area is 10% which exceeds the maximum 8.3% or 1:12 required by §§4.7.2 and 4.8.2.

Although the horizontal projection of this ramp is greater than 72" there is only one handrail contrary to §4.8.2 which requires that if a ramp run has a rise greater than 6" or a horizontal projection greater than 72" it must have handrails on both sides. The handrail provided does not extend along the entire length of the ramp. The handrail provided does not extend at least 12" beyond the bottom of the ramp. See 4.8.5 (2) and Fig. 17.

The intermediate landing, where the ramp changes direction, is not at least 60" x 60" as required by §4.8.4 (3).

There are weeds growing along the building side of the ramp which narrows the clear width of this ramp to less than 36" contrary to §§4.7.2 and 4.8.2. During the site survey there were also two bicycles chained to the ramp handrail which also narrowed the clear width of this ramp to less than 36".

3. Rear Entrance Facing Parking Lot

The operable leaf of the set of double doors at the rear of the building has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

4. Unisex Toilet Room on Level One near the New York Avenue Entrance

The visual alarm signal appliance is mounted 83½" above the highest floor level in the toilet room and 12" below the ceiling contrary to §4.28.3 which requires it to be placed 80" above the highest floor level within the space or 6" below the ceiling, whichever is lower.

The centerline of the toilet is 19 ¼" from the side wall not the exactly 18" it is required to be by Fig. 30(a) and §4.16.

The control for the toilet's flush valve is not mounted on the wide side of the toilet area contrary to §4.16.5.

5. Route from Lobby near the New York Avenue Entrance to Corridor Four

The route to Corridor Four is elevated 1½" above the level of the front entrance lobby. The transition is not ramped contrary to §4.5.2 which requires changes in level greater than ½" to be accomplished by means of a ramp that complies with §4.7 or §4.8.

6. Doors with Hardware that Requires Tight Grasping and Twisting of the Wrist

Many interior doors have knob hardware that require tight grasping and twisting of the wrist contrary to §4.13.9.

7. Stall Toilet Room on Level One near Dormitory Five

The entrance door to this toilet room requires 15 pounds of force to operate. Unless it is a fire door, an interior door must operate with no more than 5 pounds of force. See §4.13.11 (2) (b). Fire doors must operate with the minimum opening force allowable by the appropriate administrative authority. See §4.13.11 (1).

The threshold at the entrance door is 1½" high contrary to §4.13.8 and 4.5.2 which requires that thresholds at doors that are not exterior sliding doors be no higher than ½" and beveled at 1:2 maximum if between ¼" and ½".

The visual alarm signal appliance is mounted 91" above the highest floor level in the toilet room and 3" below the ceiling contrary to §4.28.3 which requires it to be placed 80" above the highest floor level within the space or 6" below the ceiling, whichever is lower.

The widest stall is located at the end of the row but its door opens out contrary to Fig. 30 (a-1) and §4.17.3.

The control for the flush valve in the toilet in the widest toilet stall is not mounted on the wide side of the toilet area contrary to §4.16.5.

The coat hook is 63" above the finished floor ("AFF"). See §§4.2.5/6 and Figs. 5/6 which require that elements be mounted within the reach range of a person seated in a wheelchair - no higher than 48" AFF if there is at least 30" wide x 48" long of clear floor space for a front approach to the element and no higher than 54" AFF if there is at least 48" long x 30" wide of clear floor space for a parallel approach to the element.

One of the urinals in this toilet room is mounted slightly lowered than the other urinal. However, the elongated rim of this lower urinal is, at 23¾" AFF, still

higher than the maximum 17" AFF that §4.18.2 requires for the height of the elongated rim of an accessible urinal.

The required minimum 30" wide x 48" long of clear floor space is not provided at the lower urinal. There is only 26½" wide of clear floor space between the urinal shield separating the two urinals and the opposite wall for someone to approach the lower urinal. The rim of the lower urinal is 5" in from the end of the urinal shield.

8. Bathroom A on Level One ("Handicap Shower Room")

A permanent room identification sign is mounted on the toilet room entrance door. See §4.30.6 which requires such signs to be installed on the wall adjacent to the latch side of the door. This sign does not have raised letters or Braille. See §§4.1.3 (16) (a) and 4.30.4 which require permanent room identification signs to have letters and numerals raised 1/32nd of an inch in upper case with sans serif or simple serif font and to be accompanied by Grade 2 Braille.

The entrance door to this toilet room provides only 29" of clear width. See §4.13.5 which requires that an accessible door have a minimum clear opening at least 32" wide with the door open 90 degrees, measured between the face of the door and the opposite stop. See Fig. 24 (a).

The threshold at the entrance door is 1" high contrary to §4.13.8 and 4.5.2 which requires that thresholds at doors that are not exterior sliding doors be no higher than ½" and beveled at 1:2 maximum if between ¼" and ½".

The width of the pull side maneuvering clearance is only 13½" contrary to Fig. 25 which requires that the width of the pull side maneuvering clearance on a front approach door such as this must be at least 18" and preferably 24".

None of the four urinals is mounted with its rim maximum 17" AFF. See §4.18.2 which requires that the height of the elongated rim of an accessible urinal be maximum 17" AFF.

There is no accessible route to the widest stall. The width between the leading edge of each of the urinal shields and the stall doors opposite them is only 34½". The minimum width of an accessible route is 36 inches - see §4.3.3.

The control for the toilet flush valve in the widest toilet stall is not mounted on the wide side of the toilet area contrary to §4.16.5.

The coat hook in the widest stall is 66 ½" AFF. See §§4.2.5/6 and Figs. 5/6 which

require that elements be mounted within the reach range of a person seated in a wheelchair - no higher than 48" AFF if there is at least 30" wide x 48" long of clear floor space for a front approach to the element and no higher than 54" AFF if there is at least 48" long x 30" wide of clear floor space for a parallel approach to the element.

The lavatory in the widest toilet stall has round faucets which require tight grasping and twisting of the wrist contrary to §4.19.5.

The hot water and drain pipes on the lavatory in the widest toilet stall are not insulated or otherwise configured to protect against contact contrary to §4.19.4.

The robe hook near the shower stall with a seat is mounted higher than 54" AFF. See §§4.2.5/6 and Figs. 5/6 which require that elements be mounted within the reach range of a person seated in a wheelchair - no higher than 48" AFF if there is at least 30" wide x 48" long of clear floor space for a front approach to the element and no higher than 54" AFF if there is at least 48" long x 30" wide of clear floor space for a parallel approach to the element.

In the shower with a seat the shower seat does not extend the full depth of the shower contrary to §4.21.3. In the shower with a seat the controls are not within reach of the seat. The shower spray unit in the shower stall with the seat cannot be used as both a fixed shower head and as a hand-held shower. See §4.21.6 which requires that the shower spray unit be able to be used as both a fixed shower head and as a hand-held unit. This shower spray unit is a fixed shower head only. One of the three grab bars is mounted behind the seat contrary to Fig. 35 (a) and Fig. 57. The seat is 13½" deep x 18" long and is not as shown in Fig. 36. One grab bar is not securely attached to the wall contrary to §§4.21.4 and 4.26.3 which specifies that the structural strength of grab bars must allow them to withstand at least 250 pounds of force from the various stresses enumerated in §4.26.3.

9. Bathroom B on Level One

A permanent room identification sign is mounted on the toilet room entrance door. See §4.30.6 which requires such signs to be installed on the wall adjacent to the latch side of the door. This sign does not have raised letters or Braille. See §§4.1.3 (16) (a) and 4.30.4 which require permanent room identification signs to have letters and numerals raised 1/32nd of an inch in upper case with sans serif or simple serif font and to be accompanied by Grade 2 Braille.

The threshold at the entrance door is 1" high contrary to §4.13.8 and 4.5.2 which requires that thresholds at doors that are not exterior sliding doors be no higher than ½" and beveled at 1:2 maximum if between ¼" and ½".

None of the urinals is mounted with its rim maximum 17" AFF. See §4.18.2 which requires that the height of the elongated rim of an accessible urinal be maximum 17" AFF.

The lavatories all have round faucets which require tight grasping and twisting of the wrist contrary to §4.19.5.

The toilet stalls and shower stalls provided in this room are inaccessible. No Standard Stall is provided as required by §§4.17.3 and 4.22.4. No accessible shower is provided as required by §§4.21 and 4.23.8.

10. "Resident Toilet" on Level One

A permanent room identification sign is mounted on the toilet room entrance door. See §4.30.6 which requires such signs to be installed on the wall adjacent to the latch side of the door. This sign does not have raised letters or Braille. See §§4.1.3 (16) (a) and 4.30.4 which require permanent room identification signs to have letters and numerals raised 1/32nd of an inch in upper case with sans serif or simple serif font and to be accompanied by Grade 2 Braille.

