

# PREDETERMINATION SETTLEMENT AGREEMENT

CP# 12-17-71358  
HUD# 07-18-8267-8

## PARTIES TO THE SETTLEMENT AGREEMENT:

### RESPONDENTS

#### **CONFLUENCE ON THIRD, L.L.C.**

1964 West Wayzata Boulevard, Suite 200  
Long Lake, Minnesota 55356-9494

#### **ROERS INVESTMENTS, L.L.C.**

1964 West Wayzata Boulevard, Suite 200  
Long Lake, Minnesota 55356-9494

#### **FRANA COMPANIES, INC.**

633 Second Avenue South  
Hopkins, Minnesota 55343-1030

#### **URBANWORKS ARCHITECTURE, L.L.C.**

901 North 3<sup>rd</sup> Street, Suite 145  
Minneapolis, Minnesota 55401-1169

### 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 and usable public and common use areas," the "accessible route into and through the covered

unit,” the “light switches, electrical outlets, thermostats, and other environmental controls in accessible locations,” and the “usable kitchens and bathrooms.”<sup>1</sup>

Complainant specifically alleged, in Units 346 and 405, 103 SW 3<sup>rd</sup> Street, Confluence on 3<sup>rd</sup> (“Confluence”), one feature in the common areas and four features 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 top four rows of the mail compartments at the wall-mounted mailbox station were calculated to be 68 ½” (top row), 65” (second to top row), 61 ½” (third to top row), and at 58” (fourth to top row)– all of which are higher than the 54”-maximum allowed for a parallel approach by persons using a wheelchair; (2) the height of the interior threshold at the sliding glass doorway in Units 405 and 346 were measured at 1 ¾”, which exceeds the ¼”-maximum allowed for interior thresholds at sliding glass doorways if there is 1:2 beveling present, which was observed to be lacking; (3) the heights of the thermostat top controls were measured at 49 ⅞” in Unit 346, which is more than the allowed maximum height of 48”; and (4) the midline of the toilet was measured to be 17 ¾” away from the wall to the left and 12 ⅜” from the furred wall to the right – which totals 29 15/16” and is less than the 33”-minimum required for a toilet to be accessible.

### Description of the Subject Property

#### Subject Property

Confluence consists of one building located at 103 SW 3<sup>rd</sup> Street.<sup>2</sup> The residential building and common areas will all be required to meet the same accessibility requirements of the ICRA and FHA. The building was issued a Certificate of Occupancy, signed by Cody Christensen, Building Official for the City of Des Moines, on March 30, 2017.

The scope of the current agreement includes all of the dwelling units and the public and common use areas, including the pool, hot tub, dog park, dog washing station, bicycle storage/repair area, bicycle racks, fitness center, community room, community grills, rooftop community gardens, bocce ball court, courtyard, fire pit, barbecue/picnic area, leasing office, yoga studio, elevator, dumpsters, recycling containers, package delivery lockers, and the wall-mounted mailbox units adjacent to the main entrance.

The dwelling units at Confluence consist of 29 floor-plan types, which have been grouped by Respondents based on their floor-plan configurations.<sup>3</sup> Respondents’ reorganization of the floor-plan types has resulted in eight separate groups of units.<sup>4</sup>

The table below lists the unit types that were grouped together. It also provides the unit numbers for the inspected units, and the total number of units by group.

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<sup>1</sup> See Iowa Code §§216.8A(3)(c)(3)(a) [Requirement 2 – Accessible and Usable Public and Common Use Areas]; 216.8A(3)(c)(3)(c)(i) [Requirement 4 – Accessible Route into and Through the Covered Unit]; 216.8A(3)(c)(3)(c)(ii) [Requirement 5 – Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations], and 216.8A(3)(c)(3)(c)(iv) [Requirement 7 – Usable Kitchens and Bathrooms].

<sup>2</sup> Burk, Terry. “RE: Request for CO, Building Application, and Building Permit” Message to Emigdio López-Sanders. July. 20, 2017 Email.

<sup>3</sup> See Appendix B for floor plans.

