

# PREDETERMINATION SETTLEMENT AGREEMENT

CP# 12-17-71357  
HUD# 07-18-8265-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

**LOFTS AT RED CEDAR, LLC**

450 1<sup>st</sup> Street SW, Unit 102  
Cedar Rapids, Iowa 52404-5746

**KNUTSON CONSTRUCTION SERVICES MIDWEST, INC.**

2351 Scott Boulevard SE  
Iowa City, Iowa 52240-8174

**AMENT, INC.**

625 32<sup>nd</sup> Avenue SW  
Cedar Rapids, Iowa 52404-3947

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

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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)(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].

Complainant specifically alleged, in Unit 210, 450 1<sup>st</sup> Street SW, The Metropolitan (“Metropolitan”), one feature in the common areas and two 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 66 7/8” (top row), 63 3/8” (second to top row), 59 7/8” (third to top row), and at 56 3/8” (fourth to top row)– all of which are higher than the 54”-maximum height allowed for a parallel approach by persons using a wheelchair; (2) the height of the midline of thermostat control ring was measured at 53 1/2” in Unit 210, which is more than the allowed maximum height of 48”; and (3) clear opening width of the shower was measured at 30 1/2”, which is less than the 36”-minimum required whenever shower stalls are the only bathing fixture at dwelling units.

Description of the Subject Property

Subject Property

Metropolitan consists of one building located at 450 1<sup>st</sup> Street SW. The residential building and common areas will all be required to meet the same accessibility requirements of the ICRA and FHA. The building at Metropolitan was issued a Certificate of Occupancy signed by Kevin Ciabatti, Building Services Director for the City of Cedar Rapids, Iowa, on March 9, 2017.

The scope of the current agreement includes all of the dwelling units – both rental and for sale – and the public and common use areas, including the fitness center, leasing office, elevator, dumpsters, recycling containers, and the wall-mounted mailbox units adjacent to the main entrance.

The dwelling units at Metropolitan consist of 15 floor-plan types, which have been grouped by Respondents based on their floor-plan configurations.<sup>2</sup> Respondents’ reorganization of the floor-plan types has resulted in five separate groups of units.<sup>3</sup>

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

<b>Unit Types/Groups and Unit Numbers</b>	<b>Inspected Unit Numbers</b>	<b>Total Units Per Group</b>
<u>Studio/1BA</u> : 205, 206, 207, 305, 306, and 307	306	6
<u>1BR/1BA</u> : 202, 203, 204, 208, 209, 210, 302, 303, 304, 308, 309, and 310	202 and 210	12
<u>2BR/1BA</u> : 201, 210, 211, and 311	311	4
<u>Condominium Units for Sale</u> : [2BR/2BA] – 401, 402, 403, 404, 405, and 406 // [2BR/2 1/2BA] – 501, 502, 503, 504, 601, and 602 // [3BR/2 1/2BA]: 603	503	13
	<b>TOTAL</b>	35

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

<sup>3</sup> See Appendix B for matrix indicating the configuration of units by floor-plan type, and floor.

## Respondents' Defenses

When asked in the questionnaire what was true or false about the allegations, LRC and Ament answered:

1. Thermostats will be lowered.
2. Unit 210 isn't rented to an individual requiring ADA accessibility. If it does get rented to such an individual, the door will be removed [and] a shower curtain will be installed.
3. The mailboxes are installed according to the requirements listed in 2010 ADA Standards for Accessible Design paragraph 228.2 which states in part[,] "In residential facilities, where mail boxes are provided for each residential dwelling unit, mail boxes complying with 309 shall be provided for each residential dwelling unit required to provide mobility features complying with 809.2 through 809.4" The only 2 units "required" in this building are 209 [and] 210. The [mailboxes] provided for them are at a compliant height. If any other units are sold/rented to persons with disabilities [and] the assigned box is above 48", then they'll be shuffled [with] lower boxes so they're accessible.

Knutson answered,

T-Stat will be lowered by the installing mechanical contractor.