The threshold at the entrance door is 1" high contrary to §4.13.8 and 4.5.2 which requires that thresholds at doors that are not exterior sliding doors be no higher than ½" and beveled at 1:2 maximum if between ¼" and ½".

The width of the pull side maneuvering clearance at the entrance door is only 4" contrary to §4.13.6 and Fig. 25 which require that the width of the pull side maneuvering clearance on a front approach door such as this must be at least 18" and preferably 24".

Each of the two urinals is mounted at 22" AFF which is higher than the maximum 17" AFF that §4.18.2 requires for the height of the elongated rim of an accessible urinal.

The lavatories both have round faucets which require tight grasping and twisting of the wrist contrary to §4.19.5. The hot water and drain pipes under the lavatories are not insulated or otherwise configured to protect against contact contrary to §4.19.4.

11. Bathroom C on Level One

A permanent room identification sign is mounted on the toilet room entrance door. See §4.30.6 which requires such signs to be installed on the wall adjacent to the latch side of the door. This sign does not have raised letters or Braille. See

§§4.1.3 (16) (a) and 4.30.4 which require permanent room identification signs to have letters and numerals raised 1/32nd of an inch in upper case with sans serif or simple serif font and to be accompanied by Grade 2 Braille.

The width of the pull side maneuvering clearance at the entrance door is only 3" contrary to §4.13.6 and Fig. 25 which requires that the width of the pull side maneuvering clearance on a front approach door such as this must be at least 18" and preferably 24".

The shower spray unit in the shower stall with the seat cannot be used as both a fixed shower head and as a hand-held shower. See §4.21.6 which requires that the shower spray unit be able to be used as both a fixed shower head and as a hand-held unit. The hook that a user would hang the hand-held shower spray unit on to make it be "fixed" was broken the day of the site survey.

12. Storage Lockers

Half-height metal lockers are provided for the secure storage of residents' personal possessions. The traditional twist-type combination locks require tight grasping, pinching and twisting of the wrist contrary to §§4.25.4 and 4.27.4 which require that hardware for accessible storage facilities be operable with one hand and not require tight grasping, pinching or twisting of the wrist.

The bottom shelf on the inside of the lockers is too low for a person seated in a wheelchair to reach. See Figs. 5 and 6 and §§4.2.5 and 4.2.6. See also §4.25.3 which requires that accessible storage spaces be within at least one of the reach ranges specified in §§4.2.5 and 4.2.6.

13. Sleeping Areas

None of the beds in the sleeping areas of the New York Avenue Shelter have maneuvering space that is at least 36" clear wide along both sides of the bed contrary to §§9.5.2 (2) (b) and 9.2.2 (1).

14. Kitchen / Eating Area

During the site visit on July 25, 2007 we were told that one meal per day is delivered from the D.C. Central Kitchen and distributed in the kitchens/eating room at the New York Avenue Shelter. We were told that residents are handed an empty plate at the door to the kitchen area. Residents then hand the empty plate over both a tray slide and Delfield brand sneeze guard (a 50¾" AFF x 24" deep reach) for food to be put on their plate by the server who is on the other side of the Delfield brand sneeze guard. See Fig. 6 (c) and §4.2.6 which specify that the

maximum high side reach over an obstruction is 46" AFF.

The kitchen/eating room is elevated 1½" above the level of the corridor. The transition is not ramped contrary to §4.5.2 which requires changes in level greater than ½" to be accomplished by means of a ramp that complies with §4.7 or §4.8.

The television set mounted above the lockers in the eating area is 72" AFF and protrudes 8" from the leading edge of the line of lockers below it. See §4.4.1 and Fig. 8 (a) which prohibit anything deeper than 4" from protruding from walls between 27" AFF and 80" AFF.

15. Laundry Room

A permanent room identification sign is mounted on the laundry room entrance door. See §4.30.6 which requires such signs to be installed on the wall adjacent to the latch side of the door. This sign does not have raised letters or Braille. See §§4.1.3 (16) (a) and 4.30.4 which require permanent room identification signs to have letters and numerals raised 1/32nd of an inch in upper case with sans serif or simple serif font and to be accompanied by Grade 2 Braille.

**H. Community of Hope, Inc.
1413 Girard Street, N.W.
Washington, D.C. 20009
Residents: Families with Children
*Surveyed: July 16, 2007***

1. Ramp from Girard Street to Front Entrance to the Girard Street Shelter

The top landing is 53" long contrary to §4.8.4 (2) which requires landings to be at least 60" clear long.

The bottom landing changes direction but is not at least 60" x 60" contrary to §4.8.4 (3). The dimensions of the bottom landing are 36" wide x 42" long. The bottom landing, also, is not level contrary to §4.8.4. The bottom landing has a running slope of 4.4%.

The space between the street-side handrail and the decorative metal railing is 3" when §4.26.2 and Fig. 39 require that space to be exactly 1 ½".

The top part of the ramp is only 35" wide - a minimum width of 36" is required by §4.8.3 and Fig. 11.

2. Entrance Door from Girard Street

The threshold is ½" high and is not beveled contrary to §4.13.8 and Fig. 7 (c) and (d).

3. Platform Lift Connecting the Entrance Lobby to the Main Part of Level One

An older model Stair-Lift manufactured by Garaventa Limited is installed at the side of three stairs which connect the small entrance lobby, where the reception desk is located, to the main part of Level One of the Girard Street Shelter; The Stair-Lift does not facilitate unassisted entry, operation, and exit from the lift contrary to §4.11.3. There was no key in the lift during the site visit on July 16, 2007. We were told that the guard/receptionist has possession of the key to the lift and operates the lift for the person who needs to use it. However, that was not what occurred during the site visit on July 16, 2007. The guard/receptionist did not have the key to operate the lift. There was a delay while a third staff member went to get the key to operate the lift. Operation of the lift was demonstrated but only after this delay when this third person went to get the key to operate the lift. The lift is old and battered and staff present during the site visit told us that the lift frequently breaks down.

4. Accessible Route to Common Use Areas

The only laundry room at the Girard Street Shelter and the children's program area are both located on the Basement Level. The only route to the Basement Level is not accessible since it is down a flight of stairs. See §9.5.2 (2) (e). During the site visit on July 16, 2007 neither of the two designated accessible units had washers and/or dryers within the unit.

5. Accessible Route to Public Use Areas

The children's program area is located on the Basement Level. During the site visit on July 16, 2007 we were told that children who are not residents of the Girard Street Shelter are allowed to participate in the children's programs offered there. Therefore, the children's program area is a place of public accommodation. The only route to the Basement Level is not accessible since it is down a flight of stairs contrary to §4.3.8.

6. Door Leading to the Telephone Room and to the Case Management Suite

One enters the area containing the telephone room (from which residents make calls related to potential employment only) and the case management suite

through a door from the main corridor. Immediately upon passing through this door, one is in a narrow hallway which requires either a right turn into the telephone room or a left turn into the case management suite. This hallway is only 40" wide. The hallway means that when a person using a mobility device approaches the door to leave the telephone room they don't have enough space to maneuver their wheelchair to open the door. Coming from the telephone room they approach the door from the latch, pull side which requires a width of at least 48". See §4.13.6 and Fig. 25 (c). On the hinge, pull side (which is how this door is approached when one is approaching it from the case management suite) at least 54" wide is required. See §4.13.6 and Fig. 25 (b).

7. Toilet Room in Case Management Suite

The toilet and lavatory and the room in which they are located are completely inaccessible. No accessible toilet is provided as required by §§4.16 and 4.23.4. No accessible lavatory is provided as required by §§4.19 and 4.22.6. The mirror is mounted too high. See §§4.19.6, 4.22.7 and 4.27.3. There is no turning space as required by §§4.2.3 and 4.23.3. Nor is there the required clear floor space at the lavatory or at the toilet - see §§4.19.3 and 4.16.2.

The entrance door to this toilet room provides 30" clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

This door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

This door has no pull side maneuvering clearance contrary to §4.13.6.

The threshold is ½" high and is not beveled contrary to §§4.5.2, 4.13.8 and Fig. 7 (c) and (d).

The lavatory in this toilet room is in a vanity cabinet so that there is no front approach knee clearance contrary to §4.19.2 and Fig. 31.

The bottom of the reflecting surface of the mirror in the shared toilet room is mounted 49 ½" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

The top of the toilet seat is 15" above the finished floor ("AFF") which is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

The toilet is not located beside a wall contrary to Fig. 28 which requires an accessible toilet to be located with its centerline exactly 18" from the side wall. The toilet is located between the tub and the vanity cabinet containing the lavatory.

There are no grab bars at the side or rear of the toilet contrary to §4.16.4 and Fig. 29.

The clear floor space required at the toilet seat cover dispenser is blocked by the toilet contrary to §4.27.2.

