

# PREDETERMINATION SETTLEMENT AGREEMENT

CP# 09-17-70937  
HUD# 07-18-7631-8

## PARTIES TO THE SETTLEMENT AGREEMENT:

### RESPONDENTS

#### **RESIDENCES AT 62W, LLC**

1225 Jordan Creek Parkway, Suite 200  
West Des Moines, Iowa 50266-2346

#### **ICON CONSTRUCTION, LLC**

1225 Jordan Creek Parkway, Suite 114  
West Des Moines, Iowa 50266-2346

#### **BSB DESIGN, INC.**

4601 Westown Parkway, Suite 208  
West Des Moines, Iowa 50266-1030

### COMPLAINANT

#### **ANGELA JACKSON, COMMISSIONER**

Iowa Civil Rights Commission  
400 East 14<sup>th</sup> Street, Room 201  
Des Moines, Iowa 50319-0201

and

#### **IOWA CIVIL RIGHTS COMMISSION**

400 East 14<sup>th</sup> 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 route into and through the covered unit," and the "light switches, electrical outlets, thermostats, and other environmental controls in accessible locations."<sup>1</sup>

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<sup>1</sup> See Iowa Code §§216.8A(3)(c)(i) [Requirement 4 – Accessible Route into and Through the Covered Unit]; and 216.8A(3)(c)(ii) [Requirement 5 – Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations].

Complainant specifically alleged, in Units 233 and 235, 6000 NW 62<sup>nd</sup> Avenue, Residences at 62W (“62W”), two features within two of the covered units appeared inaccessible to a person utilizing a wheelchair for mobility – (1) in Units 233 and 235, the top thermostat controls were measured at 56”, which exceeds the 48”-maximum height; and (2) in Units 233 and 235, the exterior balcony surfaces (pervious) were measured to be 3” below the interior finished floor surfaces at the sliding glass doorways, which exceeds the 1/2”-maximum change in level for pervious exterior surfaces.

Description of the Subject Property

Subject Property

62W consists of one building located at 6000 NW 62<sup>nd</sup> Avenue. The residential building and common areas will be required to meet the same accessibility requirements of the ICRA and FHA. The residential building was issued a Certificate of Occupancy on March 2, 2017, which was signed by Douglas Sandvig, Building Official for the City of Johnston.

The scope of the current agreement includes all the dwelling units and the public and common use areas, including the Fitness Center, Business Center, Pet Spa Room, Bike Storage Room, Bike Repair/Workshop Room, Yoga/Pilates Room, Game Room, trash chutes, Community Room, outdoor grills, fire pit shelter, swimming pool, storage units, leasing office, elevator, and the mailbox units.

The dwelling units at 62W consist of nine floor-plan types, with Types G and G1 being grouped by Respondents based on their similar floor-plan configurations.<sup>2</sup>

The table below lists unit types and the number of the inspected unit. It also provides the total number of units by type.

Unit Type(s)	Inspected Unit Numbers	Total Units Per Type(s)
A (1BR/1BA)	233	30
A LOFT (1BR/1BA)	235	9
B (1BR/1BA)	419	8
C (2BR/2BA)	303	36
D (2BR/2BA)	420	24
E (2BR/2BA)	200	12
F (2BR/2BA)	438	12
G and G1 (3BR/2BA)	337	6
	<b>TOTAL</b>	137

Respondents’ Defenses

When asked in the questionnaire what was true or false about the allegations, Residences at 62W, L.L.C. (“R@62W”) and Icon Construction, L.L.C. (“Icon”) answered:

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<sup>2</sup> See Appendix B for floor plans.

It is true that the thermostat controls were improperly installed in the inspected units. They have already been lowered to less than 48 inches from the finished floor.

It is true that the balcony surfaces are 3” below the interior finished floor. It is not true that the balconies are constructed of pervious materials and it is not true that the balconies are not compliant with FHA requirements. The balcony decks are constructed of synthetic plastic material that does not absorb water. The balconies are constructed to be flush with the exterior wall of the building, which does not allow for water drainage at the sliding door thresholds. Additionally, the small gaps between the synthetic boards were not designed or constructed to be and are not adequate to prevent puddling of heavy rain fall, blowing rain, or melting snow and are not adequate to drain water in such a way to avoid infiltrating the interior of the units. There is no slope in the balconies to allow drainage away from the building. The impervious balconies were constructed three inches below the interior surface because the design professional determined that this was required to adequately prevent water infiltration, and was done so after the contractor and developer received correspondence from the ICRC about this very issue during the construction process.