Shower doors are set up to be adaptable. This can be revised if a tenant whom is disabled occupies the unit.

The mailboxes were installed per the manuf. recommendations and USPS standards. See attached submittal. The mailbox for unit #209 and #210 is below the required 48" level for access to the mailbox. If the mailbox was lowered, then a tenant requiring a wheel chair would have to reach lower than 15" AFF to get inside of the bottom parcel boxes.

## Report of Preliminary Findings:

ICRC Investigators inspected five units at Metropolitan, 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 from the previous page, and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

- 1) The access aisle shared by the two parking spaces that are designated as reserved for use by persons with disabilities was measured at 94 <sup>3</sup>/<sub>4</sub>" wide and the parking space designated as "Van Accessible" was measured at 101 <sup>1</sup>/<sub>2</sub>" wide.<sup>4</sup> If the width for a "Van-Accessible" parking space is less than 132", then the width of the adjoining access aisle must be no less than 96", as required in Section 502.2 from the 2010 ADAAG. The width for this access aisle is less than the 96"-minimum required in the 2010 ADAAG. The plans submitted by Respondents did not include instructions or diagrams for the installation of "Van-Accessible" parking paint stripes.
- 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 four rows of mailboxes were measured, and are listed in the table below:

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<sup>4</sup> See Appendix A, Figures 1A and 1B.

MAILBOX ROW	HEIGHT
Top	66 ¾"
Second	63 ¼"
Third	59 ¾"
Fourth	56 ¼"

The top four rows of mailboxes exceed the 54"-maximum allowed for a parallel approach by ANSI 1986, and render these mailboxes inaccessible.<sup>5</sup> The plans submitted by Respondents did not include instructions or diagrams for the installation of mailboxes.

3) There is enough clearance in front of the fan for residents using wheelchairs to make a parallel approach, which allows for a maximum reach height requirement of 54". The height of the pull-string handle that operates the fan was measured at 63 ⅞".<sup>6</sup> Therefore, the fan controls are unusable for residents using wheelchairs for mobility, according to the maximum reach parameters of ANSI 1986. The plans submitted by Respondents did not include instructions or diagrams for the installation of the fan at the Fitness Center.

4) The height to the bottom of the control ring of the thermostats in Units 202, 306, and 311 was measured at no less than 51", which exceeds the 48"-maximum height.<sup>7</sup> Although Respondents stated during the inspection that the thermostats are operable via smart cellular telephones, this method of operating the thermostat control is not allowed by the FHA and ICRA because it requires the resident to have a smart cellular telephone. The thermostats are unusable by persons using wheelchairs because they are too high. The plans submitted by Respondents did not include instructions or diagrams for the installation of the thermostats.

5) In Unit 202, the midline of the refrigerator was measured to be 15 ¼" from the wall adjacent to the right in and the same distance was measured to be 19 ¾" in Unit 311, both of which are less than the 24" minimum required for the parallel approach, which leaves a forward approach as the only other option for a person using a wheelchair.

The width of the path between the refrigerator – which is in the same configuration as shown and described above – and the opposing fixture, excluding the door handles, was measured at 34 ⅝" in Unit 202 and 39 ¾" in Unit 311, which are both less than the 48"-minimum required for this refrigerator configuration. In Unit 306, the location of the refrigerator allows for a parallel approach by persons in a wheelchair. Therefore, the minimum width of the path between the refrigerator and the opposing dishwasher in Unit 306 is only required to be 40" instead of the 48"-minimum for Units 202 and 311. The clear width in Unit 306 was measured at 34 ½", which is less than the 40"-minimum required when location of the refrigerator allows for a parallel approach to be made in a galley-style kitchen by persons using wheelchairs.<sup>8</sup>

Respondents submitted plans for all units. The plans for the kitchens in 1BR/1BA, 2BR/1BA and units are shown below.<sup>9</sup>