8. Staff Toilet Room

The toilet and lavatory and the room in which they are located are completely inaccessible. No accessible toilet is provided as required by §§4.16 and 4.23.4. No accessible lavatory is provided as required by §§4.19 and 4.22.6. The mirror is mounted too high. See §§4.19.6, 4.22.7 and 4.27.3.

There is no turning space as required by §§4.2.3 and 4.23.3. Nor is there the required clear floor space at the lavatory or at the toilet - see §§4.19.3 and 4.16.2.

The entrance door to this toilet room has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

This door has no pull side maneuvering clearance contrary to §4.13.6. It is blocked by the vanity cabinet.

The lavatory in this toilet room is in a vanity cabinet so that there is no front approach knee clearance contrary to §4.19.2 and Fig. 31.

The bottom of the reflecting surface of the mirror in the shared toilet room is mounted 49 ½" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

The top of the toilet seat is 15" AFF which is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

The toilet centerline is located 17" from the side wall contrary to Fig. 28 which requires an accessible toilet to be located with its centerline exactly 18" from the side wall.

The flush control is mounted on the narrow side of the toilet area contrary to §4.16.5 which requires it to be mounted on the wide side of the toilet area.

There are no grab bars at the side or rear of the toilet contrary to §4.16.4 and Fig. 29.

The clear floor space required at the toilet seat cover dispenser is blocked by the toilet contrary to §4.27.2.

9. Case Managers' Offices

The entrance doors to these two rooms have knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

10. Case Managers' Offices

The entrance doors to these two rooms have knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

11. Computer Lab Door

The entrance door to the computer lab has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The threshold is ½" high and is not beveled contrary to §4.13.8 and Fig. 7 (c) and (d).

12. Laundry Room

The entrance door to the laundry room has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

There is no accessible route to the folding table in the laundry room. The route to the folding table narrows to 29" wide across from the dryers. See §4.3.3 which requires an accessible route to be at least 36" wide.

13. Children's Program Area - Girl's Toilet Room

The toilet and lavatory and the room in which they are located are completely inaccessible. No accessible toilet is provided as required by §§4.16 and 4.23.4. No accessible lavatory is provided as required by §§4.19 and 4.22.6. The mirror is mounted too high. See §§4.19.6, 4.22.7 and 4.27.3.

There is no turning space as required by §§4.2.3 and 4.23.3. Nor is there the required clear floor space at the lavatory or at the toilet - see §§4.19.3 and 4.16.2.

The entrance door to this toilet room provides 27½" clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

The entrance door to this toilet room has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The lavatory in this toilet room is in a vanity cabinet so that there is no front approach knee clearance contrary to §4.19.2 and Fig. 31.

The bottom of the reflecting surface of the mirror in the shared toilet room is mounted 49 ½" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

The toilet centerline is located 17" from the side wall contrary to Fig. 28 which requires an accessible toilet to be located with its centerline exactly 18" from the side wall.

The flush control is mounted on the narrow side of the toilet area contrary to §4.16.5 which requires it to be mounted on the wide side of the toilet area.

There are no grab bars at the side or rear of the toilet contrary to §4.16.4 and Fig. 29.

14. Children's Program Area - Boy's Toilet Room

The toilet, the door and the room in which they are located are completely inaccessible. See §§4.19.6, 4.22.7 and 4.27.3.

There is no turning space as required by §§4.2.3 and 4.23.3. Nor is there the required clear floor space at the toilet - see §4.16.2.

The entrance door to this toilet room provides 28" clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

The entrance door to this toilet room has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The bottom of the reflecting surface of the mirror in the shared toilet room is mounted 49 ½" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

The toilet centerline is located 14" from the side wall contrary to Fig. 28 which requires an accessible toilet to be located with its centerline exactly 18" from the side wall.

There are no grab bars at the side or rear of the toilet contrary to §4.16.4 and Fig. 29.

15. Children's Program Area - Break Out Rooms and Offices (Except for the Blue Break Out Room)

The entrance doors to these rooms provide 28" clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

The entrance doors to these rooms have knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

16. UNIT 104 [One of two units designated as accessible]

(a) DOORS

The unit entrance door, as well as all of the other doors in this unit, has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

One enters this unit through a door from the main corridor on the main part of Level One. Immediately upon passing through the unit entrance door, one is in a narrow hallway which requires either a right turn to the bedrooms and bathroom or a left turn into the living/dining/kitchen area. This hallway is only 30 ¾" wide. The clear space on the latch side of the door is only 13 ½" long. The location of this hallway means that when a person using a mobility device approaches the unit entrance door to leave the unit they don't have enough space to maneuver their wheelchair to open the door. Coming from the area containing the living/dining/kitchen area they approach the door from the latch, pull side which requires a width of at least 48". See §4.13.6 and Fig. 25 (c). On the hinge, pull side

(which is how this door is approached when one is approaching it from the area containing the bedrooms and bathroom) a clear space on the latch side that is at least 42" long x 54" wide is required. Or that clear space can be at least 36" long x 60" wide. See §4.13.6 and Fig. 25 (b). Here the clear space is only 13½" long x 30 ¾" wide.

The threshold at the unit's entrance door is 1" high and not beveled contrary to §§4.13.8 and 4.5.2 which require thresholds and other level changes to be no higher than ½" and to be beveled at 1:2 maximum if between ¼ inch and ½ inch. See Fig. 7 (c) and (d).

The bathroom door provides only 27 ½" clear width contrary to §4.13.5. That

section requires that doors to and in accessible spaces that are intended for user passage have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the stop.

(b) BATHROOM

Turning Space

The bathroom does not provide either the minimum five foot diameter turning radius or the T-shaped turning space required by §4.22.3, 4.2.3 and Fig. 3. The widest space in the bathroom is from the wall to the leading edge of the bath tub which is 37" wide.

Lavatory

The lavatory is in a vanity cabinet so does not provide the front approach clear floor space required by §4.19.3 and Fig. 31. The required minimum 30" wide x 48" long clear floor space in front of the lavatory is not provided. The bottom of the mirror's reflecting surface is 47" AFF contrary to §4.19.6 which requires it to be no higher than 40" AFF.

Toilet

The toilet is located in a 25" wide space between the tub and the lavatory. It does not have the clear floor space required by §4.16.2 or Fig. 28. Nor is the toilet seat 17" to 19" AFF as required by §4.16.3. The top of the toilet seat is 15" AFF. There are no grab bars at the rear and side wall of the toilet as required by §4.16.4.

Bath Tub

The tub is a standard, inaccessible tub with no seat, no grab bars and no handheld shower spray unit contrary to §4.20.

The controls for the bath tub are not offset close to the edge of the tub so that they are usable from outside of the tub as required by §4.20.5.4 and Fig. 34 which require that faucets and other controls be located as shown in Fig. 34. Fig. 34 shows the control area near the edge of the tub, rather than being centered in the middle of the foot of the tub as is typical of standard tubs.

Visual Alarms

There is no visual alarm in the bathroom contrary to §4.28.1 which requires visual signal appliances to be provided in buildings and facilities that have an audible alarm system in each of the following areas:

- * Restrooms and any other general usage areas;
- * Hallways;
- * Lobbies; and
- * Any other area of common use.

There are visual and audible alarms in both bedrooms and in the living/dining/kitchen area.

(c) KITCHEN

The kitchen countertop and the sink rim are both mounted at 36" AFF contrary to §9.2.2 (7) which requires them to be mounted at a maximum height of 34" AFF.

Please note that the kitchen sink is mounted with a cabinet below it. This complies with the requirements of §9.2.2 (7) which allows a front or a parallel approach to cabinets, counters, sinks and appliances. Section 4.34.6.5 of the Uniform Federal Accessibility Standards ("UFAS") would require a much more accessible kitchen, including at the sink and cabinets.

UFAS would require the rough-in plumbing to be located to accept connections of supply and drain pipes for sinks mounted at a height of 28" (§4.34.6.5 (2)).

UFAS would also require that the depth of the sink bowl would have to be no greater than 6 ½" (§4.34.6.5 (3)).

UFAS would also require that base cabinets, if provided, must be removable under the full 30" minimum frontage of the sink and surrounding counter. The finished flooring must extend under the counter to the wall (§4.34.6.5 (5)). Counter thickness and supporting structure must be 2" maximum over the required clear space (§4.34.6.5 (6)).

UFAS would also require that there be a clear floor space 30" x 48" to allow a forward approach to the sink. Nineteen inches maximum of the clear floor space may extend underneath the sink. The knee space must have a clear width of 30" and a clear depth of 19" (§4.34.6.5 (7)).

UFAS would require that there be no sharp or abrasive surfaces under sinks. Hot water and drain pipes must be insulated or otherwise covered (§4.34.6.5 (8)).