BSB Design Inc. (“BSB”) answered,

It is true that the balcony surfaces are 3” below the interior finished floor. It is not true that the balconies are constructed of pervious materials and it is not true that the balconies are not compliant with FHA requirements. Further, the balcony decks are constructed of synthetic plastic material that does not absorb water. The Owner has provided the ICRC a response to this same question and BSB concurs with the Owner’s answer. The Owner has also provided documentation received from the ICRC that the balcony surfaces qualify as impervious and their location at 3 inches below interior unit floor surface is therefore allowable.

It is false that the dwelling is not designed in compliance with Federal and State Fair Housing Laws.

#### Report of Preliminary Findings:

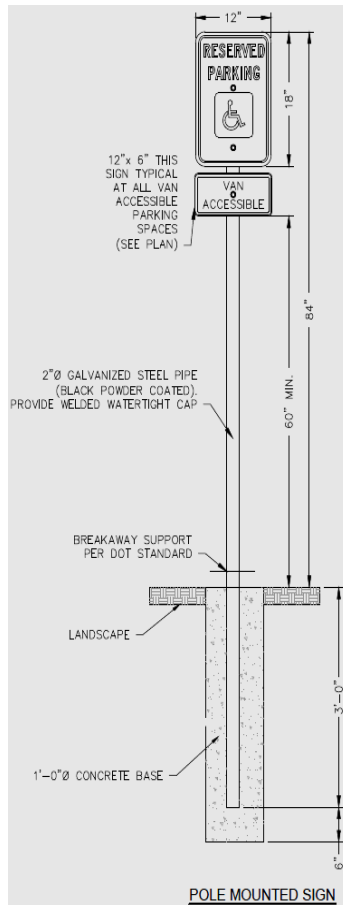
ICRC Investigators inspected 8 units at 62W, as well as the public and common use areas in and surrounding the complex. After conducting an onsite inspection of the units listed in the table above, and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

- 1) At all four parking spaces reserved for persons with disabilities to the south of the building and at the southernmost parking space located to the east of the building, the height to the bottom edge of the signage was measured at no more than 58 1/2”, which is less than the minimum height of 60 inches allowed by 2010 ADAAG.<sup>3</sup>

The plans submitted by Respondents include drawings and instructions for the installation of signage designating spaces as reserved for persons with disabilities. The relevant drawing and instructions for the installation of these signs are shown below.

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<sup>3</sup> See Appendix A, Photos 1A, 1B, 1C, and 1D.



Based on the drawings and instructions above, the height to the bottom edge of the signage designating the accessible parking spaces as reserved for persons with disabilities was designed to be a minimum of 60". However, as built, the heights of these signs result in their decreased visibility that makes it more challenging for persons with disabilities to readily locate these parking spaces.

2) One of the animal waste stations is located west and the other one is located east of the of the subject property building. The animal waste station to the west was measured to be 6' 4" and the one to the east was measured to be 6' 1/2" from the closest sidewalks.<sup>4</sup> 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. Therefore, the animal waste stations are not accessible to persons in a wheelchair who have either a pet or assistance animal.

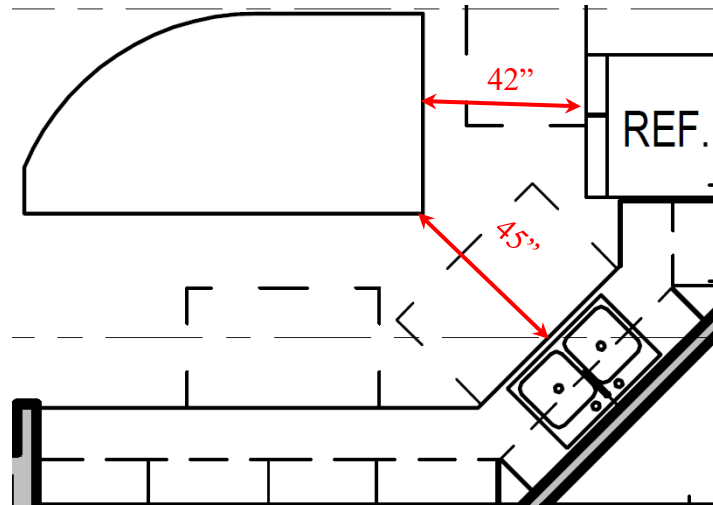
3) The common-use kitchen in the Community Room has an island. The width of the path between the island and the refrigerator was measured by the ICRC investigators at 38". The width of the path between the island and the opposing counter at the corner adjacent to the refrigerator was measured at 39 1/4".<sup>5</sup>

The plans submitted by Respondents include a scaled drawing of the kitchen in the Community Room, which shows that the width clearances of the path between the kitchen island and opposing features

<sup>4</sup> See Photos 2A and 2B.

<sup>5</sup> See Appendix A, Photos 3A and 3B.

were designed to be 42” at the refrigerator and 45” at the sink. These width clearances are portrayed in the captioned diagram below:



The width of the path around the kitchen island in the Community Room would have been compliant with the 40-inch minimum width if installed according to the plans. But, as built, the path is too narrow, rendering this common-use kitchen unusable by persons using wheelchairs.