<sup>4</sup> See Appendix B for matrix indicating the configuration of units by floor-plan type, and floor.

| Unit Type(s)  | Inspected Unit Numbers and Types                   | Total Units Per Group |
|---|--|-----------------------|
| STU-(A, B, and C)<br>[Studio/1BA]                       | 144 (STU-A)  | 7                     |
| JR-(A, B, C, D, E, F, and G)<br>[1 "Sleeping Room"/1BA] | 253 (JR-F)   | 41                    |
| 1BR-(D, E, F, G, and H)<br>[1BR/1BA]                    | 209 (1BR-E)  | 32                    |
| 1BR-(A, B, and C)<br>[1BR/1BA]                          | 346 (1BR-B) [Test Unit]<br>405 (1BR-B) [Test Unit] | 51                    |
| 1BR-(J, K, and L)<br>[1BR/1BA]                          | 235 (1BR-L)  | 8                     |
| 2BR-(A, B1, B2, and C)<br>[2BR/2BA]                     | 404 (2BR-A)  | 41                    |
| 2BR-(D1, D2, E, and F)<br>[2BR/2BA]                     | 154 (2BR-D2)                                       | 31                    |
|   | <b>TOTAL</b>                                       | 211                   |

### Respondents' Defenses

When asked in the questionnaire what was true or false about the allegations, Respondents Urbanworks, Roers, and Confluence-Owner answered:

#### Item 7.1

Regarding unit balcony access: To provide reasonable accommodation at the door threshold to the balcony the building management would provide a ramp to meet the accessible requirements upon request by the renter. Initially, management will [purchase] two ramps to have on site. See Exhibit A ramp cut-sheet.

#### Item 7.2

Unit 405 bathroom vanity: It appears that the sink bowl is not centered on the vanity and does not meet the required clearance as documented. The proposed remedy is to install a new counter top with the sink bowl located a minimum 24" from the nearest obstruction to meet the parallel approach.

#### Item 7.3

Unit 346 Thermostat: Upon inspection by the electrical contractor (this week) the device was installed outside the accessible reach range and has since been corrected.

#### Item 7.4

Unit 346 toilet: Based on further investigation (See attached photo) it has been verified that the clear distance from the edge of the bathtub to the edge of the vanity is 33" and meets the

accessible requirement. The location of the toilet within this 33" clear space was also verified to be within the acceptable range per ANSI guidelines. It appears that the dimensions stated in the [complaint] were measurements to the furring wall as part of the bathtub installation. Based on the Fair Housing Diagrams that both show the furred wall on both ends of the tub, and [the] way the Fair Housing Diagrams describe the operation, it suggests that the clear space dimension is measured from the face of the tub. Any furring behind the tub would have no impact on the ability to access the tub or toilet.

#### Item 7.5

Unit mailboxes: Given that more [than] half the mailboxes are within the accessible reach range there is the opportunity to provide reasonable accommodation by the mail carrier to arrange the delivery of any unit to have access to an accessible mailbox. To better facilitate the arrangement of mail delivery we would propose that the mailboxes be numbered chronologically instead of by specific unit number. This chronologically[-]assigned approach will provide 60 percent compliant mailboxes. If there is a need for more than 60 percent compliant mailboxes the owner would then make further accommodations.

As a point of reference, in the 2010 ADA, in section 233.3, where Entities are Not Subject to HUD Section 504, only 5 percent of dwelling units would be required to provide mobility features, and therefore 5 percent would need mailboxes as noted in 228.2.

One should also note that tenants only have access to their individual box. Only the postal carrier has access to all boxes. Therefore with a numbering sequence that does not relate directly to the unit number, it is simple and reasonable to be able to locate tenant boxes within reach range.

Respondent Frana answered,

#### Item 7.1

Regarding unit balcony access: To provide reasonable accommodation at the door threshold to the balcony the building management would provide a ramp to meet the accessible requirements upon request by the renter. Manufactured patio doors are not available with accessible thresholds so an adaptable ramp can be provided.

#### Item 7.2

Unit 405 bathroom vanity: Vanity required an offset bowl to maintain min 24" clear from the wall. The opening provided in the top was offset in the wrong direction. A new vanity top will be installed with the correct offset.

#### Item 7.3

Unit 346 Thermostat: Electrical contractor has visited the property and confirmed this thermostat was not mounted correctly and will remedy this thermostat on 12/27/17.

#### Item 7.4

Unit 346 toilet: Based on further investigation (See attached photo) it has been verified that the clear distance from the edge of the bathtub to the edge of the vanity is 33" and meets the accessible requirement. The location of the toilet within this 33" clear space was also verified to be within the acceptable range per ANSI guidelines. It appears that the dimensions stated in the compliant were measurements to the furr[ed] wall as part of the bathtub installation. Based on the Fair Housing Diagrams that both show the furred wall on both ends of the tub, and [the] way the Fair Housing Diagrams describe the operation, it suggests that the clear space dimension is measured from the face of the tub. Any furring behind the tub would have no impact on the ability to access the tub or toilet.