(d) HALL CLOSET

The closet rod/shelf is 65" AFF contrary to §§4.25.3 and 9.2.2 (4) which requires it to be no higher than 54" AFF for a side approach.

(e) THERMOSTAT

The thermostat requires tight grasping and twisting of the wrist contrary to §§4.27.4 and 9.2.2 (5).

The thermostat is mounted at 56" AFF contrary to §§4.27.3 and 9.2.2 (5) which require all controls in accessible units to be placed within at least one of the reach ranges specified in §4.2.5 and 4.2.6 (no higher than 48" AFF if clear floor space for a forward approach is provided or no higher than 54" AFF if clear floor space for a parallel approach is provided).

17. UNIT 105 [One of two units designated as accessible.]

(a) DOORS

The unit entrance door, as well as the door to the bedroom at the right end of the corridor, has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The threshold at the unit's entrance door is 1" high and not beveled contrary to §§4.13.8 and 4.5.2 which require thresholds and other level changes to be no higher than ½" and to be beveled at 1:2 maximum if between ¼ inch and ½ inch. See Fig. 7 (c) and (d).

One enters this unit through a door from the main corridor on the main part of Level One. Immediately upon passing through the unit entrance door, one is in a narrow hallway which requires either a right turn to the bedrooms and bathroom or a left turn into the living/dining/kitchen area. This hallway is only 40" wide. The clear space on the latch side of the door is only 13 ½" long. The location of this hallway means that when a person using a mobility device approaches the unit entrance door to leave the unit they don't have enough space to maneuver their wheelchair to open the door. Coming from the area containing the living/dining/kitchen area they approach the door from the latch, pull side which requires a width of at least 48". See §4.13.6 and Fig. 25 (c). On the hinge, pull side (which is how this door is approached when one is approaching it from the area containing the bedrooms and bathroom) a clear space on the latch side that is at least 42" long x 54" wide is required. Or that clear space can be at least 36" long x 60" wide. See §4.13.6 and Fig. 25 (b). Here the clear space is only 13½" long x 30 ¾" wide.

(b) BATHROOM

Turning Space

The bathroom does not provide either the minimum five foot diameter turning radius or the T-shaped turning space required by §4.22.3, 4.2.3 and Fig. 3.

Lavatory

The lavatory is in a vanity cabinet so does not provide the front approach clear floor space required by §4.19.3 and Fig. 31. The required minimum 30" wide x 48" long clear floor space in front of the lavatory is not provided. The bottom of the mirror's reflecting surface is 44" AFF contrary to §4.19.6 which requires it to be no higher than 40 inches above the finished floor.

Toilet

The toilet is located beside the door to the bathroom. There is no grab bar at the rear wall of the toilet as required by §4.16.4. The grab bar at the side of the toilet is only 24" long when a minimum length of 42" (extending 54" from the rear wall - see Fig. 29 (b)) is required by §4.16.4. However, a 42" long side grab bar could not be installed in the current configuration of this bathroom since the bathroom door is on the side wall. A 42" long grab bar would extend into the door opening.

This location of the toilet also means that the toilet blocks the pull side maneuvering clearance required at the bathroom door contrary to §4.13.6 and Fig.

25 (a).

The flush control is mounted on the narrow side of the toilet area contrary to §4.16.5 which requires it to be mounted on the wide side of the toilet area.

Bath Tub

The bottom grab bar on the long wall is mounted 6½" above the tub rim contrary to §4.20.4 which requires it to be exactly 9" above the rim.

The controls for the bath tub are not offset close to the edge of the tub so that they are usable from outside of the tub as required by §4.20.5.4 and Fig. 34 which require that faucets and other controls be located as shown in Fig. 34. Fig. 34 shows the control area near the edge of the tub, rather than being centered in the middle of the foot of the tub as is typical of standard tubs.

Visual Alarms

There is no visual alarm in the bathroom or in any other of the rooms in Unit 105 contrary to §4.28.1 which requires visual signal appliances to be provided in buildings and facilities that have an audible alarm system in each of the following areas:

- * Restrooms and any other general usage areas;
- * Hallways;
- * Lobbies; and
- * Any other area of common use.

There are visual and audible alarms in both bedrooms and in the living/dining/kitchen area of Unit 104.

Robe Hook

The robe hook is mounted at 67" AFF contrary to §§4.2.5 and 4.2.6 which require the highest reach range to be 54" AFF and then, only when clear floor space for a side approach is provided.

Electrical Outlet

The electrical outlet is installed at 49½" AFF contrary to §§9.2.2 (5) and 4.27.3 which require that receptacles and other operable equipment be placed within at least one of the reach ranges specified in §§4.2.5 and 4.2.6. This electrical outlet is

installed in the space between the toilet and the lavatory where there is not even clear floor space for a front approach.

(c) KITCHEN

The kitchen sink is mounted with knee space below it. However, this knee space does not comply with the requirements of §9.2.2 (7) which allows a front or a parallel approach to cabinets, counters, sinks and appliances. Section 4.24.3 describes the dimensions of clear knee space under sinks as being at least 27" AFF x 30" wide x 19" deep. The knee space under this sink is only 28" wide. It is also in the corner of the kitchen which prevents a parallel approach being made to the sink.

Neither a parallel approach nor a front approach can be made to either the range or the microwave oven contrary to §9.2.2 (7) which requires a front or a parallel approach to cabinets, counters, sinks and appliances.

At least 50% of the cabinet space is not within reach range contrary to §9.2.2 (7) which requires at least 50% of shelf space in cabinets to be within the reach ranges of §4.2.5 or 4.2.6.

II. Violations in Other Shelters Surveyed by the Department

A. Emery Working Man's Shelter
1725 Lincoln Road, N.E.
Washington, D.C. 20002
Residents: Single Men
Surveyed: July 16, 2007

1. Parking Lot

The parking lot at the south side of the Emery Shelter does not contain any accessible parking spaces. See §4.1.2 (5) which requires that if parking spaces are provided for employees or visitors, or both, then accessible spaces complying with §4.6 shall be provided in each such parking area in conformance with the chart set out in §4.1.2 (5) (a). The parking spaces in this lot are not striped. However, it would appear to contain approximately 18 parking spaces.

2. No Accessible Route from Parking Lot to an Accessible Building Entrance

Section 4.3.2 (1) requires at least one accessible route within the boundary of the

site to be provided from public transportation stops, accessible parking, and accessible passenger loading zones and public streets or sidewalks to an accessible building entrance. The accessible route must, to the maximum extent feasible, coincide with the route for the general public. There is no accessible route from the parking lot to an accessible entrance. Nor is there an accessible entrance (both the front entrance facing Lincoln Road, N.E. and the side entrance facing the parking lot have unramped steps up to the entrance door - two sets of ten steps up to a porch and then one more step up at the set of double doors at the Lincoln Road, N.E. entrance and eleven steps at the side entrance door near the parking lot). The route from the parking lot to the side entrance has a curb between the lot and the shortest route to the side door. There is a sloped asphalt path that requires a longer route of travel. However, this sloped path has a running slope of 13.6% and a cross slope of 6.1% and an unramped level change of approximately 3" where the asphalt meets the concrete walkway leading to the side door steps.

Additionally, there are room air conditioners protruding out of windows near both sets of stairs at the entrance facing Lincoln Road, N.E. contrary to §4.4.1 and Fig. 8 (a). Each air conditioner cover protrudes 10 ½" between 27" and 80" above the ground.

3. No Accessible Entrance

At least 50% of the public entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see §§4.3.2(1) and 4.14). Both the front entrance facing Lincoln Road, N.E. and the side entrance facing the parking lot have unramped exterior steps up to the entrance door - two sets of ten steps at the Lincoln Road, N.E. entrance and eleven steps at the side entrance door. When one enters the front entrance facing Lincoln Road, N.E. there is also one unramped step up to the entrance doorway and then another flight of eleven stairs to get from the entrance lobby/foyer to the upper main level and a flight of stairs down to the ground level.

At the front entrance facing Lincoln Road, N.E., there is a door bell mounted 75" above the floor of the entry porch. This door bell is too high for a control or operating mechanism to be mounted - see §4.27.3, Figs. 5 and 6 and §§4.2.5 and 4.2.6. The maximum high side reach is 54" AFF.

4. No Accessible Route to Sleeping Areas or to all Common Use Amenities

The design of the building in which the Emery Shelter is housed is inaccessible. When one enters the front entrance facing Lincoln Road, N.E. (which is up a flight

of ten stairs) there is also one unramped step up to the entrance doorway and then another flight of eleven stairs to get from the entrance lobby/foyer to the upper main level and a flight of stairs down to the ground level.

The common use amenities, such as the dining room and the laundry room, are on the ground floor level, which is down a flight of stairs from the entrance level on the upper main level. There is no accessible route connecting the ground floor level, the upper main level and the level above the upper main level. See §4.3.8 and 4.5.2 of the Standards - an accessible route does not include steps or stairs.