4) Based on the requirements from the Guidelines and ANSI 2003, a 30-inch by 48-inch clear floor space size centered on the bathroom sink is required, which means the midline of the sink must not be any closer than 15 inches to an adjacent wall when the sink has sufficient space underneath for knee clearance. ICRC investigators verified there is sufficient knee clearance under the sink and all the surfaces under the sink are finished.

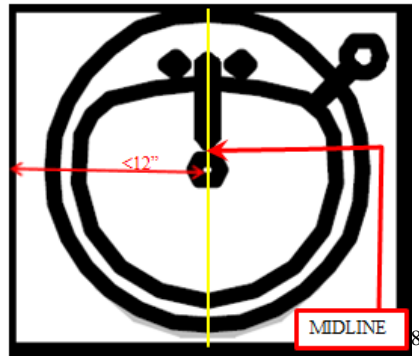
In the bathroom at the Community Room, the midline of the sink was measured to be 12 <sup>5</sup>/<sub>8</sub>" away from the nearest obstruction, which is the wall to the left of the sink.<sup>7</sup>

The plans submitted by Respondents include a scaled drawing of the bathroom in the Community Room, which shows that the midline of the sink was designed to be <12" away from the wall to the left of the sink. This dimension is portrayed in the captioned diagram at the top of the next page

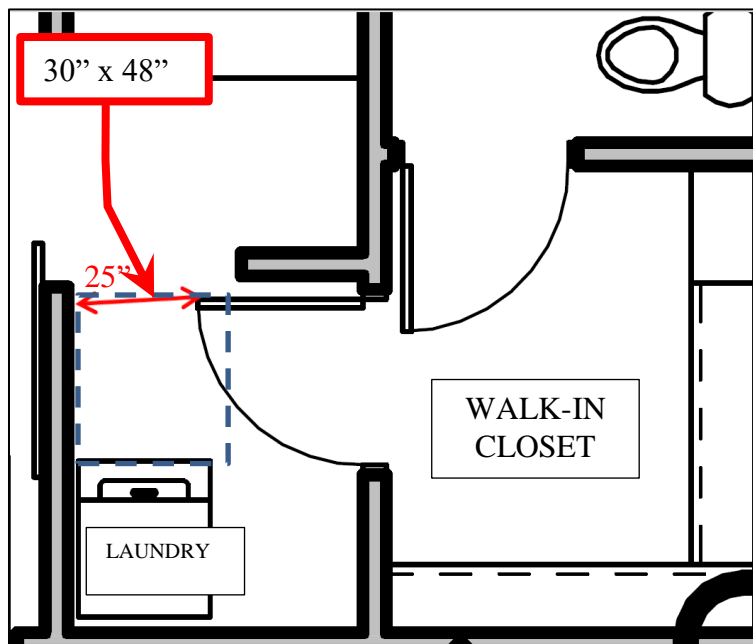
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<sup>6</sup> See Appendix B.

<sup>7</sup> See Appendix A, Photos 5A and 5B.



As designed and built, the sink in the bathroom at the Community Room is too close to the wall, rendering this common-use bathroom unusable by persons using wheelchairs.



5) ANSI 2003 requires the opening force for interior-hinged doors to be no greater than 5 pounds. The doors located at the entrance to men’s restroom and to the storage-units room required 11 pounds of force to open, and the door to the mail room required 10 pounds.<sup>9</sup> All these are interior-hinged doors that, according to Respondents, are not required to be fire doors.<sup>10</sup> These doors exceeded the 5-pound maximum limit allowed by ANSI 2003 for interior-hinged doors, which makes them unusable for persons with disabilities who have diminished strength to push or pull.

6) The plans submitted by Respondents include scaled drawings of the dwelling units. The relevant portion of the drawing for Unit 200 [“E” Unit], with captions, is shown below:<sup>11</sup>

<sup>8</sup> See Appendix B.

<sup>9</sup> See Appendix A, Photos 4A and 4B

<sup>10</sup> See Appendix A, Photos 2C and 2D

<sup>11</sup> See Appendix B.

Based on the scaled drawings above, the route connecting the laundry area with the hallway was designed to be 25” wide with the door to the walk-in closet fully opened. ICRC Investigators measured the width of this path at 25 ¾”.<sup>12</sup> Although there is sufficient clear floor space for a tenant who uses a wheelchair to reach the laundry machines from the hallway, the tenant would not be able to reach the walk-in closet from the laundry area along the most direct path because the door at the entrance to the walk-in closet swings in towards the tenant. The fact that this door swings into the laundry area results in the clear floor space in front of the laundry machines being less than the minimum 30” by 48” that is required by a person using a wheelchair, as based on the scaled drawing and as it visually appeared to ICRC Investigators during the inspection.