Item 7.5

Unit mailboxes: Given that more than half the mailboxes are within the accessible reach range there is the opportunity to provide reasonable accommodation by the mail carrier to arrange the delivery of any unit to have access to an accessible mailbox. To better facilitate the arrangement of mail delivery we would propose that the mailboxes be numbered chronologically instead of by specific unit number. As a point of reference, in the 2010 ADA, in section 233.3, where Entities are Not Subject to HUD Section 504, only 5 percent of dwelling units would be required to provide mobility features, and therefore 5 percent would need mailboxes as noted in 228.2. That being said this chronologically assigned approach will provide 60 percent compliant mailboxes. If there is a need for more than 60 percent compliant mailboxes the owner would then make further accommodations.

Report of Preliminary Findings:

ICRC Investigators inspected 8 units at Confluence, 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) The ICRC investigators took five slope measurements at Confluence at the interior ramp – which was observed to have ADA-accessible handrails – because it is the only one of the two routes from near the leasing office and the main building entrance to Units 104 through 117, which does not include steps. Therefore, this path needs to be accessible.

| DISTANCE BETWEEN LOWEST PORTION OF RAMP ADJACENT TO LEASING OFFICE AND LOCATION OF MEASUREMENT <sup>5</sup> | CORRESPONDING PHOTO IN APPENDIX A | RUNNING SLOPE |
|---|-----------------------------------|---------------|
| 15'   | Photo 1B                          | 8.7%          |
| 17'   | Photo 1C                          | 8.6%          |
| 19'   | Photo 1D                          | 8.8%          |
| 21'   | Photo 1E                          | 8.6%          |
| 23'   | Photo 1F                          | 8.9%          |

<sup>5</sup> See Appendix A, Photo 1A.

The above-reported slopes at the inspected sections of the interior ramps exceeds the 8.33%-maximum running slope established by the Manual, ANSI 1986, and 2010 ADAAG for ramps with handrails, rendering this path inaccessible to persons who utilize wheelchairs for mobility.

2) There is sufficient clearance in front of all wall-mounted mailbox units to allow for a parallel approach by persons using a mobility-assistive device such as a wheelchair. The heights to the midline of the keyholes at the top five rows of mailboxes were measured, and are listed in the table below:

| MAILBOX ROW | HEIGHT  |
|-------------|---------|
| Top         | 68 1/2" |
| Second      | 65"     |
| Third       | 61 1/2" |
| Fourth      | 58"     |
| Fifth       | 54 1/2" |

The top five rows of mailboxes exceed the 54"-maximum allowed for a parallel approach by ANSI 1986, and render these mailboxes inaccessible.<sup>6</sup>

3) The door at the doorway providing access to the dog-wash area required 10 pounds of force to open, which exceeded the 5-pound maximum limit allowed by ANSI 1986 for interior swinging doors.<sup>7</sup> This door requires too much force to open, which makes it unusable for persons with disabilities who have diminished strength to push or pull.

4) The clear opening width of the doorway at the walk-in closet in Unit 154 [2BR-D2] was measured at 30", and at the doorway to the laundry-machines area in Unit 209 [1BR-E], the clear opening width was measured at 29 3/4".<sup>8</sup>

The interior doorways in the inspected dwelling units reported above would have been compliant with the 31 5/8-inch minimum clear opening width requirement if installed according to the plans. But, as built, they are too narrow, rendering them unusable by persons using wheelchairs.<sup>9</sup>

5) The interior threshold heights at the sliding glass doorways in Units 209 [1BR-E], 404 [2BR-A], 346 [1BR-B], 405 [1BR-B], and 253 [JR-F/JR-G] were measured at no less than 5/8", which exceeds the 1/4-inch maximum allowed for thresholds without beveling.<sup>10</sup> These thresholds are too high, rendering the doorways unusable by persons using wheelchairs.

6) After being notified of the current complaint on December 14, 2017, and prior to ICRC's full onsite inspection on February 23, 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".

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<sup>6</sup> See Appendix A, Photos 2A and 2B.

<sup>7</sup> See Appendix A, Photos 3A, 3B, and 3C.

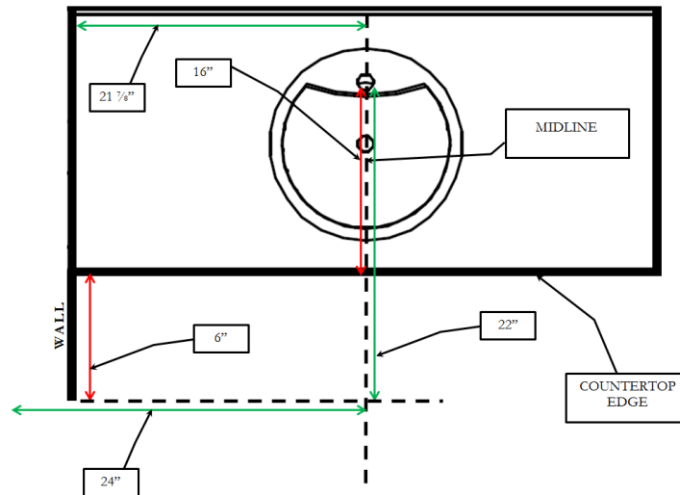
<sup>8</sup> See Appendix A, Photos 4A, 4B, and 4C.

