

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 10-17-71046
HUD# 07-18-7876-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

AUTUMN RIDGE, L.C.
1910 SW Plaza Shops Lane
Ankeny, Iowa 50023-7080

CLASSIC BUILDERS, INC.
1910 SW Plaza Shops Lane
Ankeny, Iowa 50023-7080

PLUM BUILDING SYSTEMS, L.L.C.
(dba Plum Design Services)
P.O. Box 1000
Waukee, Iowa 50263-1000

COMPLAINANT

ANGELA JACKSON, COMMISSIONER
Iowa Civil Rights Commission
400 East 14th Street, Room 201
Des Moines, Iowa 50319-0201

and

IOWA CIVIL RIGHTS COMMISSION
400 East 14th Street, Room 201
Des Moines, Iowa 50319-0201

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216. Complainant alleged Respondents designed and constructed covered multifamily dwellings in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the "accessible and usable public and common use areas," and the "light switches, electrical outlets, thermostats."¹

¹ See Iowa Code §§216.8A(3)(c)(3)(a) [Requirement 2 – Accessible and Usable Public and Common Use Areas]; and 216.8A(3)(c)(3)(c)(ii) [Requirement 5 – Light Switches, Electrical Outlets, Thermostats, and Other

Complainant specifically alleged, in Unit 103, 1125 SE Olson Drive, Autumn Ridge Apartments (“Autumn Ridge”), two features in the common areas and one feature within one of the covered ground-floor units appeared inaccessible to a person utilizing a wheelchair for mobility – (1) the heights of the midlines of the keyholes at the mailbox compartments assigned to Units 101 and 102 at the kiosks each of the three buildings were measured at 58 ¼” (Unit 101), and 55 ¼” (Unit 102) – all of which are higher than the 54”-maximum allowed for a parallel approach by persons using a wheelchair; (2) the path to the animal waste station located on the north side of Building 1125 does not meet ANSI’s requirement for a “stable, firm, and slip-resistant” surface, and renders the animal waste station inaccessible to persons using a wheelchair; and (3) the height of the thermostat top controls in Unit 103 in Building 1125 was measured at 48 ¾”, which is more than the allowed maximum height of 48”

Description of the Subject Property

Subject Property

Autumn Ridge currently consists of six residential-unit buildings located on SE Olson Drive – 1115, 1125, 1135, 1145, 1165, and 1175² – with 200 total units. All the residential buildings and common areas will be required to meet the same accessibility requirements of the ICRA and FHA. The completed buildings at Autumn Ridge were issued Certificates of Occupancy signed by Keith Rash, Building Inspector for the City of Waukee, Iowa. The issue dates for each of the Certificates and the corresponding 300-day filing dates are listed in the table below:

BUILDING	CERTIFICATE OF OCCUPANCY DATE	300-DAY DATE
1115	January 27, 2017	November 23, 2017
1125	December 21, 2016	October 17, 2017
1135	August 26, 2016	June 22, 2017
1145	October 28, 2016	August 24, 2017
1150 [Community Center]	January 27, 2017	November 23, 2017
1165	November 13, 2015	September 8, 2016
1175	January 5, 2016	October 31, 2016

The scope of the current agreement includes all the ground-floor dwelling units at Buildings 1115 and 1125, and the public and common use areas, including the leasing office, Community Center, public bathrooms, fitness room, game room, swimming pool, dumpsters, and the mailbox kiosks located near to the main entrance of each building.

The dwelling units at Autumn Ridge consist of six floor-plan types.³ The table at the top of the next page lists the unit floor-plan type, each tested unit’s building and number, the total number of units of each floor-plan type by building, and total number of units of each floor-plan type.

Environmental Controls in Accessible Locations].

² Henceforth, each building will be referred to as “Building [address number].”

³ See Appendix B for floor plans.