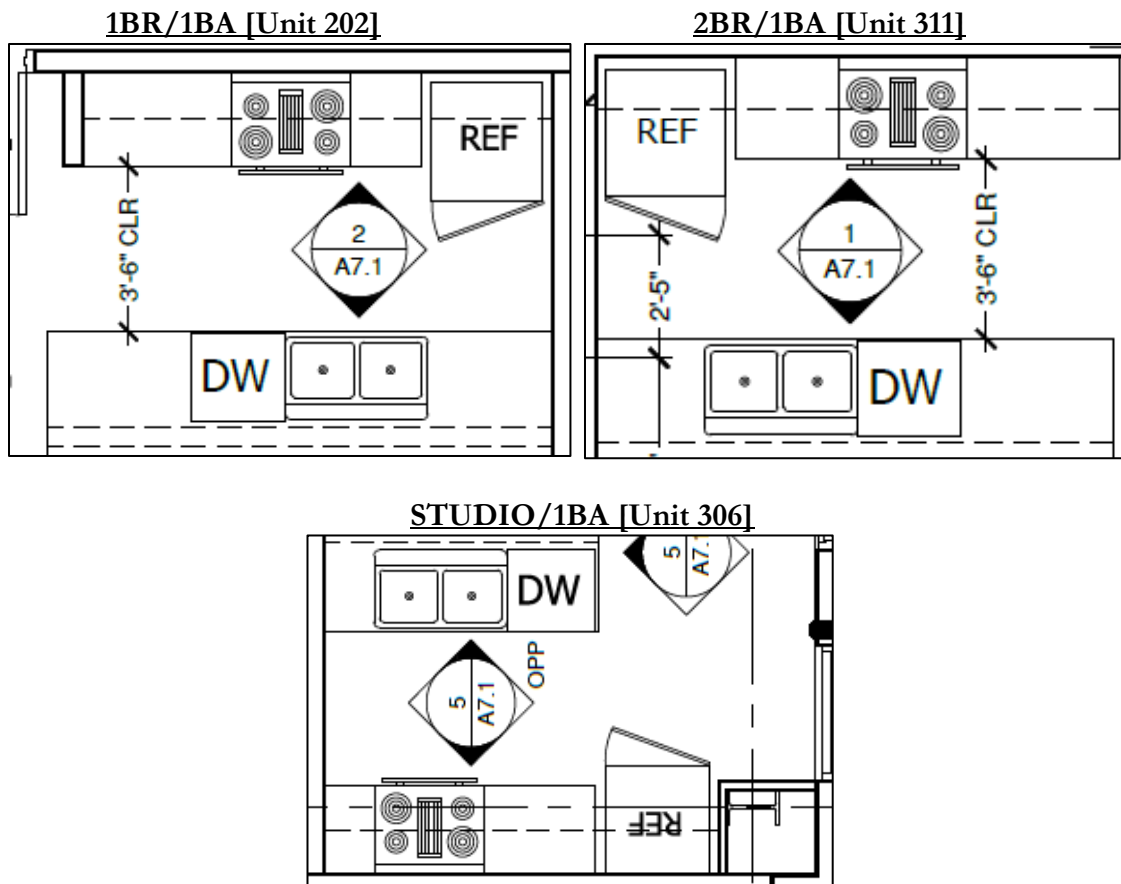
<sup>5</sup> See Appendix A, Photos 2A and 2B.

<sup>6</sup> See Appendix A, Photos 3A and 3B.

<sup>7</sup> See Appendix A, Photo 3A.

<sup>8</sup> See Appendix A Photos 5A, 5B, 5C, 5D, 5E, and 5F.

<sup>9</sup> See Appendix B.



The width of the path in the kitchens of Units 202 and 311 was designed and built to be 40". The midlines of the refrigerators were designed to be about 15" away from the wall in both units. As designed and built, the path in these kitchens is less than the 48"-minimum, which is required because the only approach possible at the refrigerator is a forward approach given the location of the refrigerator at the closed end of the kitchen.

The width of the path in the kitchen of Unit 306 would have been compliant with the required 40-inch minimum width if installed according to the plans. But as built, it is too narrow. These violations render these kitchens unusable by persons using wheelchairs.