5. Multi-User Toilet Room on Upper Main Level

This toilet room contains two toilet stalls, two urinals and three lavatories mounted in a counter top.

The toilet stalls, urinals and lavatories provided in this room are completely inaccessible. No Standard Stall is provided as required by §§4.17.3 and 4.22.4. No urinal is lowered with an elongated rim no higher than 17" AFF as required by §§4.18 and 4.22.5. No accessible lavatories are provided as required by §§4.19 and 4.22.6. The mirrors and soap dispensers are mounted too high for a person using a wheelchair for mobility to be able to use. See §§4.19.6, 4.22.7 and 4.27.3. Additionally, the threshold at the entrance door is 2" high and unramped contrary to §4.13.8 and 4.5.2 which require that thresholds at doors that are not exterior sliding doors be no higher than ½".

6. Staff Toilet Room off of the Substance Abuse Office on Upper Main Level

This single - user toilet room is entered through a narrow door with a knob. The door provides only 29½" of clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

The door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The top of the toilet seat of the only toilet in this room is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

There are no grab bars at the side or rear of the only toilet in this toilet room contrary to §4.16.4 and Fig. 29.

The faucets on the only lavatory in this room require tight grasping and twisting of the wrist contrary to §4.19.5.

7. Toilet Room off of the Computer Lab/ Office on Upper Main Level

This single - user toilet room is entered through a door with a knob. Knob hardware requires tight grasping and twisting of the wrist contrary to §4.13.9.

The top of the toilet seat of the only toilet in this room is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

There are no grab bars at the side or rear of the only toilet in this toilet room contrary to §4.16.4 and Fig. 29.

The faucets on the only lavatory in this room require tight grasping and twisting of the wrist contrary to §4.19.5.

The hot water supply and drain pipes are not insulated or configured to protect against contact with the user's legs contrary to §4.19.4.

The mirror is mounted too high for a person using a wheelchair for mobility to be able to use. The bottom of the reflecting surface is mounted 44" AFF contrary to §4.19.6.

Additionally, there is a coat rack at the entrance to this toilet room protruding out more than 4" between 27" and 80" AFF contrary to §4.4.1 and Fig. 8 (a).

8. Toilet Room off of the Group Room on Upper Main Level

The unobstructed turning space required by §§4.22.3 and 4.2.3 is not provided in this room. The total overall dimensions of this room are 58" x 58". Section 4.2.3 requires a clear space of 60" diameter or a T-shaped space as illustrated in Fig. 3 (a) and 3 (b).

The top of the toilet seat of the only toilet in this room is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

The centerline of the only toilet in this toilet room is 27" from the side wall contrary to Fig. 28 which requires an accessible toilet to be located such that its centerline is exactly 18" from the side wall.

The only lavatory in this room does not provide the knee space under it required

for a front approach by a person using a wheelchair for mobility contrary to §§4.19.2 and 4.19.3. The lavatory is on legs that are 13½" apart contrary to §4.19.3 which requires that a clear floor space 30" x 48" be provided in front of a lavatory to allow front approach. There is only 25 ¾" of clear knee space under this lavatory. See §4.19.2 which requires a clearance of at least 29" AFF from the bottom of the apron. These clearances are illustrated in Figs. 31 and 32.

9. Designated Accessible Toilet/Shower Room off of Sleeping Area on Upper Main Level

There is no accessible route into the toilet room from the sleeping area. The threshold at the entrance to the toilet/shower room is higher than ½" and unramped contrary to §4.13.8 and 4.5.2 which require that thresholds at doors that are not exterior sliding doors be no higher than ½".

The shower stall in this room has a seat but the seat does not extend the full depth of the shower stall contrary to §4.21.3 and Fig. 35 (a).

The grab bar in the shower stall is only on the front wall under the fixed shower head. See Figs. 35 (a) and 37 (a) which illustrate an 18" long grab bar on the side wall as well as the grab bar the full length of the wall opposite the seat in a transfer shower.

The shower spray unit in the shower stall with the shower seat is only a fixed shower head. See §4.21.6 which requires that the shower spray unit be able to be used as both a fixed shower head and as a hand-held unit.

There is no grab bar at the rear of the toilet as required by §4.16.4 and Fig. 29 (a).

The access panel on the side wall near the toilet reduces the required 1½" clear space between the side grab bar and the wall. See §4.16.4, 4.26.2 and Fig. 39.

10. Multi-User Toilet Room on Ground Level

The seven toilet stalls, urinals and lavatories provided in this room are completely inaccessible. No Standard Stall is provided as required by §§4.17.3 and 4.22.4. No ambulatory stall is provided contrary to §4.22.4. No urinal is lowered with an elongated rim no higher than 17" AFF as required by §§4.18 and 4.22.5. No accessible lavatories are provided as required by §§4.19 and 4.22.6.

11. Shower Room on Ground Level

This room has a total of 12 shower stalls none of which are accessible. None of the shower stalls comply with §4.21, including the requirement for an accessible shower stall to be one of the two sizes illustrated in Fig. 35, to have a seat as illustrated in Fig. 36 and grab bars as illustrated by Fig. 37 and to not have a curb higher than ½" (only allowed in the case of a 36" x 36" shower - a roll-in shower may not have a curb of any height). Each of these shower stalls has a curb that is 14" high.

12. Small Toilet Room off of the Kitchen/Eating Area on Ground Level

This single - user toilet room has a narrow stall and one wall-hung lavatory. No Standard Stall is provided as required by §§4.17.3 and 4.22.4.

13. Multi-User Toilet/Shower Room on Level above the Upper Main Level

This toilet room with toilet stalls, urinals, shower stalls and lavatories is entered through a door that has knob hardware and a 3" high unramped threshold.

The toilet stalls, urinals, shower stalls and lavatories provided in this room are completely inaccessible. No Standard Stall is provided as required by §§4.17.3 and 4.22.4. No urinal is lowered with an elongated rim no higher than 17" AFF as required by §§4.18 and 4.22.5. No accessible lavatories are provided as required by §§4.19 and 4.22.6. Additionally, the threshold at the entrance door is 3" high and unramped contrary to §4.13.8 and 4.5.2 which require that thresholds at doors that are not exterior sliding doors be no higher than ½". The door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

None of the shower stalls comply with §4.21, including the requirement for an accessible shower stall to be one of the two sizes illustrated in Fig. 35, to have a seat as illustrated in Fig. 36 and grab bars as illustrated by Fig. 37 and to not have a curb higher than ½" (only allowed in the case of a 36" x 36" shower - a roll-in shower may not have a curb of any height). Each of these shower stalls has a curb that is 6" high.

There is also no accessible route to the rest of the room past the toilet stalls. The path of travel is less than 36" wide contrary to §§4.22.3 and 4.3.3 which require the accessible fixtures to be on an accessible route which is at least 36" wide.

14. Sleeping Areas

None of the beds in the sleeping areas have maneuvering space that is at least 36" clear wide along all sides of the bed contrary to §§9.5.2 (2) (b) and 9.2.2 (1).

15. Doors with Hardware that Requires Tight Grasping and Twisting of the Wrist

The outer door to the Administrative Offices has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

16. Laundry Room

There is no accessible route to the only laundry room provided for residents to use to wash their clothes. Not only is this laundry room on the ground level (which is down 13 steps from the entrance) there are an additional three steps down into the laundry room from the ground level corridor in which it is located.

17. Dining Room

There is no accessible route to the only dining room provided for residents to eat the two meals per day that we were told are provided to them. This dining room is on the ground level (which is down 13 steps from the entrance).

18. Clinic

There is no accessible route to the clinic where a physician comes to treat residents once a week. This clinic is on the ground level (which is down 13 steps from the entrance).

19. Door en route to the Laundry Room and Ground Level Toilet Room

There is no accessible route to the laundry room and toilet room on the ground level. The area containing the toilet room and laundry room is entered through a narrow door. The door provides only 31" of clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

20. Metal Lockers Provided in Corridors on Level above the Upper Main Level

Metal lockers are provided for the secure storage of residents' personal possessions. The traditional twist-type combination locks require tight grasping, pinching and twisting of the wrist contrary to §§4.25.4 and 4.27.4 which require that hardware for accessible storage facilities be operable with one hand and not require tight grasping, pinching or twisting of the wrist.

The shelves and hooks on the inside of the lockers are too high or low for a person

seated in a wheelchair to reach. See Figs. 5 and 6 and §§4.2.5 and 4.2.6. See also §4.25.3 which requires that accessible storage spaces be within at least one of the reach ranges specified in §§4.2.5 and 4.2.6.