<sup>9</sup> See Appendix A, Photo 6A

<sup>10</sup> See Appendix A, Photo 5A.

7) The width of the path between the kitchen island and the refrigerator, excluding the door handles, was measured at 38 ¾” in Unit 405 [1BR-B].<sup>11</sup> The width of the path in the kitchen of Unit 405 [1BR-B] would have been compliant with the required 40-inch minimum width if installed according to the plans. But as built, it is too narrow, rendering this kitchen unusable by persons using wheelchairs.<sup>12</sup>

8) The midlines of the bathroom sinks at all inspected units were measured by ICRC Investigators at no less than 24” away from the closest wall, which complies with the 24”-inch minimum required. Although the Tester reported the midlines of the sink to be 21 7/8” away from the wall – as claimed in the second allegation from the current complaint – this distance was measured by the Tester to a wall that extends 6” horizontally from the countertop edge in front of the sink, as measured during the inspection. ICRC Investigators measured the distance from the faucet spouts and control handle to the counter top edge at 16” and the height to the top of the sink rims to be no more than 33”. In order for someone in a wheelchair to make a centered parallel approach to the bathroom sink such that the wall adjacent to the sink is no longer an obstruction and achieve the 24”-minimum to the adjacent wall, the wheelchair user need be 22” away from the faucet spout and control handle. As reported on page 17 of the current report, ANSI 1986 allows a 24”-maximum horizontal reach distance over an obstruction if that obstruction has a 34”-maximum height. Therefore, a centered-parallel approach that is in compliance with the 24”-minimum distance from the closest obstruction to the midline of the bathroom sink is possible if the wheelchair user is no less than 22” away from the faucet spout and control handle. Please see the illustration below for a representation of the above description:



Although the distance that the Tester measured from the midline of the bathroom sink to wall was initially determined to be representative of the actual distance to the closest obstruction, the analysis of the information collected during the inspection by ICRC Investigators did not support the initial determination. Therefore, no evidence was found to support the allegation that the midline of the bathroom sink is closer to the nearest obstruction by less than the 24”-minimum required.

9) ICRC Investigators measured 29 15/16” between the vanity and the furred wall adjacent to the bathtub. However, the depth of the furred wall was measured at 11 ½”. Typically, furred walls with a depth of less than 12” are not considered to be one of the obstructions on either side of the toilet. Therefore, ICRC Investigators measured instead the distance between the vanity and the bathtub, and found it to be

<sup>11</sup> See Appendix A Photos 6A.

<sup>12</sup> See Appendix A, Photos 7A and 7B.

more than the 33"-minimum requirement from the guidelines, and therefore compliant with the clear floor space requirements for toilets.

Although the distance that the Tester measured at the toilet from the vanity countertop to the furred wall was initially determined to be representative of the actual distance between the obstructions on both sides of the toilet, the analysis of the information collected during the inspection by ICRC Investigators did not support the initial determination. Therefore, no evidence was found to support the allegation that the total distance between the obstructions on both sides of the toilet is less than the 33"-minimum required.

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

Respondents submitted written responses to the reported deficiencies. The most relevant excerpts from their responses are quoted below:

- 1) The interior ramp adjacent to the leasing office leading to units 104-117 has variant slopes along its length. The measurements documented (on page 15) call out a variant of .3% - .6% ( $1/32'' - 1/16''$  per foot of slope). The overall run of the ramp is 24' and the rise is 2', which corresponds to a 1:12 slope. Given that the overall parameters of the ramp comply with the accessibility regulation, the documented variants do not impede the reasonable use of the accessible route.
- 2) The unit mailboxes are designed and constructed per the USPS design standards. That being said the observation that the top five (5) rows of boxes are outside the accessible reach range is not disputed. The approach that the USPS has instituted to provide accessible access is simply to accommodate those requests by assigning specific units to mailboxes located within the allowable reach range. Given that 50% of the mailboxes are currently accessible there is capacity to make reasonable accommodation.
- 3) The door at the dog-wash area was measured to require more force to open than allowed. The contractor has agreed to adjust the closer resistance to meet the regulation.
- 4) The clear opening width of the doorway into the walk-in closet at unit 154 is measured at 30" clear. Without the door panel in place and the removal of a door stop on one side of the opening, the clear opening measures a nominal 32" clear. The proposed accommodation is to ask the current occupant and any future occupant if they would like the door removed, in order to provide the required clearance. At that time the building management will make the accommodation and remove the door.
- 5) The clear opening of the doorway into the laundry area in unit 209 is measured at  $29 \frac{3}{4}''$  clear. In this instance it is proposed that the door be reversed to swing out and allow the door panel to be opened 180 degrees and there by provide a clear 32" nominal opening.
- 6) The accessibility of the sliding patio door thresholds is an industry-wide known issue. The proposed accommodation is to provide an accessible threshold ramp which will be available on-site as need arises.
- 7) The measured width between the refrigerator and island countertop in unit 405 was  $38 \frac{3}{4}''$ . It is proposed that the countertop be reinstalled on the island cabinets to provide the required 40" clearance



## Assessment of Deficiencies:

Respondents stated all units were built in accordance with the scoping requirements of the 2012 International Building Code [IBC 2012], which incorporates the standards of the 2009 American National Standards [ANSI 2009] for guidance on the technical requirements [i.e., the dimension requirements]. Neither the IBC 2012 nor the ANSI 2009 is one of the safe harbors accepted by HUD.<sup>13</sup> Therefore, the Manual and the Guidelines, which incorporate ANSI 1986 for some of the technical requirements, must be used to assess and determine compliance with the ICRA and FHA, not IBC 2012 or ANSI 2009.

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 dog park, dog/bike washing station, bike storage area, fitness center, community room, exterior parking spaces, and community grills are governed by the FHA since they are only for use by the residents of Confluence and their guests. The ADA will only be referenced in the current report for the public areas, which include leasing office, exterior parking spaces adjacent to the leasing office, sidewalks, elevators, and hallways.<sup>14</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 and the Manual:

- 1) It is true that the overall running slope for the ramp is compliant with the 8.33% requirement, as determined by dividing the rise of 2' by the 24' horizontal projection of the ramp. However, *both* the overall *and* the localized running slope (i.e., "flatness") must be maintained to ensure accessibility for persons who use wheelchairs. Therefore, ICRC will require the non-compliant section of the ramp – as reported on page 6 of the current agreement – to be retrofitted such as to decrease the running slope to no more than 8.3%, to be measured in accordance with Section 1.1.13 ("Flatness of ramp running slope") of the US Access Board "Dimensional Tolerances in Construction and for Surface Accessibility."<sup>15</sup> ICRC will require that this retrofit be completed within 60 days from the date of the Closing Letter from ICRC.
- 2) The FHA and ICRA require for all dwelling units to have reachable mailboxes if there is an elevator. The accessibility requirements do not allow options that require tenants in wheelchairs to first request for a mailbox compartment to be reassigned in order to have a reachable mailbox. Reachable features must be available upon occupation of covered dwelling units. As Confluence is currently at the post-construction phase, ICRC will require at least 75% of the mailboxes to be reachable, *only* if is not possible to achieve 100% of the mailboxes being reachable due to physical limitations.

After ICRC's initial settlement offer, Respondents proposed to lower the mailbox units approximately 10" to provide 3 additional horizontal mailbox rows within reach ranges, while maintaining the lower parcel box key access within an acceptable range for the USPS. Respondents stated that Parcel deliveries can also

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<sup>13</sup> <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on March 28, 2014).

<sup>14</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."

<sup>15</sup> <https://www.access-board.gov/research/completed-research/dimensional-tolerances/part-ii> (Last visited on July 17, 2018).

utilize the parcel system on the adjacent wall to be within reach ranges. As the new retrofit proposal increases the proportion of tenants with reachable mailboxes from 50% to 80%, ICRC concurs with Respondents' most recent retrofit proposal, as long as they notify current and future tenants occupying units that have mailboxes with unreachable heights assigned to them about the option to have a reachable mailbox assigned to them if they require it because of a mobility impairment. ICRC will require that this retrofit be completed within 60 from the date of the Closing Letter from ICRC.

3) ICRC concurs with the proposed retrofit to adjust the closer resistance, as long as the force required does not exceed the 5-pound maximum. ICRC will require that this retrofit be completed within 30 days from the date of the Closing Letter from ICRC.

4) ICRC concurs with the proposed retrofit of removing the door panel and door stop to the walk-in closet in Unit 154 to comply with the nominal 32"-clearance, but not with the requirement of a request from a tenant prior to completing the retrofit. For the same reason as with the mailboxes, all features required to be accessible, must be compliant with the applicable requirements at the time units are occupied for the first time.