The open door is an obstruction preventing the tenant using a wheelchair from entering the walk-in closet directly from the laundry area. The only other way a tenant in wheelchair could reach the walk-in closet would require a significantly longer and more complex path through the hallway into the bedroom, and then traveling through the bathroom into the walk-in closet. Additionally, this is a path that is expected to be used frequently by tenants occupying “E” Units because it is the most direct path to carry laundered clothes into the walk-in closet.

The route referenced above is too narrow because its measured width is less than the required 32”-minimum, which renders this route inaccessible for tenants who use wheelchairs.

7) The table below lists the units with interior-threshold height values measured at the secondary doorway to the balcony that exceeded the ¼”-maximum allowed by ANSI 2003, and the measured heights.

Unit	Height
419 [“B” Unit]	29/32”
303 [“C” Unit]	1 11/32”
420 [“D” Unit] <sup>13</sup>	1”
438 [“F” Unit]	¾”
337 [“G” Unit]	¾”

In Units 419, 303, 420, 438, and 337, the interior threshold heights at the secondary doorways to the balcony exceed the ¼”-maximum allowed for thresholds without beveling. These thresholds are too high to be usable by persons using wheelchairs.

8) Prior to construction, upon request from Respondents, ICRC provided advice regarding the subject property to determine whether an exterior balcony or porch surface is pervious or not, and the resulting maximum height for the change in level at the exterior surface based upon this determination. The advice provided by ICRC was based on the following section from the Guidelines:

(4) Except as provided in paragraphs (5) and (6) below, thresholds at exterior doors, including sliding door tracks, are no higher than ¾ inch. Thresholds and changes in level at these locations are beveled with a slope no greater than 1:2.

<sup>12</sup> See Appendix A, Photos 6A, 6B, 6C, and 6D.

<sup>13</sup> See Appendix A, Photos 7A and 7B.

(5) Exterior deck, patio, or balcony surfaces are no more than 1/2 inch below the floor level of the interior of the dwelling unit, unless they are constructed of impervious material such as concrete, brick or flagstone. In such case, the surface is no more than 4 inches below the floor level of the interior of the dwelling unit, or lower if required by local building code.<sup>14</sup>

The wording above was initially interpreted by ICRC to mean that the perviousness of exterior surfaces – which is used for determining which maximum change in level requirement (1/2” or 4”) applies - is solely based upon the nature of the materials used. However, ICRC has subsequently determined both the materials and construction of exterior services should be considered when determining if the surface is pervious.

The balconies at the subject property are constructed of composite material laid side by side with small gaps between each plank. ICRC Investigators measured the width of the synthetic plastic planks at 5 3/8” and the open gaps or slits between the planks at no less than 1/4”. Based on the knowledge and experience of the ICRC investigators, the exterior surfaces of the balconies at 62W are determined to be pervious. As a result, the exterior balcony surface at 62W must not be more than 1/2” below the interior finished floor surface.

ICRC acknowledges Respondent constructed its balconies in accordance with ICRC’s previous guidance. In determining the required response by Respondents, ICRC takes into consideration the fact that Respondents designed and built the balconies at 62W based on the previously gathered information from ICRC, which indicated perviousness is *solely* determined by the type of material used at the balcony surface. Therefore, ICRC will not require an immediate retrofit to correct the change in levels at the balcony surfaces for the reason above stated. As part of the Predetermination Settlement Agreement, ICRC would consider agreeing to the solution offered by Respondent Representative Wendy Ogden during the inspection, which would require Respondents to advise current and future tenants about the option to have a ramp installed at the balcony at no cost to the tenant. ICRC would only require current tenants to be notified in writing within 30 days – and for a period of 12 months for future tenants at the time new leases are signed – of the Closing Letter from ICRC.

However, going forward with all covered properties that are yet to be designed and built, ICRC will enforce its interpretation that the change in level at balcony/porch surfaces based on the perviousness of the construction and not solely on the exterior surface materials used. Lastly, any allowances made regarding the ICRC’s enforcement shall not be precedent-setting.

9) After being notified of the current complaint on September 12, 2017, and prior to ICRC’s full onsite inspection on November 3, 2017, 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”.

#### Respondents’ Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

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<sup>14</sup> Fair Housing Accessibility Guidelines, Federal Register, Vol. 56. No. 44, Wednesday, March 6, 1991, Rules and Regulations, page 9507.