Unit Type	Inspected Building Numbers/ Unit Numbers	Total Units Per Type by Building		Total Units Per Type
		1115	1125	
A-A	1125 / 102	0	1	1
A-B	1115 / 102	2	1	3
B-B	1125 / 103	4	4	8
C-A	1115 / 107	1	0	1
C-B	1125 / 105	3	4	7
D-B	1125 / 112	2	2	4
	GRAND TOTALS	12	12	24

Respondents' Defenses

When asked in the questionnaire what was true or false about the allegations, Respondents Autumn Ridge L.C. and Classic Builders, Inc. ("Respondents Owner and Builder"), answered:

a. In Unit 103 in Building 1125, the height of the top thermostat control was measured at 48 ³/₄". All controls on the thermostat must be no higher than 48". The height deficiency makes the thermostat inaccessible to a person using a mobility assistive device such as a wheelchair.

i. We will move the thermostat down to 48"

b. The midlines of the keyholes of the mailboxes for two for the ground-floor units at the kiosk (Unit 101 and 102) for building 1125 were measured at 58 ¹/₄" and 55 ¹/₄", which are both higher than the 54" - maximum allowed for a parallel approach by a person using a mobility assistive device such as a wheelchair. Since an elevator was not available to reach all of the units in the building, only the mailboxes for the ground floor units are required to be accessible. This deficiency makes the mailboxes for these ground-floor units inaccessible to a person using a mobility assistive device such as a wheelchair.

i. Check if US Post office can switch unit boxes to make this compliant

c. The path to the animal waste station located on the north side of Building 1125 did not have a stable, firm, and slip resistant surface, as required by ANSI. Therefore, the animal waste station is not accessible to a person using a mobility assistive device such as a wheelchair.

i. We will move this to the sidewalk.

Respondent Plum Design answered:

1. See Plum's position statement submitted herewith.

[Relevant sections of the position statement]

The complaint alleges violations of Iowa Code section 216.8A(3)(c)(3) and 42 U.S.C. section 3604(f)(3)(C) (also known as section 804(f)(3)(C) of the federal Fair Housing Act). Section 216.8A(3)(c)(3) provides that discrimination under that section includes “a failure to design and construct” dwellings in a manner that allows for specific accessibility for persons with disabilities. Section 3604 of 42 U.S.C. contains similar language.

The Commissioner's allegations are limited to alleged inaccessibility of a thermostat control, mailboxes, and the path to the animal waste station on the north side of building 1125. None of the alleged accessibility issues in the complaint were within the scope of Plum Design's design services. In other words, Plum Design did not “design and construct” the items on which the Commissioner's allegations are based. Plum Design's design services were solely limited to the design and layout of the apartment building structures and did not include the electrical, mailbox, or outside concrete pathway layout. The design and construction of those items were done by the civil engineering firm, the builder, and/or others unknown to Plum Design. Because these items are outside the scope of Plum Design's work and responsibility, Plum Design cannot be held liable for the accessibility issues alleged in the complaint. In light of the foregoing, the discrimination complaint should be administratively closed as to Plum Designs.

Report of Preliminary Findings:

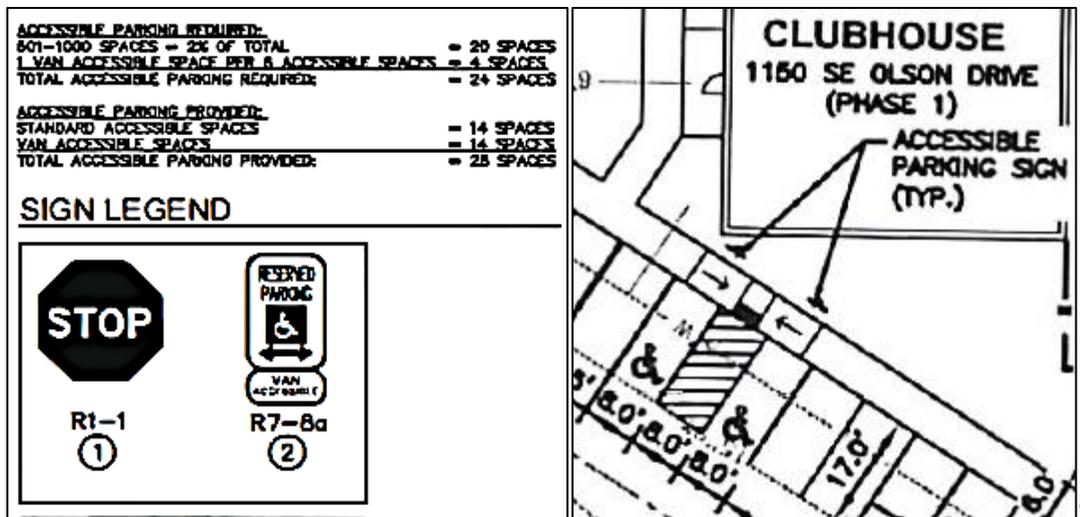
ICRC Investigators inspected six covered units at Autumn Ridge, as well as the public and common use areas in and surrounding the complex. After conducting an onsite inspection of the units listed in the table on the last page, and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

1) At both parking spaces reserved for persons with disabilities adjacent to Building 1150, the height to the bottom edge of the signage was measured at 55³/₈” which is less than the minimum height of 60 inches required by ADAAG.⁴ Although both parking spaces and access aisle were observed at Building 1150 – which meet the required ADA dimensions for Van-Accessible parking spaces and access aisles quoted above – neither of the two parking spaces had the required signage designating each as “Van-Accessible.”⁵

The plans submitted by Respondents include instructions and diagrams for the installation of signage designating spaces as reserved for persons with disabilities. The relevant instructions for the installation of these signs are shown at the top of the next page.

⁴ See Appendix A, Photo 1A.

⁵ See Appendix A, Photos 1B and 1C.



Based on these instructions, the signage designating parking spaces as reserved for persons with disabilities was designed to comply with the ADAAG requirement for signage designating at least one of these two parking spaces as “Van-Accessible.” However, as installed, neither one of these two parking spaces had the required “Van-Accessible” signage and both were too low. These deficiencies make the identification of parking spaces wide enough for vans and standard vehicles more challenging to identify.

2) The mailboxes for the 36 units at Buildings 1115 and 1125 are housed in three 12-compartment mailbox kiosks adjacent to each building.⁷ None of the buildings at Autumn Ridge have an elevator. Therefore, only the mailboxes for the ground-floor units must meet reachability requirements.

There is sufficient clearance in front of all mailbox kiosks to allow for a parallel approach by persons using a mobility-assistive device such as a wheelchair. The height to the midline of the keyholes at the top two rows of mailboxes measured 54 5/8” (second row) and 57 3/4” (top row). The height of each of these mailbox compartments exceeds the 54”-maximum allowed by ANSI 1986 for a parallel approach by a person using a mobility assistive device such as a wheelchair.⁸

Instructions about the height of the mailboxes were not included in the plans submitted by Respondents.

3) One of the animal waste stations is located northwest and the other one to the northeast of Building 1125. The animal waste station to the northwest was measured at 22’ 10” and the one to the northeast was measured at 29’ 2 3/4” from the closest sidewalks, both of which exceed the 24”-maximum reach.⁹ The surface along the path to the animal waste station consists of grassy and rocky areas that are not “stable, firm, and slip resistant,” as required by Section 302.1 of ANSI 2003, quoted above. Though only one of the animal waste stations needs to be accessible to persons in a wheelchair who have either a pet or assistance animal, currently neither one is accessible.

No specific instructions were found in the plans for the installation of the animal waste stations.

⁶ See Appendix B.

⁷ See Appendix A, Figure 3A for location of mailbox kiosks as captioned in the site plans.

⁸ See Appendix A, Photo 2A

⁹ See Photos 3A, 3B, 3C, and 3D.