Therefore, ICRC will require this retrofit to be completed at all affected unoccupied non-compliant units, with the provision that tenants may select to have the doors reinstalled upon making a request to management. At occupied units, tenants will be asked if they would like the door removed. If the door is reinstalled, ICRC will require that the door be removed after the current tenant moves out and before the unit is occupied again. The removal of the door will be added to a pre-lease checklist indicating a tenant request. ICRC will require that this retrofit be completed within 90 days from the date of the Closing Letter from ICRC.

5) ICRC concurs with the proposed retrofit of reversing the door swing and allowing the door panel to be opened 180 degrees to provide a clear 32" nominal opening at the doorway of the laundry area in Unit 209. ICRC will require the same retrofit be completed in Unit 209 and in all affected non-compliant units within 90 days from the date of the Closing Letter from ICRC.

6) ICRC concurs with the proposed retrofit of providing an accessible threshold ramp at Units 209 [1BR-E], 404 [2BR-A], 346 [1BR-B], 405 [1BR-B], and 253 [JR-F/JR-G], but not with the requirement of a tenant's request prior to completing the retrofit. The ramp may be removed upon a tenant's request, but it must be reinstalled after the current tenant moves out and before the next tenant moves in. At the occupied units, ICRC will require that Respondents to ask tenants if they want to have the ramps installed. ICRC will require that this retrofit be completed in all affected unoccupied non-compliant units – including those listed above – within 60 days from the date of the Closing Letter from ICRC.

7) ICRC concurs with the proposed retrofit of reinstalling the countertop on the kitchen island cabinets further away from the opposing fixtures to provide the required 40" clearance in Unit 405 [1BR-B] and in all affected non-compliant units within 90 days from the date of the Closing Letter from ICRC.

#### 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 that:

(a) Justin Webster (Frana), Adam Steffl (Roers), and John Seppanen (Urbanworks) will 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, this term may be fulfilled by scheduling a training session with ICRC via email at [BuilltRightIowa@iowa.gov](mailto:BuilltRightIowa@iowa.gov), or by attending 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>.

(b) Send documentation to ICRC, verifying the fair housing / accessible design and construction training has been completed, within ten days of completing the training.

15) Respondents agree all persons identified in “14)” paragraph of the current section, and all Respondents’ current employees or agents who are involved in the design and/or construction of covered multifamily-dwelling properties 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.

#### *Required Retrofits*

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

#### *Accessible and Usable Public and Common Use Areas – Interior Ramp Along Accessible Route*

(a) The parties agree the interior ramp adjacent to the main building entrance and leasing office needs to meet maximum slope values established by ANSI 1986 and 2010 ADAAG – 2% maximum cross slope; 8.33% maximum running-slope (within sections of the ramp and overall for the entire ramp) with ADA-compliant handrails – because it is the most direct route without steps from the aforementioned common-use and public areas to Units 104 to 117, and therefore need to be accessible.

(b) The parties agree that sections of the interior ramp, as reported on pages 5 and 6 of the current agreement, have running slopes that exceed the 8.33%-slope maximum referenced in “a” paragraph above.

(c) Respondents agree to retrofit the non-compliant ramp sections exceeding maximum 8.33% running-slope requirement at the interior ramp – referred to in “b” paragraph above – such that those interior ramp sections, once corrected, will have a running-slope value of no more than 8.33% and a cross-slope value of no more than 2%, as required by ANSI 1986 and 2010 ADAAG, and measured consistent with the US Access Board “Dimensional Tolerances in Construction and for Surface Accessibility,” previously referred to on page 9 of the current agreement.”

(d) Respondents agree to complete the retrofits described in the current subsection within 60 days from the date of the Closing Letter from ICRC.

*Accessible and Usable Public and Common Use Areas – Mailboxes*

(a) The parties agree that the mailbox keyholes at the mailbox compartments in the top five rows of all 10 wall-mounted mailbox units exceed the 54”-maximum height allowed by ANSI 1986.

(b) Respondents agree to coordinate with the United States Postal Service to retrofit the mailboxes at the subject property such that no less than 80% of the mailbox compartments will have keyholes with midlines that do not exceed 54”-maximum height – that is allowed because there is sufficient clearance for tenants who use a wheelchair to make a parallel approach – as required by ANSI 1986.

(c) Respondents agree to notify current and future tenants occupying units with unreachable mailboxes, verbally and in writing, about their option to swap mailboxes for units occupied by tenants without mobility impairments, such that their new mailbox location will have a keyhole with a midline at a maximum height of 54 inches.