21. Reception Counter on Upper Main Level

The entire length of this counter is 46" AFF contrary to §7.2 which requires that service counters either have a section that is at least 36" long that is no higher than 36" AFF or that it have an auxiliary counter no higher than 36" AFF in close proximity to the main counter or that it provide equivalent facilitation such as a folding shelf attached to the main counter and space at the side of the counter for handing materials back and forth.

22. Hazards to Persons who are Blind or have Low Vision

There are numerous protruding object hazards (§4.4.1 and Fig. 8) and overhead hazards (§4.4.2) throughout the Emery Shelter, including:

- * Fire annunciator panel;
- * Pay phones;
- * Electrical panel;
- * Fire Extinguisher cabinet;
- * Service counter in Dining Room; and
- * Air duct on ground level that reduces headroom below the minimum 80" AFF required by §4.4.2.

B. Park Road Shelter
1448 Park Road, N.W.
Washington, D.C.
Residents: Families with Children
Surveyed: May 9, 2007

1. Common Use Areas

The Park Road Shelter provides the following common use elements which were also surveyed for compliance with the Standards:

- * Front Entrance Doors from Park Road;
- * An Office;
- * A Community Room;
- * An Elevator;

- * Stairs;
- * An Emergency Exit.

There is no accessible route into the Park Road Shelter. At the street there are two unramped level changes - a three inch high step and then, closer to the building entrance, an 8½ inch high step.

When you enter the double doors at the only public entrance into the Park Road Shelter, there are an additional seven unramped steps up from the vicinity of the doors to the lobby area.

The elevator, which is very small and old, is located at the lobby level (i.e. you would have to walk up the seven unramped stairs to get to the elevator; it does not come down as far as the entrance door level).

The design of the exterior of the entrance area with its proximity to the street and also with exterior stairs (going down into what appeared to be an exterior entrance to the "community room" in the basement) beside the front entrance steps makes it difficult, if not impossible, to provide an accessible route at the entrance. Nor is there any space inside the entrance area to either build a ramp or install a wheelchair lift to provide an accessible route for the seven unramped steps up into the lobby area that confront you when you enter the front doors.

When you come up those seven steps you are on the level where a small old elevator (which we were told by D.C. representative Michele Salters is not used - it was filled with janitorial equipment during the survey), an office area and the one hundred series dwelling units are located. The doors to these offices do not provide 32 inches clear width contrary to §4.13.5.

The dwelling units located on the floors above the first floor are not on an accessible route since the only route to them in lieu of the elevator is by way of a flight of stairs. The community room is not on an accessible route either since it is down two flights of very narrow stairs consisting of 13 steps.

The emergency exit at this basement level is also not accessible since it empties out into an area where one must climb up seven steps to exit.

2. UNIT 103 [A unit being used by a person with a disability]
 - (a) DOORS

All doors that the user must pass through to use the space on the other side of the

door do not provide at least 32" clear width contrary to §4.13.5. That section requires that doors to and in accessible spaces that are intended for user passage have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the stop. The door to the bathroom is very narrow, providing only 22 inches clear width.

(b) BATHROOM

Turning Space

The bathroom does not provide either the minimum five foot wide turning radius or the T-shaped turning space required by §4.22.3, 4.2.3 and Fig. 3. The widest space in the bathroom is from the wall to the leading edge of the bath tub which is 39 inches wide.

Lavatory

The lavatory is in a vanity cabinet so does not provide the front approach clear floor space required by §4.19.3 and Fig. 31. The required minimum 30" wide x 48" long clear floor space in front of the lavatory is not provided. The toilet is on the opposite wall directly behind the lavatory with less than 30 inches between the lavatory and the toilet. The faucets require tight grasping and twisting contrary to §4.19.5.

Toilet

The toilet is located in a 27 inch wide alcove at the far end of the tub and directly across from the lavatory. It does not have the clear floor space required by §4.16.2 or Fig. 28. Nor is the toilet seat 17 to 19 inches high as required by §4.16.3. There are no grab bars at the rear and side wall of the toilet as required by §4.16.4.

Bath Tub

The tub is a standard, inaccessible tub with no seat, no grab bars and a sliding door enclosure with tracks mounted on the tub rim such as those prohibited by §4.20.7.

The controls for the bath tub are not offset close to the edge of the tub so that they are usable from outside of the tub as required by §4.20.5.4 and Fig. 34 which require that faucets and other controls be located as shown in Fig. 34. Fig. 34 shows the control area near the edge of the tub, rather than being centered in the middle of the foot of the tub as is typical of standard tubs.

One cannot verify by visual inspection whether walls at the tub and toilet are reinforced for later installation of grab bars. I did not open up the walls or otherwise probe for evidence of the necessary reinforcement of the drywall to provide the structural strength to support grab bars.

(c) KITCHEN

The range and the microwave oven are both located in the corner of the two runs of kitchen cabinets which form an L-shape. This corner location means that neither appliance has clear floor space for either a front or parallel approach as required by §9.2.2 (7).

The range fan switch is located above the maximum 54 inch high side reach contrary to §9.2.2 (7) which requires that controls in kitchens comply with §4.27. §4.27.3 requires that the highest operable part of all controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in §§4.2.5 and 4.2.6. The maximum side reach is 54" AFF. Each approach must provide at least 30" x 48" of clear floor space at the control. See Figs. 5 and 6 and §4.27.2.

The faucets on the kitchen sink require tight grasping and twisting of the wrist contrary to §9.2.2 (7) which requires that controls in kitchens comply with §4.27. Section 4.27.4 requires that controls and operating mechanisms operate with one hand without tight grasping, pinching, or twisting of the wrist with no more than five pounds of force.

**C. 801 East Shelter [TRP and Project Rise]¹⁰
801 Making Life Better Lane, S. E.
Washington, D.C. 20032
Residents: Single Men
Surveyed: July 23, 2007**

1. Parking Lot

The parking lot contains six van accessible parking spaces. However, only three of these spaces have post-mounted signs and none of the existing post-mounted signs contain the additional sign saying that the space is "Van Accessible". See §4.6.4.

¹⁰ It appears that the District intended to identify as accessible the 12 Hour Bed Program at 801 East, but not the TRP/Project Rise Shelter in that building. Thus the violations in TRP/Project Rise are listed in Part II rather than in Part I.

2. Curb Ramp from Parking Lot to the Accessible Building Entrance

The running slope of this curb ramp is 10.1% which exceeds the maximum 8.3% or 1:12 required by §§4.7.2 and 4.8.2.

3. Resident Toilet Room on Level Two

There are two areas containing toilet stalls in this room. Both areas have wider stalls. However, one of the wider stalls is only 51" wide and so does not meet the 60" wide minimum width for a Standard Stall - see Fig. 30 (a). In the area where there are just two toilet stalls the wider of those two stalls is 60" wide. This 60" wide stall was surveyed as the one Standard Stall required in this toilet room. However, the door to this stall is located directly in front of the toilet. See Fig. 30(a) which shows the door to the Standard Stall in front of the clear floor space beside the toilet. Also, the grab bars in this Standard Stall are loose. See §4.26.3 which requires that grab bars, fasteners and mounting devices have the structural strength to withstand the application of 250 pounds of force from bending stress, sheer stress, sheer force and tensile force. The grab bars in the 60" wide stall did not appear to be able to withstand the application of much less than 250 pounds of force during the site visit. This is a serious safety concern since the side grab bar, especially, could pull out of the wall if someone leaned heavily on it to pull up from the toilet.

The mirror serving the accessible lavatory nearest to the Standard Stall is mounted with the bottom of its reflecting surface at 47½" AFF. See §4.19.6 which requires it to be no higher than 40" AFF.

The entrance door nearest to the 60" wide stall requires 19 pounds of force to operate. Unless it is a fire door, an interior door must operate with no more than 5 pounds of force. See §4.13.11 (2) (b). Fire doors must operate with the minimum opening force allowable by the appropriate administrative authority. See §4.13.11 (1).

A permanent room identification sign, without raised letters or Braille, is mounted on the toilet room entrance door nearest to the 60" wide stall. See §4.30.6 which requires permanent room identification signs to be installed on the wall adjacent to the latch side of the door with its centerline exactly 60" AFF. See, also, §4.1.3.16 (a), §4.30.4 and §4.30.5 which require permanent room identification signs to have letters and numbers raised 1/32" in sans serif or simple serif type and be accompanied by Grade 2 Braille.

The visual alarm signal appliance is mounted 73½" above the highest floor level in

the toilet room and 20" below the ceiling contrary to §4.28.3 which requires it to be placed 80" above the highest floor level within the space or 6" below the ceiling, whichever is lower.

4. "Small Shower Room" on Level Two

A permanent room identification sign, without raised letters or Braille, is mounted on the toilet room entrance door. See §4.30.6 which requires permanent room identification signs to be installed on the wall adjacent to the latch side of the door with its centerline exactly 60" AFF. See, also, §4.1.3.16 (a), §4.30.4 and §4.30.5 which require permanent room identification signs to have letters and numbers raised 1/32" in sans serif or simple serif type and be accompanied by Grade 2 Braille.