- 1) R@62W will raise the signage at all four parking spaces designated as reserved for persons with disabilities as soon as the ground temperature allows.
- 2) R@62W will relocate the two animal waste stations closer to usable sidewalks.
- 3) R@62W and Icon will either move the refrigerator and the kitchen island further away from each other or reduce the size of the island counter to increase the clear width of the path around the kitchen to a minimum of 40”.
- 4) Icon installed the sink in the bathroom at the Community Room based on BSB’s design. BSB has provided a revised design to Icon that will increase the distance from the midline of the sink to the adjacent wall to a minimum of 15”. Icon will retrofit the sink based on the revised design.
- 5) R@62W will adjust the hinges at the doors located at the entrance to men’s restroom, the storage-units room, and to the mail room, such that they will not require more than 5 pounds of force to open.
- 6) Respondents maintain the route connecting the laundry area with the hallway in Unit 200 [“E” Unit] is compliant with all accessibility requirements because there is an accessible route that is not obstructed by the opened door that is located between the area with the laundry machines and walk-in closet.
- 7) R@62W and Icon will provide threshold mats to any tenants who use a wheelchair, so they can have easier access to the balcony upon request from those tenants.
- 8) Since completion of the ICRC inspection of 62W in November 2017, R@62W stated the exterior balcony surface at every unit became more impervious after the installation of gaskets, which were needed to correct a manufacturer’s warranty issue about the noise created by the wind forced through the slits in the balcony surface that disturbed the tenants. This modification has resulted in the diminished capability for water to drain from the balcony surface.<sup>15</sup>
- 9) As previously reported in the current agreement, all thermostats have been relocated such that the heights of all thermostats in the units inspected by ICRC Investigators were verified to be at heights of no more than 48”. Therefore, no further action is required by ICRC regarding this deficiency.

Assessment of Deficiencies:

Respondents stated in their written responses to the ICRC questionnaire all units were built in accordance with the scoping requirements of the 2012 International Building Code [IBC 2012], which is not one of the Safe Harbors accepted by HUD. However, the plans submitted by Respondents include a section titled “ACCESSIBILITY GUIDELINES & REQUIREMENTS.” The relevant excerpts from this section read,

1. All work shall comply with applicable codes and ordinance in force at time of construction.
  - a. Code Referenced at time of design: Per Chapter 11, 2012 INTERNATIONAL BUILDING CODE (IBC) Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and ICC/ANSI A117.1-2009 (Section 1101.2).

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<sup>15</sup> See Appendix C for photograph of exterior balcony surface indicating the installed gaskets.

b. Code Referenced at time of design: Fair Housing Act, 1998. Per the Fair Housing Act, Safe Harbors are set in place referencing the ICC/ANSI A117.1-2003.<sup>16</sup>

ANSI 2003 is referenced in the above quote from the plans as part of the “Code Referenced at time of design.” According to the information about the safe harbors presented previously in the Report of Preliminary Findings, the ANSI 2003 is one of the safe harbors accepted by HUD, if it is used in conjunction with the FHA, HUD’s regulations and, as described in the next section.

To determine compliance with the ICRA and FHA, the ANSI 2003 will be used to assess compliance with the technical requirements [i.e., the dimension requirements] and the Fair Housing Act Design Manual [“Manual”] will be used to assess compliance with the technical *and* scoping requirements [i.e., what needs to be accessible]. In the event ANSI 2003 does not provide guidance on the technical requirements for a feature required to be accessible by the Manual, or if the requirements are less strict than those in the Guidelines, the Manual and ANSI 1986 will be consulted for the guidance on that technical requirement.

The public areas must meet the requirements of the ADA in addition to those of the FHA, as people other than residents or residents’ visitors will visit or frequent those areas. The common use areas, however, such as the Fitness Center, Business Center, Pet Spa Room, Bike Storage Room, Bike Repair/Workshop Room, Yoga/Pilates Room, Game Room, trash chutes, Community Room (including the adjacent bathroom), outdoor grills, fire pit shelter, swimming pool, storage units, and the mailbox units are governed by the FHA since they are only for use by the residents of 62W and their guests. The ADA will only be referenced in the current agreement for the public areas, which include leasing office, exterior parking spaces, sidewalks, elevators, and hallways.<sup>17</sup> Finally, the requirements of the ADA will be presented as stated in the “2010 American with Disabilities Act Standards: 2004 ADAAG for Titles II and III Facilities” (ADAAG). *See* 42 U.S.C. 12204, Part 1191, Appendix A, and 42 U.S.C 12186(b); 28 CFR Part 36, Appendix B.

Following is the assessment of Respondents’ proposed retrofits and determination, based on the scoping and technical requirements of the 2010 ADAAG, the Manual, ANSI 2003, and ANSI 1986:

- 1) ICRC concurs with Respondents’ proposal to reinstall the signage at the four parking spaces designated as reserved for use by persons with disabilities at a greater height as soon as the ground thaws enough to allow for this retrofit to be completed. Additionally, ICRC will require that the height to the bottom edge of the signage is compliant with the 60”- minimum height requirement, and that this modification is completed within 60 days of the date of the Closing Letter from ICRC.
  