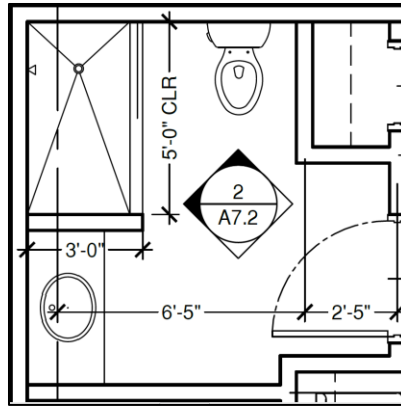
6) All rental units have only one bathing facility. In Unit 210, the clear opening width of the doorway to the stall shower was measured at 30 1/2".<sup>10</sup> In all other inspected rental units, the clear opening width of the doorway to the stall shower was measured at no more than 28 1/2", all of which are significantly less than the 36"-minimum clear width required.

Respondents submitted plans for all units. As based on the plans, the same type of bathing fixture was installed in all units except for Units 210 and 211. The plan for the bathroom in Unit 202 is shown at the top of the next page:<sup>11</sup>

<sup>10</sup> See Appendix A, Photos 6A and 6B.

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

**Unit 202**

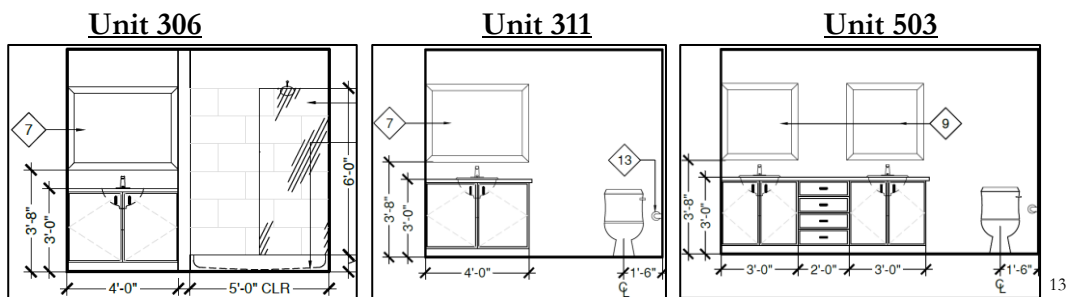


As designed and built, the clear opening width of this doorway is less than the 36”-minimum required. These violations render the bathrooms in all rental units unusable by persons using wheelchairs.

Additionally, as stated above, dwelling units that have that have shower stalls as the only bathing fixture in Specification-B bathrooms – which includes the bathrooms in Units 306 and 311 – are required to have reinforcements in the walls of the shower stall to allow for the possible future installation of a wall-mounted shower seat. Respondents’ answers to the ICRC questionnaire indicate compliance with the requirements for blocking to allow for the installation of grab bars. However, there is no information indicated in their responses or construction plans about reinforcement in the walls surrounding the shower stalls, which would allow for the installation of a wall-mounted shower seat in the Specification-B bathrooms at the rental units. If the required reinforcement for a wall-mounted shower seat was not installed during construction, Respondents will be required to correct this deficiency. If the required reinforcement for shower seat was installed during construction, Respondents will be required to verify the presence of the required reinforcement for shower seats.

7) Respondents stated the bathrooms in Units 306, 311, and 503 – which are Specification B bathrooms – have removable vanity cabinets with finished surfaces surrounding the available knee space under the sink. ICRC Investigators verified the dimensions of the knee space comply with the technical requirements of the FHA and ICRA. The height of the bathroom sinks in these units was measured at 36”, which exceeds the 34”-maximum height allowed by the Guidelines.<sup>12</sup>

The plans submitted by Respondents included the following diagrams for the installation of the sinks:



<sup>12</sup> See Appendix A, Photo 7A.

<sup>13</sup> See Appendix B.

The bathroom sinks in Units 306, 311, and 503 were designed and built with sink rims at a height of 36", which exceeds the 34"-maximum height requirement. Therefore, the sink rims are too high, rendering the sinks unusable by persons using wheelchairs.