The threshold at the entrance door to this room is 1 ¼" high and it is not beveled contrary to §4.13.8 and §4.5.2 which requires that thresholds at doors that are not exterior sliding doors be no higher than ½" and beveled at 1:2 maximum if higher than ¼".

The visual alarm signal appliance is mounted 74" above the highest floor level in the toilet room and 18" below the ceiling contrary to §4.28.3 which requires it to be placed 80" above the highest floor level within the space or 6" below the ceiling, whichever is lower.

The height of the toilet in the widest toilet stall is 20" measured to the top of the toilet seat. See §4.16.3 and Fig. 30 (d) - the top of the seat must be at least 17" but no higher than 19", measured to the top of the toilet seat.

The centerline of the toilet in the widest toilet stall is 19" from the side wall not the exactly 18" it is required to be by Fig. 30(a) and §4.16.

The coat hook in the widest toilet stall is 63" AFF. See §§4.2.5/6 and Figs. 5/6 which require that elements be mounted within the reach range of a person seated in a wheelchair - no higher than 48" AFF if there is at least 30" wide x 48" long of clear floor space for a front approach to the element and no higher than 54" AFF if there is at least 48" long x 30" wide of clear floor space for a parallel approach to the element.

The mirror serving the accessible lavatory is mounted with the bottom of its reflecting surface at 41" AFF. See §4.19.6 which requires it to be no higher than 40" AFF.

There are two unramped level changes in this room. Near the accessible shower stall there is a level change of 1". This is contrary to §4.5.2 which requires that changes in level greater than ½" be accomplished by a ramp that complies with §4.7 or §4.8. The other unramped level change is between the toilet stalls and the shower stalls. It is 1½" high.

5. Female Staff Toilet Room on Level Two

A permanent room identification sign, without raised letters or Braille, is mounted on the toilet room entrance door. See §4.30.6 which requires permanent room identification signs to be installed on the wall adjacent to the latch side of the door with its centerline exactly 60" AFF. See, also, §4.1.3.16 (a), §4.30.4 and §4.30.5 which require permanent room identification signs to have letters and numbers raised 1/32" in sans serif or simple serif type and be accompanied by Grade 2 Braille.

The mirror is mounted with the bottom of its reflecting surface at 41 ¼" AFF. See §4.19.6 which requires it to be no higher than 40" AFF.

The visual alarm signal appliance is mounted 74" above the highest floor level in the toilet room and 16" below the ceiling contrary to §4.28.3 which requires it to be placed 80" above the highest floor level within the space or 6" below the ceiling, whichever is lower.

6. Male Staff Toilet Room on Level Two

A permanent room identification sign, without raised letters or Braille, is mounted on the toilet room entrance door. See §4.30.6 which requires permanent room identification signs to be installed on the wall adjacent to the latch side of the door with its centerline exactly 60" AFF. See, also, §4.1.3.16 (a), §4.30.4 and §4.30.5 which require permanent room identification signs to have letters and numbers raised 1/32" in sans serif or simple serif type and be accompanied by Grade 2 Braille.

The mirror is mounted with the bottom of its reflecting surface at 41 ¼" AFF. See §4.19.6 which requires it to be no higher than 40" AFF.

The visual alarm signal appliance is mounted 74" above the highest floor level in the toilet room and 16" below the ceiling contrary to §4.28.3 which requires it to be placed 80" above the highest floor level within the space or 6" below the ceiling, whichever is lower.

7. Elevator

The emergency two-way communication system in the elevator cab is located in a closed compartment. The door to this compartment requires tight grasping and pinching and more than five pounds of force to open contrary to §§4.10.14 and 4.27.4.

The requirement of §4.10.14 that the emergency intercommunication system shall not require voice communication appears not to be met by this elevator. During the site visit on July 23, 2007, the telephone receiver located in the closed compartment rang for at least fifteen rings but was never answered. Therefore, it could not be ascertained if the communication system requires that the stranded passenger be able to speak. Indeed, the non-response suggests that there is no system in place to respond to an emergency in this elevator.

8. Storage Lockers in Fitness Room

The shelves and hooks on the inside of the lockers are too high for a person seated in a wheelchair to reach. The hook is 57" AFF and the shelf is 62" AFF. See Figs. 5 and 6 and §§4.2.5 and 4.2.6. See also §4.25.3 which requires that accessible storage spaces be within at least one of the reach ranges specified in §§4.2.5 and 4.2.6.

9. Pay Phone

The coin slot for the only pay phone is 56 ½" AFF contrary to §4.31.3 which requires the highest operable part of the telephone to be within the reach ranges specified in §§4.2.5 or 4.2.6. The highest of those reach ranges is 54" AFF which is specified as the maximum high side reach allowed.

This phone also does not have a volume control contrary to §4.1.3 (17) (b) which requires that all telephones required to be accessible be equipped with a volume control.

10. Kitchen on Level Two

During the site visit on July 23, 2007 we were told that one meal per day is delivered from the D.C. Central Kitchen and distributed in the kitchens/dining rooms on each of the two levels of the 801 East Shelter. For other meals residents of Level Two participating in a six month long rehabilitation program may store and cook food themselves in a small kitchen/dining room on Level Two.

The sink in this kitchen/dining room on Level Two is mounted with its rim 36" AFF contrary to §4.24.2 which requires sinks to be mounted with their rims no higher than 34" AFF.

The sink in this kitchen/dining room on Level Two does not have knee space under it contrary to §4.24.3. See §4.24.3 which requires that knee clearance that is at least 27" high x 30" wide x 19" deep be provided under accessible sinks.

11. Storage Lockers Provided in Sleeping Areas

Lockers are provided for the secure storage of residents' personal possessions. The traditional twist-type combination locks require tight grasping, pinching and twisting of the wrist contrary to §§4.25.4 and 4.27.4 which require that hardware for accessible storage facilities be operable with one hand and not require tight grasping, pinching or twisting of the wrist.

The storage areas on the inside of the lockers are too high or low for a person seated in a wheelchair to reach. See Figs. 5 and 6 and §§4.2.5 and 4.2.6. See also §4.25.3 which requires that accessible storage spaces be within at least one of the reach ranges specified in §§4.2.5 and 4.2.6.

D. House of Ruth Shelter
[Domestic Violence Shelter: Address Confidential]
Residents: Women and Children
Surveyed: October 29, 2007

1. No Accessible Entrance

At least 50% of the public entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see §§4.3.2(1)) and 4.14). Both the front entrance facing the street and the rear entrance have unramped exterior steps up to the entrance door - a set of nine steps at the street front entrance and six steps at the rear entrance door. When one enters the front entrance facing the street after climbing the nine exterior iron stairs there is also one unramped step up to the entrance doorway.

The front entrance door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

There is also a threshold that is higher than ½" high and not beveled at the front entrance door. See §4.13.8 which requires thresholds to be no higher than ½" and

to be beveled at 1:2 maximum if higher than ¼".

2. No Accessible Route to Sleeping Areas or to all Common Use Amenities

The design of the house in which the House of Ruth Shelter is housed is inaccessible. When one enters the front entrance facing the street (which is up a flight of nine stairs) there is also one unramped step up to the entrance doorway and then a flight of stairs down to the ground level and two flights of stairs up to the two floors housing the bedrooms and bathrooms.

The laundry room, pay phone and children's play room are on the ground floor level which is down a flight of stairs from the entrance level. There is no accessible route connecting the ground floor level, the main level and the two levels above the upper main level. See §4.3.8 and 4.5.2 of the Standards - an accessible route does not include steps or stairs.

3. Bath Room on First Floor above the Front Entrance Level Facing the Street

This single - user toilet room is entered through a narrow door with a knob. The door provides less than 32" of clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

The door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The top of the toilet seat of the only toilet in this room is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

There are no grab bars at the side or rear of the only toilet in this toilet room contrary to §4.16.4 and Fig. 29. The toilet is located beside the lavatory so is not beside a wall to which the required side grab bar could be mounted.

The toilet paper dispenser is located on the wall behind the toilet contrary to §4.16.6 and Fig. 29 (b).

The only lavatory in this room is in a vanity cabinet so does not provide the knee space under it required for a front approach by a person using a wheelchair for mobility contrary to §§4.19.2 and 4.19.3.

No in-tub seat is provided in the bath tub nor is there a seat at the head end of the

tub as required by §4.20.3 and Fig. 33.

There are no grab bars mounted on the walls at the side, foot and head of the tub as required by §4.20.4 and Fig. 34.