- 2) ICRC concurs with Respondents’ proposal to relocate the two animal waste stations closer to usable sidewalks. Additionally, ICRC will require that the new location for the animal waste stations is no further than 24” from usable sidewalks.

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<sup>16</sup> *See* Appendix B.

<sup>17</sup> The ADAAG defines “Public Use” as “[I]nterior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.” *See* “Definitions” on page 47 of ADAAG available online at [http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards\\_prt.pdf](http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf). Therefore, since the hallways and parking spaces are available for use by prospective residents, who are part of the general public, these areas are deemed to be “Public Use.”

- 3) ICRC concurs with Respondents' proposal to either move the refrigerator and the kitchen island further away from each other or reduce the size of the island counter, so as to increase the width of the path around the kitchen to a minimum of 40".
- 4) ICRC concurs with Respondents' proposal to reinstall the sink in the bathroom at the Community Room such that the midline of the sink is no closer than 15" to the adjacent wall.
- 5) ICRC concurs with Respondents' proposal to adjust the hinges at the doors located at the entrance to men's restroom, the storage-units room, and the mail room, such that they will not require more than 5 pounds of force to open.
- 6) In response to Respondents' interpretation that the laundry-machines' area and the walk-in closet in Unit 200 are actually connected via an accessible route – which does not need to be the shortest route to meet the requirements of an accessible route – ICRC gathered additional information to verify whether Respondents' claim is true. The relevant excerpt from page 4.3 of the Manual reads:

Unlike public and common use areas where a fully accessible route that complies with ANSI A117.1 - 1986, or an equal or more strict accessibility standard is required, the Guidelines designate specific elements of an accessible route that must be provided. The accessible route must be **1.** sufficiently wide and **2.** lacking in abrupt changes in level[.]

So, as stated in this excerpt, accessible routes inside dwelling units must be wide and smooth enough, but no reference is made to the length of the route.

Therefore, ICRC concedes that the laundry-machines area and the walk-in closet in Unit 200 are connected via an accessible route, and that no additional accessible routes are required. ICRC requires no further action regarding this route in Unit 200.

- 7) ICRC concurs with Respondents' proposal to provide reducer strips or ramps to tenants who use a wheelchair, so they can have easier access to the balcony. However, ICRC will require that the reducer strips or ramps be in place at units with non-compliant interior threshold heights at the balcony doorways at units before the units are shown to prospective tenants or at the time new tenants take possession of rental units. ICRC will allow tenants to request that the threshold ramps be removed for the duration of their tenancy.
- 8) ICRC concurs with Respondents' determination that the exterior balcony surface at every unit became more impervious after the installation of gaskets, which (i) was completed to correct a manufacturer's warranty issue about the noise created by the wind forced through the slits in the balcony surface that disturbed the tenants; and (ii) which resulted in the diminished capability for water to drain off the balcony surface. Therefore, the change in level between the exterior balcony surface and the interior finished floor surface is now considered to be compliant because it is less than the 4"-maximum required for exterior impervious balcony surfaces.

ICRC concurs with Respondents' determination that the exterior balcony surface, as retrofitted, is impervious because of the retrofitted construction and the materials. However, ICRC disagrees with Respondents' determination that the balcony surfaces – as originally constructed prior to the gasket installation – were impervious, and therefore, the change in level only needed to be compliant with the 4"-maximum for exterior impervious surfaces instead of the ½"-maximum required for exterior pervious balcony surfaces.

## 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 Pages 12 and 13 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 Dan Swift, and 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) Dan Swift and all persons identified in “14)” paragraph of the current section also agree to 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 Dan Swift, and 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 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 indicating:
- 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.

*Required Modifications or Retrofits*

17) Respondents agree to make the following modifications or retrofits to the subject property:

*Accessible and Usable Public and Common Use Areas – Parking Area*

- (a) The parties agree the height to the bottom edge of the signs designating the four parking spaces – that are adjacent to the south of the dwelling-units building – as reserved for persons with disabilities is less than the minimum height of 60" allowed by 2010 ADAAG.
- (b) Respondents claim R@62W has reinstalled the existing signs at the parking spaces described in "(a)" paragraph above, such that the bottom edge of these signs are no less than the 60"-minimum height required by 2010 ADAAG.
- (c) Respondents agree to submit photographs to ICRC to verify their claim in "(b)" paragraph of the current section within 30 days from the date of the Closing Letter from ICRC.
- (d) If the photographs required in "(c)" paragraph above are not determined by ICRC to have corrected the deficiency described in "(a)" paragraph above, Respondents agree to reinstall the signage pursuant the requirements in "(a)" paragraph of the current section within 60 days from the date of the Closing Letter from ICRC

*Accessible and Usable Public and Common Use Areas – Animal Waste Stations*

- (a) The parties agree (i) the animal waste stations east and west of the dwelling-units building are more than 6' away from the closest sidewalks; (ii) the surface along the path to the animal waste stations consists of grassy areas that are not "stable, firm, and slip resistant," as required by the Manual and ANSI 2003; and

(iii) therefore, the animal waste station is not accessible to persons in a wheelchair who have either a pet or assistance animal, as required by the Manual and ANSI 2003.