4) The Guidelines require common access areas, such as coat racks, to be accessible by tenants who use a wheelchair as a mobility-assistive device.¹⁰ There is enough clearance in front of the coat rack for tenants using wheelchairs to make a parallel approach, which allows for a maximum reach height requirement of 54 inches. The height of the coat rack was measured at 67".¹¹ Therefore, the touch-screen monitor controls are unusable for persons using wheelchairs for mobility, according to the maximum reach parameters of ANSI 1986.

No specific instructions were found in the plans for the installation of the coat rack.

5) After being notified of the current complaint on October 3, 2017, and prior to ICRC's full onsite inspection on January 19, 2018, Respondents stated they completed retrofits to correct the non-compliant heights observed by ICRC Tester as alleged in the complaint. The heights of all thermostats in the units inspected by ICRC Investigators were verified to be at heights of no more than 48".

6) The heights of the bathroom towel bars in all inspected units were measured at no less than 58 ½". The heights of the towel bars in the inspected units exceed the 54"-maximum height requirement. As built, the towel bars are too high, rendering them unusable by persons using wheelchairs.¹²

The plans submitted by Respondents did not include diagrams or instructions for the installation of the towel bars.

Respondents' Response to Report of Preliminary Findings:

On March 26, 2018, Respondents Owner and Builder submitted a letter with their responses to the Report of Preliminary Findings. In regards to the proposed retrofits to correct the violations, Respondents stated:

Every effort has been made or is being made to bring the property into compliance as set forth in your Preliminary Findings. The coat rack and towel bars will be moved to the correct height. The animal waste stations will be moved to the correct locations. The handicap sign has been ordered and was to arrive last week and when received, it will be installed. The Post Office has been notified that the lower level respective boxes must not be in the top two rows and the boxes need to accordingly be lowered.

On April 18, 2018, Respondents Owner and Builder stated in a telephone call that the required retrofits were either completed or about to be completed; and on May 10, 11, and 15, 2018, they submitted additional information and photographs documenting the correction of all reported deficiencies in both all ground-floor dwelling units and the common-use/public access areas.¹³ Based on the gathered information and documentation described above, no additional retrofits or modifications are required by ICRC to bring Autumn Ridge into compliance with the accessibility requirements of the ICRA and the FHA.

¹⁰ See Manual, at page 2.3.

¹¹ See Appendix A, Photo 4A.

¹² See Appendix A, Photo 5A.

¹³ See Appendix C.

Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an on-site inspection of the subject property, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

- 1) Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the “Iowa Civil Rights Act of 1965” (ICRA); or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).
- 2) Respondents acknowledge the ICRA makes it unlawful to discriminate in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status. Iowa Code § 216.8(1)(b).
- 3) Respondents acknowledge the ICRA makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person. Iowa Code § 216.8(1)(a).
- 4) Respondents acknowledge the Fair Housing Act (FHA) makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the of race, color, religion, sex, familial status, or national origin. 42 U.S.C. 3604(f)(1)(a) (§ 804(f)(1) of the Fair Housing Act).
- 5) Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling and to the extent that the accommodation does not cause undue financial or administrative burden or fundamentally alter the nature of the provider’s operations. 42 U.S.C. 3604(f)(3)(b) (§ 804(f)(3)(b) of the Fair Housing Act); Iowa Code § 216.8A(3)(c)(2).
- 6) Respondents acknowledge the FHA and ICRA make it unlawful to discriminate against another 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 the dwelling because of a disability. 42 U.S.C. 3604(f)(2)(a) (§ 804(f)(2)(a) of the Fair Housing Act); Iowa Code § 216.8A(3)(b)(1).
- 7) Respondents acknowledge as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in buildings with no elevator or all units in buildings with an elevator, and consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216. 8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C).

HUD has described these accessibility requirements via regulation and in several publications, including the “Final Fair Housing Accessibility Guidelines.” 24 C.F.R. Part 100.200 et seq.; 56 Fed. Reg. 9,472. In the “Guidelines,” HUD presented the seven specific requirements as:

Requirement 1 – Accessible building entrance on an accessible route.