(d) Respondents also agree to send a statement to ICRC within 14 days from the date of the Closing Letter from ICRC verifying that the note referred to in “(c)” paragraph above was, in fact, distributed to each of the tenants in the units with unreachable mailboxes, including the unit numbers of units where the note was sent.

(c) Respondents agree to distribute the note referred to in “(c)” paragraph above to each new tenant at the time a lease or sub-lease agreement is signed for the six units with mailboxes higher than 54 inches.

(e) Respondents agree to complete the retrofits described in the current subsection within 60 days from the date of the Closing Letter from ICRC.

*Usable Doors – Door-Opening Force*

(a) The parties agree the door-opening force for the doors to the dog-wash area – which is not a fire-rated doors – exceeds the 5-lbs. maximum force allowed by ANSI 1986 for interior-hinged doors that are not fire-rated.

(b) Respondents agree to adjust the self-closer at the door to the dog-wash area to reduce the opening force at this door to no more than the 5-lbs. force-maximum allowed by ANSI 1986 for doors that are not fire rated.

(c) Respondents agree to complete the retrofit described in the current subsection for the common areas within 30 days from the date of the Closing Letter from ICRC.

*Usable Doors – Clear Opening Width for Secondary Entrances*

- (a) The parties agree the interior doorways providing access to the walk-in closet in Unit 154 [2BR-D2] and to the laundry-machines area in Unit 209 [1BR-E], have clear opening widths that are narrower than the 31 <sup>5</sup>/<sub>8</sub>-inch minimum required by the Manual.
- (b) Respondents agree to remove the door panel and door stop at the walk-in closet in Unit 154 to increase the door-opening width to  $\geq 31 \frac{5}{8}$  inches.
- (c) Respondents agree to reinstall the door to reverse the swing and allow the door panel to be opened 180 degrees at the laundry-machines area in Unit 209 to increase the clear opening width to  $\geq 31 \frac{5}{8}$  inches.
- (d) Respondents agree to measure the interior doorways of the other units that were not inspected by ICRC Investigators and are in the same floor-plan groups as Units 154 and 209, as defined in the table on page 3 of the current agreement. If the clear-opening width of any of the interior doors is  $< 31 \frac{5}{8}$ , then Respondents agree to retrofit the interior doorways of all unoccupied units in the manner as described in either “b” or “c” paragraphs above – as applicable – to bring them into compliance with the ICRA and FHA.
- (e) Respondents agree to notify the tenants at the occupied units about the option to have the retrofits in either “b” or “c” paragraphs completed if they require it because of a mobility impairment.
- (f) Respondents agree to allow current tenants who do not desire to have the interior doorways in their units retrofitted as required in either “b” or “c” paragraphs above – as applicable – and future tenants who desire to have the completed retrofits reverted, to have management either not perform the retrofits or revert the retrofits that have been completed.
- (g) However, Respondents agree to complete the retrofits, as described in either “b” or “c” paragraphs above, if necessary to accommodate the onset of mobility-impairment health condition for those tenants.
- (h) At units where the retrofits required in either “b” or “c” paragraphs above were not completed or were reverted because of tenants’ requests, Respondents agree to provide door option on a pre-lease checklist to properly notify the tenant of the availability of a closet door and the reversal of the door swing as applicable.
- (i) Respondents agree to complete the retrofits described in the current subsection within 90 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 in Units 209 [1BR-E], 404 [2BR-A], 346 [1BR-B], 405 [1BR-B], and 253 [JR-F/JR-G] measure no less than  $\frac{5}{8}$ ”, which exceeds the  $\frac{1}{4}$ -inch maximum allowed for thresholds without beveling, as required by the Manual.
- (b) Respondents agree to install accessible ramps with a running slope of no greater than 8.33% in 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.

(c) Respondents agree to inspect the interior threshold height at the doorway providing access from the living room to the balcony of the other units that were not inspected by ICRC Investigators, and are in the same floor-plan groups as Units 209, 404, 346, 405, and 253, as defined in the table on page 3 of the current agreement, to verify compliance with either the 1/4" maximum threshold height if no 1:2 beveling is present or the 3/4"-maximum threshold if the 1:2 beveling is present.

(d) Respondents agree to allow current tenants who do not desire to have the interior threshold at the doorway to the balcony in their units retrofitted as required in "b" paragraph above, and future tenants who desire to have the completed retrofit reverted, to have management either not perform the retrofit or revert the retrofit that has been completed.

(e) However, Respondents agree to complete the retrofits, as described in "b" paragraph above, if necessary to accommodate the onset of mobility-impairment health condition for those tenants.