(b) Respondents claim R@62W has relocated the two animal waste stations, such that they are located no more than 24” away from the existing accessible sidewalk sections, in compliance with the Manual and ANSI 2003.

(c) Respondents agree to submit photographs to ICRC to verify their claim in “(b)” paragraph of the current section within 30 days from the date of the Closing Letter from ICRC.

(d) If the photographs required in “(c)” paragraph above are not determined by ICRC to have corrected the deficiency described in “(a)” paragraph above, Respondents agree to reinstall the relocate the animal waste stations pursuant the requirements in “(a)” paragraph of the current section within 60 days from the date of the Closing Letter from ICRC.

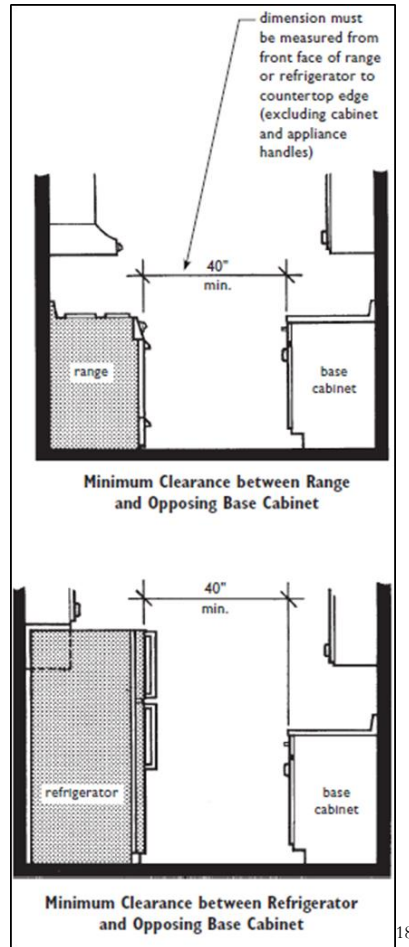
*Accessible and Usable Public and Common Use Areas – Community Room Kitchen*

(a) The parties agree the width of the path between the kitchen island and (i) the opposing counter immediately in front of the kitchen sink and (ii) the refrigerator in the Community Room Kitchen were both measured at less than the 40”-minimum width required by the Manual and ANSI 2003.

(b) Respondents agree R@62W and Icon will increase the clear width of the path between the kitchen island and opposing features to no less than 40” in the Community Room kitchen by either moving the refrigerator and kitchen island further away from each other or by reducing the size of the kitchen island counter, to meet the 40”-minimum clear width, as required in the Manual and ANSI 2003.

(c) Respondents agree R@62W and Icon will measure the clear width of the path as indicated in the figure at the top of the next page.





(d) Respondents agree R@62W and Icon will complete the retrofits in the current section within 60 days from the date of the Closing Letter from ICRC.

*Accessible and Usable Public and Common Use Areas – Community Room Bathroom Sink*

(a) The parties agree the distance from the midline of the sink to the adjacent wall in the Community Room bathroom was measured at less than the 15”-minimum required for bathroom sinks when the sink has sufficient space underneath for knee clearance, as required by the Manual and ANSI 2003.

(b) Respondents agree Icon will retrofit the sink at the Community Room by reinstalling the sink further away from the wall, such that the midline of the sink will be no less than 15” from the nearest obstruction as required in the Manual and ANSI 2003, for sinks with sufficient knee clearance to allow for a forward approach by persons using a wheelchair.

(c) Respondents agree Icon will complete the retrofits in the current section within 60 days from the date of the Closing Letter from ICRC.

<sup>18</sup> See Manual at page 7.7.

*Usable Doors – Door-Opening Force*

- (a) The parties agree the door-opening force for the doors located at the entrance to the men's restroom, storage-units room, and mail room – none of which are fire-rated doors – exceed the 5-lbs. maximum force allowed by ANSI 2003 for interior-hinged doors that are not fire-rated.
- (b) Respondents claim R@62W has adjusted the hinges of the doors located at the entrance to men's restroom, the storage-units room, and the mail room to reduce the opening force at these doors to bring them into compliance with the 5-lbs. force maximum allowed by ANSI 2003 for doors that are not fire rated.
- (c) Respondents agree to submit photographs to ICRC to verify their claim in "(b)" paragraph of the current section within 30 days from the date of the Closing Letter from ICRC.
- (d) If the photographs required in "(c)" paragraph above are not determined by ICRC to have corrected the deficiency described in "(a)" paragraph above, Respondents agree to adjust the hinges of these doors pursuant the requirements in "(a)" paragraph of the current section within 60 days from the date of the Closing Letter from ICRC.