8) The heights of the bathroom towel bars in all inspected rental units were measured at no less than 60", and were installed above toilets which have a depth of 29". Therefore, the towel bars will need to be moved to a different wall at a height of no more than 54", if there are no obstructions, because the depth of the toilet exceeds the maximum depth for obstructions. The location of the towel bars above the 29"-deep toilets renders them unusable by persons using wheelchairs.<sup>14</sup>

#### 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) [I]t is Ament's understanding that the owner will repaint this area in order to fall within the width requirements of ADAAG. *[Ament]*

Respondent will restripe the lines so that both spaces will be 96" wide, which is within the width requirements of ADAAG. *[Lofts at Red Cedar ("LRC")]*

2) It is Ament's understanding that the owner believes that the mailbox accessibility will be adjusted for any individual occupant of a unit who requires the height to be 54 inches or less. Such adjustment will come in the form of a re-numbering of the mailboxes to accommodate any individual. This adjustment to the numbering of the current mailbox configuration will apply to each individual with such requirement *[Ament]*.

Respondent notes that there are 31 mailboxes below the height noted by the Iowa Civil Rights Commission. There are only 16 mailboxes above the height noted by the Iowa Civil Rights Commission. Mailbox accessibility will be adjusted for any individual occupant of a unit who requires the height to be 54 inches or less. Such adjustment will come in the form of a re-numbering of the mailboxes to accommodate any individual. This adjustment to the numbering of the current mailbox configuration will apply to each individual with such requirement. This is sufficient to serve the needs of resident owners and tenants and it is a practical solution to the issue identified during the inspection. *[LRC]*

3) It is Ament's understanding that the owner will correct this condition by providing for a longer pull chain to meet the maximum height requirement. *[Ament]*

Respondent will correct this condition by providing for a pull cord 10" longer to meet the maximum height requirement. *[LRC]*

4) It is Ament's understanding that the thermostats will be made remote control accessible by the owner to each occupant. This will not be dependent on an occupant's possession or use of a cell phone. Ament supports this response as it is a practical, universal solution to the maximum height requirement. *[Ament]*

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<sup>14</sup> See Appendix A, Photo 8A.

Respondent notes that Nest thermostats have applications available to control the functions remotely. Tenants or resident owners may use the Nest thermostat (or other brand of their choosing) and its applications to modify the thermostat. This response is a practical, universal solution to the maximum height requirement. *[LRC]*

5) Without an assessment of responsibility, a matter to be discussed with the owner and contractor, a reasonable solution to this issue is in any unit where the clearance is non-compliant, the retrofit would be to move the cabinet that is next to the refrigerator to the wall side of the refrigerator, thus moving the refrigerator over to permit the sufficient dimensional clearance as referenced. As an alternative, a counter-depth refrigerator would be another reasonable solution. This solution can be best addressed by the owner, who has access to these units. Consistent with prior agreements entered into between the ICRC and builders, the timing of this solution can be addressed by way of a notice to the current tenants of the option to have this retrofit completed during their tenancy. If the current tenant does not opt for this retrofit, but chooses to leave the refrigerator where it currently exists, then the owner could advertise and include in its lease agreement the notice to any prospective tenant that this retrofit is made available to all, at no cost to the tenant, so as to bring the refrigerator clearance within the tolerances permitted by FHA and ICRA. *[Ament]*

A reasonable solution to this issue is the unit where the clearance is non-compliant, the retrofit would be to move the cabinet that is next to the refrigerator to the wall side of the refrigerator, thus moving the refrigerator over to permit the sufficient dimensional clearance as referenced. Alternatively, if a counter-depth refrigerator would cure the issue that may also be considered. Consistent with prior Agreements entered into between the ICRC and builders, the timing of this solution can be addressed by way of a notice to the current tenants of the option to have this retrofit completed during their tenancy. If the current tenant does not opt for this retrofit, but chooses to leave the refrigerator where it currently exists, Respondent could advertise and include in its lease agreement the notice to any prospective tenant that this retrofit is made available to all, at no cost to the tenant, so as to bring the refrigerator clearance within the tolerances permitted by FHA and ICRA. *[LRC]*