(f) At units where the retrofit required in "b" paragraph above were not completed or were reverted because of tenants' requests, Respondents agree to complete the aforementioned retrofit before the unit is rented again.

(g) At units where the ramp has been removed because of a tenant's request, Respondents agree to reinstall the ramp as required in "b" paragraph above before the unit is rented again.

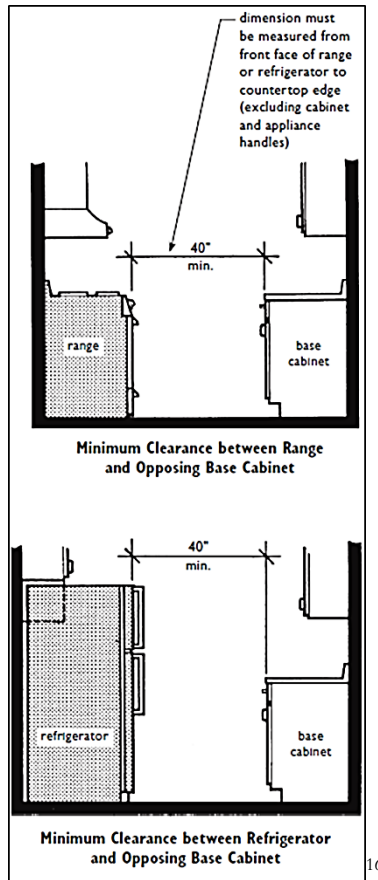
(h) Respondents agree to complete the retrofits described in the current subsection within 60 days from the date of the Closing Letter from ICRC.

#### *Usable Kitchens – Kitchen Islands*

(a) The parties agree the width of the path between the kitchen island and the opposing refrigerator is 38 3/4" in Unit 405 [1BR-B], which is less than the 40-inch minimum width required by the Manual.

(b) Respondents agree to increase the clear width of the path between the kitchen island and opposing features to no less than 40 inches in Unit 405 by reinstalling the countertop on the kitchen island further away from the opposing features to meet the 40-inch minimum distance, as required in the Manual. Respondents agree to measure the clear width of the path as indicated in the figure at the top of the next page:





(c) Respondents agree to measure the clear width of the path between the kitchen island and opposing features in the manner described in paragraph “b” above in the other similarly-situated units within the same floor-plan group, as listed on page 3 of the current agreement. If the clear width of the path is less than the 40-inch minimum required by the Manual, Respondents agree to retrofit the noncompliant kitchens in the same manner as described in “b” paragraph above to bring them into compliance with the ICRA and FHA

(d) Respondents agree to complete the retrofits described in the current subsection within 90 days from the date of the Closing Letter from ICRC.

*Retrofit Requests*

18) Respondents agree to notify all current tenants, via a letter, within 60 days from the date of the Closing Letter from ICRC about the option to have any of the above-required retrofits performed in their unit because of a disability for at no charge to the tenants.

19) Respondents agree to complete all retrofits requested by a tenant due to a disability within a reasonable amount of time based on the complexity of the retrofit and no later than 30 days from the date the request is submitted by the tenant.

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<sup>16</sup> See Manual at page 7.7.

20) Respondents agree that those tenants who request retrofits to be performed in their unit because of a disability will be allowed to remain in their units while the renovations are being completed, so long as their continued stay is safe and does not unduly disrupt the renovation work. If their continued stay is not safe or unduly interferes with renovation work, Respondents agree to make available an alternative unit or reasonable accommodations at alternative location on a temporary basis, until the unit is made safe or the renovation work is completed. Respondents agree to pay all costs generated by such accommodations.

*Mandatory Reports*

21) Respondents agree to notify ICRC when they have completed the required 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 retrofits have been completed in all 211 units.

22) Respondents agree to send a copy to ICRC of all written requests for retrofits that they receive from tenants in response to the written notice sent to tenants that is required in Term 18.

23) Respondents agree, as the required 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.

24) Respondents agree to send all reports and written statements required in this agreement to ICRC (Attn: Emigdio Lopez-Sanders; Iowa Civil Rights Commission, 400 East 14<sup>th</sup> Street, Des Moines, Iowa 50319-0201, OR via email at [emigdio.lopez-sanders@iowa.gov](mailto:emigdio.lopez-sanders@iowa.gov)).

25) 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 properties 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 retrofits as specified in this agreement.

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Confluence on Third, L.L.C.  
RESPONDENT

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Date

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Roers Investments, LLC  
RESPONDENT

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Date

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Frana Companies, Inc.  
RESPONDENT

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Date

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Urbanworks Architecture, L.L.C.  
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