*Usable Doors – Threshold for Secondary Door to Balcony*

- (a) The parties agree the interior threshold heights onto the finished floor surface at the doorways to the balconies of the units reported on page 7 of the current agreement exceed  $\frac{1}{4}$ ", which is the maximum height allowed for interior thresholds without 1:2 beveling by the Manual and ANSI 2003.
- (b) Respondents agree R@62w and Icon will install reducer strips or ramps with a running slope of no greater than 1:12 at the units described in "(a)" paragraph above at the interior side of the threshold at the doorway from the living room to the balcony, as required by the Manual and ANSI 2003.
- (c) Respondents agree R@62w and Icon will inspect the interior threshold height at the doorway providing access from the living room to the balcony of the other "B," "C," "D," "F," and "G" units that were not inspected by ICRC Investigators to verify compliance with either the  $\frac{1}{4}$ " maximum threshold height if no 1:2 beveling is present or the  $\frac{3}{4}$ "-maximum threshold if the 1:2 beveling is present.

Respondents agree R@62w and Icon will retrofit the non-compliant thresholds they find in their self-inspections in the same manner as required in "(b)" paragraph above.

- (d) Respondents agree R@62w and Icon will allow tenants who do not desire to keep the ramp or reducer strip installed in their unit as required in "(b)" paragraph above, to have management remove the ramp or reducer strip from the unit.

However, Respondents agree to reinstall the ramp or reducer strip upon a tenant's request, as described in "(b)" paragraph above, if necessary to accommodate the onset of mobility-impairment health condition for that tenant.

- (e) At units where the ramp or reducer strip has been removed because of a tenant's request, Respondents agree R@62w and Icon will reinstall the ramp as required in "(b)" paragraph above before the unit is rented again.

(f) Respondents agree R@62w and Icon will complete the retrofits described in the current subsection within 60 days from the date of the Closing Letter from ICRC.

*Usable Doors – Change in Level Between Exterior Balcony Surface and Interior Finished Floor Surface*

(a) The parties agree that, as retrofitted with gaskets installed after ICRC’s inspection of the subject property in November 2017, the exterior balcony surface at each unit is impervious because the ability for the water to drain off the balcony surface is now diminished after the gasket installation. Though it is not a retrofit completed with the intent to correct the deficiency of the change in level, the resulting impervious nature of the corrections made at the balconies’ surfaces to improve the tenants’ enjoyment of the units has rendered this deficiency moot.

Therefore, ICRC requires no further action in regards to this deficiency. Finally, the allowance made – due to the unrelated correction to the balconies – in regards to the ICRC’s enforcement shall not be precedent-setting.

*Required Timelines for Completion of Modifications or Retrofits*

18) Respondents agree to complete all retrofits requested as reasonable accommodations within 14 days from the date the request is submitted by the tenant.

19) Respondents agree, for any tenant who makes a reasonable modification request that concerns one or more of the above-required modifications or retrofits, they will allow the tenant to make the decision whether the above-required modifications or retrofits are made during their tenancy.

*Mandatory Reports*

20) Respondents agree to notify when they have completed the required modifications or retrofits for each of the units and the public and common use areas. Such notification shall be made within 90 days of completion. These required notifications to ICRC after each unit or common area is modified or retrofitted will continue until all required modifications or retrofits have been completed in all applicable units.

21) Respondents agree to send a copy to ICRC (Attn: Emigdio Lopez-Sanders; Iowa Civil Rights Commission, 400 East 14<sup>th</sup> Street, Des Moines, Iowa 50319-0201) of all written reasonable accommodation requests for the above-required retrofits and modifications received within one year from the date of the Closing Letter from ICRC.

22) Respondents agree, as the required modifications or retrofits are made to a particular unit, ICRC may then inspect such unit, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within 30 days of the inspection, to Respondents. If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by ICRC.

23) The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee’s

commitment to be bound by the terms of this agreement to complete all required modifications or retrofits as specified in this Agreement.

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Residences at 62W, LLC  
RESPONDENT

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Date

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Icon Construction, LLC  
RESPONDENT

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Date

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BSB Design, Inc.  
RESPONDENT

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Date

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Angela Jackson, Commissioner  
COMPLAINANT

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Date

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Kristin H. Johnson, Executive Director  
IOWA CIVIL RIGHTS COMMISSION

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Date