6) Per the dimensions provided for within the plans, the shower area meets the requirements provided for in your Report. The access to the shower is limited by the extension of the glass partition. The reasonable remedy for any shower stall that has an access of less than 36 inches is to replace the glass partition currently in place and install a shower curtain and rod to the appropriate height. Again, this solution can be best addressed by the owner, who has access to these units. As to the timing of this retrofit, as with the kitchen refrigerator, a notice by the owner to the current tenant to permit the tenant to exercise this retrofit can be made. If the current tenant does not opt for this retrofit, but chooses to leave the glass partition where it currently exists, then the owner could advertise and include in its lease agreement the notice to any prospective tenant that this retrofit is made available to all, at no cost to the tenant, so as to bring the shower stall access clearance within the tolerances permitted by FHA and ICRA.

As it relates to the addition of a shower seat or bench, as provided for in the Preliminary Report on page 22 of 25, a free-standing shower bench or stool can be provided to any tenant so requesting in lieu of a wall-mounted bench. As with the refrigerator clearance and the shower stall partition glass, this bench/stool can be provided to any current tenant if so requested. If not requested, then the owner could advertise and include in its lease for all prospective tenants the option of having a free-standing shower bench or stool provided, at no cost to the tenant. *[Ament]*



A reasonable remedy is to install a shower curtain to replace the glass partition to address this issue. As to the timing of this retrofit, as with the kitchen refrigerator, a notice to the current tenant to permit the tenant to exercise this retrofit can be made. If the current tenant does not opt for this retrofit, but chooses to leave the glass partition where it currently exists, then Respondent could advertise and include in its lease agreement the notice to any prospective tenant that this retrofit is made available to all, at no cost to the tenant, so as to bring the shower stall access clearance within the tolerances permitted by FHA and ICRA.

As it relates to the addition of a shower seat or bench, as provided for in the Preliminary Report on page 22 of 25, a free-standing shower bench or stool can be provided to any tenant so requesting in lieu of a wall-mounted bench. As with the refrigerator clearance and the shower stall partition glass, this bench/stool can be provided to any current tenant if so requested. If not requested, then the Respondent could advertise and include in its lease for all prospective tenants the option of having a free-standing shower bench or stool provided, at no cost to the tenant. [LRC]

7) Without any assessment of responsibility, a matter to be discussed with the owner and contractor, a reasonable solution to this issue would be to eliminate the base of the vanity to lower the height of the cabinet to the allowable dimension. Any attendant plumbing retrofits would be made at that time. As with the other issues within this section, this solution can be best addressed by the owner, who has access to these units. As to the timing of this retrofit, as with the other issues in this section, a notice by the owner to the current tenant to permit the tenant to exercise this retrofit can be made. If the current tenant does not opt for this retrofit, but chooses to leave the vanity height where it currently exists, then the owner could advertise and include in its lease agreement the notice to any prospective tenant that this retrofit is made available to all, at no cost to the tenant, so as to bring the vanity height/sink clearance within the tolerances permitted by FHA and ICRA. [Ament]

A reasonable remedy is to eliminate the base of the vanity to lower the height of the cabinet to the allowable dimension. Any attendant plumbing retrofits would be made at that time. As to the timing of this retrofit, as with the other issues in this section, a notice to the current tenant to permit the tenant to exercise this retrofit can be made. If the current tenant does not opt for this retrofit, but chooses to leave the vanity height where it currently exists, then Respondent could advertise and include in its lease agreement the notice to any prospective tenant that this retrofit is made available to all, at no cost to the tenant, so as to bring the vanity height/sink clearance within the tolerances permitted by FHA and ICRA. [LRC]

8) It is Ament's understanding that the owner has agreed to provide a towel bar that is height compliant in each bathroom where an existing towel bar is not there. [Ament]

Respondents will install a hook on an unobstructed wall not obstructed (e.g., not behind the toilet) and its height will be at or less than 54". [LRC]

#### Assessment of Deficiencies:

Respondents stated all units were built in accordance with the scoping requirements of the 2015 International Building Code [IBC 2015], 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 2015 nor the ANSI 2009 is one of the safe harbors accepted by HUD.<sup>15</sup> Therefore, the

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<sup>15</sup> <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on September 28, 2018).