Requirement 2 – Accessible and usable public and common areas.

Requirement 3 – Usable doors.

Requirement 4 – Accessible route into and through the covered dwelling unit.

Requirement 5 – Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

Requirement 6 – Reinforced walls for grab bars.

Requirement 7 – Usable kitchens and bathrooms.

Voluntary and Full Settlement

8) The parties acknowledge this Predetermination Settlement Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.

9) The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.

10) The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.

11) Respondents agree the ICRC may review compliance with this Agreement. And as part of such review, Respondents agree the ICRC may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the ICRC.

Disclosure

12) Because, pursuant to Iowa Code §216.15A(2)(d), the ICRC has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa’s Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Release

13) Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of

Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Fair Housing / Accessible Design and Construction Training

14) Respondents agree to submit to ICRC the names of all employees who currently participate in the development, design, and/or construction of covered multifamily properties, as defined in “7)” paragraph on Page 7 of the current agreement, within 14 days from the date of the Closing Letter from ICRC. If there are no employees currently involved in the development, design, and/or construction of covered multifamily properties, Respondents agree to submit a signed statement to ICRC indicating this fact.

If any employee starts participating in the development, design, and/or construction of covered multifamily properties within one year from the date of the Closing Letter from ICRC, Respondents agree to notify ICRC of the change, including the names of any applicable persons, within seven days from the date of the change.

15) Respondents agree all persons identified in “14)” paragraph of the current section will:

(a) Receive training on the accessible design and construction requirements of State and Federal Fair Housing Laws. The training will address the Fair Housing accessibility requirements that must be met in order to design and build covered dwellings and common use/public areas that are accessible and usable to individuals with mobility and visual impairments.

The training shall be conducted by a qualified person, approved by ICRC or the U.S. Department of Housing and Urban Development. Additionally, attendance at one of the training events offered by Fair Housing Accessibility First – information about which is available online at <http://www.fairhousingfirst.org/training/calendar.html> - will fulfill the requirement for this term.

(b) Complete the training pursuant to “(a)” paragraph above within 180 days of the date of the Closing Letter from the ICRC if currently developing, designing, and /or building covered multifamily properties.

(c) Complete the training pursuant to “(a)” paragraph above within 180 days of their first day of developing, designing, and /or building covered multifamily if not currently engaged in the aforementioned activities.

(d) Respondents will either provide documentation in the form of a sign-in sheet in which all persons identified in “14)” paragraph of the current section acknowledge their attendance and completion of the fair housing / accessible design and construction training or all such persons will send documentation to ICRC, verifying the fair housing / accessible design and construction training has been completed, within ten days of completing the training.

16) Respondents agree all persons identified in “14)” paragraph of the current section will:

(a) Review and become familiar with the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998), which may be obtained online at <http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.

(b) Submit either separate signed written statements via email from each of the Respondents' representatives named above in paragraph "(a)", and their current employees or agents who are involved in the design and/or construction of covered multifamily-dwelling properties or one written document on which these individuals sign acknowledging:

- i. They have reviewed and become familiar with the Fair Housing Act Design Manual.
- ii. They understand what the Seven Main "Design Requirements of the Guidelines" are by listing them in the written statement.

(c) Complete the requirements in "(a)" and "(b)" paragraphs of the current section within 120 days of the date of the Closing Letter from the ICRC if currently developing, designing, and /or building covered multifamily properties.

(d) Complete the requirements in "(a)" and "(b)" paragraphs of the current section within 120 days of their first day of developing, designing, and /or building covered multifamily if not currently engaged in the aforementioned activities.

Autumn Ridge, L.C.
RESPONDENT

Date

Classic Builders, Inc.
RESPONDENT

Date

Plum Building Systems, L.L.C.
RESPONDENT

Date

Angela Jackson, Commissioner
COMPLAINANT

Date

Kristin H. Johnson, Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date