The shower spray unit in the bath tub does not have a hose and it cannot be used both as a fixed head and as a hand-held shower as required by §4.20.6 and Fig. 34. It is a fixed shower head only.

The faucets on the bath tub require tight grasping, pinching and twisting of the wrist contrary to §§4.20.5 and 4.27.4.

4. Toilet Room on Ground Level

This single - user toilet room is entered through a narrow door with a knob. Knob hardware requires tight grasping and twisting of the wrist contrary to §4.13.9.

The door provides less than 32" of clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop. The pull side maneuvering clearance at the bathroom door is less than the required minimum 18" wide x 60" long contrary to §4.13.6 and Fig. 25.

There is also an unramped step up at the entrance to this bathroom contrary to §§4.22.1 and 4.3.8.

The top of the toilet seat of the only toilet in this room is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

There are no grab bars at the side or rear of the only toilet in this toilet room contrary to §4.16.4 and Fig. 29. The toilet is located beside the lavatory so is not beside a wall to which the required side grab bar could be mounted.

The toilet paper dispenser is located on the far wall opposite the toilet contrary to §4.16.6 and Fig. 29 (b).

The only lavatory in this room is located in a vanity cabinet so does not provide the knee space under it required for a front approach by a person using a wheelchair for mobility contrary to §§4.19.2 and 4.19.3.

The faucets on the only lavatory in this room require tight grasping and twisting of

the wrist contrary to §4.19.5.

The mirror is mounted too high for a person using a wheelchair for mobility to be able to use. The bottom of the reflecting surface is mounted 44" AFF contrary to §4.19.6.

5. Doors with Hardware that Requires Tight Grasping and Twisting of the Wrist

The rear doors from the Play Room and from the Kitchen have knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

6. Laundry Room, Children's Play Room and Pay Phone

There is no accessible route to the only laundry room provided for residents to use to wash their clothes. Not only is this laundry room on the ground level (which is down a flight of steps from the entrance level) but there is also the only playroom for the children residing at House of Ruth on the ground floor level. The only pay phone is also on this ground floor level which is down an unramped flight of stairs.

7. Door en route to the Laundry Room

There is no accessible route to the laundry room which is on the ground level. The room containing the washer and dryer is entered through a narrow door with a knob. The door provides less than 32" of clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

There is also a threshold that is about 2" high and not beveled at the door to the Laundry Room. See §4.13.8 which requires thresholds to be no higher than ½" and to be beveled at 1:2 maximum if higher than ¼".

8. Hazards to Persons who are Blind or have Low Vision

There is a coat rack with hooks protruding out more than 4" between 27" and 80" AFF contrary to §4.4.1 and Fig. 8 (a).

E. My Sister's Place Shelter
[Domestic Violence Shelter: Address Confidential]
Residents: Women and Children
Surveyed: July 25, 2007

1. No Accessible Entrance

At least 50% of the public entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see §§4.3.2(1)) and 4.14). The main entrance at the side of the house has five unramped exterior steps up to the entrance door.

The side entrance door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

There is also a threshold that is higher than ½" high and not beveled at the front entrance door. See §4.13.8 which requires thresholds to be no higher than ½" and to be beveled at 1:2 maximum if higher than ¼".

2. Parking Lot

The parking lot at the rear of My Sister's Place Shelter does not contain any accessible parking spaces. See §4.1.2 (5) which requires that if parking spaces are provided for employees or visitors, or both, then accessible spaces complying with §4.6 shall be provided in each such parking area in conformance with the chart set out in §4.1.2 (5) (a). The striping for the parking spaces in this lot is faded but would appear to contain approximately three parking spaces.

3. No Accessible Route from Parking Lot to an Accessible Building Entrance

Section 4.3.2 (1) requires at least one accessible route within the boundary of the site to be provided from public transportation stops, accessible parking, and accessible passenger loading zones and public streets or sidewalks to an accessible building entrance. The accessible route must, to the maximum extent feasible, coincide with the route for the general public. There is no accessible route from the parking lot to an accessible entrance. The route from the parking lot to the side entrance has the five steps up to the side door noted above. Directly from the parking area there is a gate that leads through the back yard to a wooden ramp to a side door on the opposite side of the house from the side entrance with the five steps. However, this ramp is in disrepair and could be a safety hazard to anyone using it. One of the sides of the ramp is falling away from the rest of the structure and several of the wooden planks on the traveled portion of the ramp appear to be

badly damaged. There are no handrails on the ramp contrary to §4.8.5. The sides of the ramps are composed of pickets but they are in such disrepair that they do not provide the edge protection required by §4.8.7.

The door at the top of this ramp does not provide the maneuvering clearance required by §4.13.6 and Fig. 25 for a latch side approach door. The door hardware is a knob which requires tight grasping, pinching and twisting of the wrist contrary to §4.13.9.

4. No Accessible Route to Sleeping Areas or to all Common Use Amenities
The design of the house in which the My Sister's Place Shelter is housed is inaccessible. There are flights of stairs up to the floors housing the bedrooms and bathrooms.

The laundry room and children's play room are on the basement level which is down a flight of stairs from the entrance level. There is no accessible route connecting the basement level and the upper levels. See §4.3.8 and 4.5.2 of the Standards - an accessible route does not include steps or stairs. There is also a small bathroom on the basement level.

5. Bath Room on the Basement Level

This single - user toilet room is entered through a narrow door with a knob. The door provides less than 32" of clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

The door has knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

This bathroom does not provide the turning radius or clear floor space at fixtures required by §4.22.3.

The top of the toilet seat of the only toilet in this room is lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

There are no grab bars at the side or rear of the only toilet in this toilet room contrary to §4.16.4 and Fig. 29. The toilet is located beside the lavatory so is not beside a wall to which the required side grab bar could be mounted.

The toilet paper dispenser is located on the wall behind the toilet contrary to

§4.16.6 and Fig. 29 (b).

The only lavatory in this room is in a vanity cabinet so does not provide the knee space under it required for a front approach by a person using a wheelchair for mobility contrary to §§4.19.2 and 4.19.3.

The faucets on the lavatory require tight grasping, pinching and twisting of the wrist contrary to §§4.20.5 and 4.27.4.

No in-tub seat is shown in the bath tub nor is there a seat at the head end of the tub as required by §4.20.3 and Fig. 33.

There are no grab bars mounted on the walls at the side, foot and head of the tub as required by §4.20.4 and Fig. 34.

The shower spray unit in the bath tub does not have a hose and it cannot be used both as a fixed head and as a hand-held shower as required by §4.20.6 and Fig. 34. It is a fixed shower head only.

The faucets on the bath tub require tight grasping, pinching and twisting of the wrist contrary to §§4.20.5 and 4.27.4.

6. Bath Rooms on the Upper Levels

Each bath room is entered through a narrow door with a knob. The doors provide less than 32" of clear width with the door open 90 degrees, measured between the face of the door and the opposite stop. See §4.13.5 which requires that doors have a minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

The doors have knob hardware that requires tight grasping and twisting of the wrist contrary to §4.13.9.

The tops of the toilet seats are lower than the 17" to 19" AFF required for an accessible toilet by §4.16.3.

Except for the bath room with the shower stall which has one side grab bar there are no grab bars at the side or rear of the toilets contrary to §4.16.4 and Fig. 29.

The only lavatories are either in a vanity cabinet or are pedestal lavatories so do not provide the knee space under the lavatory required for a front approach by a person using a wheelchair for mobility contrary to §§4.19.2 and 4.19.3.

The faucets on the lavatories require tight grasping, pinching and twisting of the wrist contrary to §§4.20.5 and 4.27.4.

No in-tub seat is provided in the bath tub nor is there a seat at the head end of the tub as required by §4.20.3 and Fig. 33.

There are no grab bars mounted on the walls at the side, foot and head of the tub as required by §4.20.4 and Fig. 34. Nor are there grab bars in the shower stall contrary to §4.21.4 and Fig. 37.

The shower spray unit in the bath tub does not have a hose and it cannot be used both as a fixed head and as a hand-held shower as required by §4.20.6 and Fig. 34. It is a fixed shower head only. The shower spray unit in the shower stall is also only a fixed shower head contrary to §4.21.6 and Fig. 37.

The faucets on the bath tub require tight grasping, pinching and twisting of the wrist contrary to §§4.20.5 and 4.27.4.

7. Doors with Hardware that Requires Tight Grasping, Pinching and Twisting of the Wrist

All interior doors have knob hardware that requires tight grasping, pinching and twisting of the wrist contrary to §4.13.9.

8. Hazards to Persons who are Blind or have Low Vision

There is a wooden box housing the thermostat protruding out more than 4" between 27" and 80" AFF contrary to §4.4.1 and Fig. 8 (a).

9. Pay Phone

The pay phone is located in a corner so does not provide either front or side clear floor space contrary to §4.31.2 and Fig. 44.