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 2015 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 Fitness Center – which is only available to the individual condominium unit owners – dumpsters, recycling containers, and the wall-mounted mailbox units adjacent to the main entrance are governed by the FHA since they are only for use by the residents of Metropolitan and their guests. The ADA will only be referenced in the current report for the public areas, which include leasing office, exterior parking spaces, elevators, and hallways.<sup>16</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) ICRC agrees with the proposed retrofit of restriping the lines at the access aisle such that its width will be 96” when measured between the midline of the paint stripes, and will require the retrofit to be completed within 30 days from the date of the Closing Letter from ICRC.
- 2) ICRC disagrees with the proposed solution because it first requires residents who have inaccessible mailboxes assigned to them to request a swap for a reachable mailbox, and because it would allow this deficiency to remain uncorrected until management is presented with the request, which is in violation of the ICRA and FHA.

As a possible solution, ICRC proposes the following retrofit. The following figure shows the current configuration of mailboxes and the proposed retrofit.

201	301		310	504	
202	302		311	601	
203	303		401	602	
204	304		402	603	
205	305		403	UNASSIGNED	NEW 12-COMPARTMENT MAILBOX UNIT
206	306		404	UNASSIGNED	
207	PARCEL		405	PARCEL	
208	PARCEL		406	PARCEL	
209	307		501	UNASSIGNED	
210	308		502	UNASSIGNED	
211	309		503	UNASSIGNED	

<sup>16</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.”

The mailboxes in red represent the mailboxes that are inaccessible because they are too high and the ones in green are the ones that are accessible. There are five mailbox compartments that are unassigned and accessible. Five of the 16 units with inaccessible mailbox compartments can have accessible mailbox compartments if they are reassigned to the five unassigned and accessible mailbox compartment. For the 11 units still having inaccessible mailbox compartments, an additional 12-compartment mailbox unit (wall mounted or free standing) could be installed with all mailboxes at accessible heights, which would allow the remaining 11 units to have mailbox compartments that are accessible.

This is just one of the possible retrofits to make all mailboxes accessible in compliance with the FHA and ICRA. Respondents may coordinate with the USPS to select a different way to retrofit the mailboxes to bring them into compliance with the accessibility requirements. ICRC will require this retrofit to be completed within 60 days from the date of the Closing Letter from ICRC.

3) ICRC concurs with the proposed retrofit of installing a longer 10” cord if it includes a pull handle at the lower end. ICRC will require the retrofit to be completed within 30 days from the date of the Closing Letter from ICRC.

4) ICRC agrees with the proposed correction of retrofitting the thermostats to make them operable via remote controls, which would be provided for each unit at no cost to the resident, as long as (i) the default location for the remote is at an accessible height at the beginning of the occupancy period for each unit; and the remote is provided at no cost to each resident. ICRC will require the retrofit to be completed within 30 days from the date of the Closing Letter from ICRC.

5) ICRC agrees with the proposed retrofit, but only if both corrections – relocating the refrigerator and installing a counter-depth refrigerator – are completed. The reason is that (i) a counter-depth (25”) refrigerator is needed to increase the width to of the path in the kitchen to 41”; and (ii) the refrigerator must be relocated further away from the closed-off end of the kitchen so as to increase the distance from the midline of the refrigerator to the opposing wall to no less than 24”, which is needed to decrease the required minimum width of the path in the kitchen from 48” to 40”.

Additionally, this retrofit may be done after the current resident has moved and before the next resident moves in. However, for the same reasons stated in the section about the mailboxes, ICRC will require that these retrofits be completed (i) within one year from the date of the Closing Letter from ICRC; and (ii) independent of the residents’ preferences for the retrofit. Also, ICRC will require that this and all other required retrofits be completed sooner if requested by residents in non-compliant units. ICRC will require for residents to be notified about this option to have retrofits completed within 30 days of the resident’s request. It should be noted the prior settlement-agreements are not precedent-setting and each complaint is unique such that the terms that may have been agreed to at one property may not be deemed appropriate at another property.

6) ICRC agrees with the proposed retrofits – replacing the glass partition with a shower curtain and providing a free-standing shower seat – but without the requirement of a request from a resident for the same reasons stated in the section about the mailboxes.

Additionally, this retrofit may be done after the current resident has moved and before the next resident moves in. However, ICRC will require that these retrofits be completed (i) within one year from the date of the Closing Letter from ICRC; and (ii) independent of the residents’ preferences for the retrofit. Also, ICRC will require that this and all other required retrofits be completed sooner if requested by

residents in non-compliant units. ICRC will require for residents to be notified about this option to have retrofits completed within 30 days of the resident's request. As noted above, prior settlement-agreements are not precedent-setting and each complaint is unique such that the terms that may have been agreed to at one property may not be deemed appropriate at another property.

7) ICRC agrees with the proposed retrofit to remove the base of the vanity to lower the height of the cabinet to either the 34"-maximum height or less, but without the requirement of a request from a resident for the same reasons stated in the section about the mailboxes.

Additionally, this retrofit may be done after the current resident has moved and before the next resident moves in. However, ICRC will require that this retrofit be completed (i) within one year from the date of the Closing Letter from ICRC; and (ii) independent of the residents' preferences for the retrofit. Also, ICRC will require that this and all other required retrofits be completed sooner if requested by residents in non-compliant units. ICRC will require for residents to be notified about this option to have retrofits completed within 30 days of the resident's request. It should be noted the prior settlement-agreements are not precedent-setting and each complaint is unique such that the terms that may have been agreed to at one property may not be deemed appropriate at another property.

8) ICRC agrees with the proposed retrofit to install a towel hook on an unobstructed wall, and will require the retrofit to be completed within 30 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*

3) 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).

4) 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).

5) 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).

6) 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).

7) 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).

8) 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).

9) 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*

10) 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.

11) 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.

12) 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.

13) 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*

14) 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*

15) 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*

17) Respondents agree that:

(a) Jill Carlson [Lofts at Red Cedar, LLC], Al Varney III [Ament, Inc.], and Justin Holthaus [Knutson Construction Services Midwest, Inc.] 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 [BuiltRightIowa@iowa.gov](mailto:BuiltRightIowa@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) They will send documentation to ICRC, verifying the fair housing / accessible design and construction training has been completed, within ten days of completing the training.

18) Respondents agree all persons identified in paragraph 17 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*

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

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

- (a) The parties agree the access aisle that is adjacent to the parking space designated as "Van Accessible" is too narrow because its width is less than the 96"-minimum required in the 2010 ADAAG.
- (b) Respondents agree they will restripe the access aisle described in the previous paragraph such that its width is no less than 96".
- (c) Respondents agree to measure the width of the access aisle from the midline of the paint stripes on each side of the access aisle, as required in the 2010 ADAAG.
- (d) Respondents agree to complete the retrofits described in the current subsection within 30 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 four rows of both 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 all mailbox compartments will have keyholes with midlines that do not exceed 54"-maximum height – that is allowed because there is sufficient clearance for residents who use a wheelchair to make a parallel approach – as required by ANSI 1986.
- (c) 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 – Fitness Room Fan Control*

- (a) The parties agree the height to the handle of the pull-string cord operating the fan in the Fitness Center exceeds the maximum height of 54", as allowed by ANSI 1986.

(b) Respondents agree to replace the existing pull-string cord with a longer 10” cord such that the height to the operating handle of the cord does not exceed the 54”-maximum height – that is allowed because there is sufficient clearance for residents who use a wheelchair to make a parallel approach – as required by ANSI 1986.

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

*Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations – Thermostats*

(a) The parties agree the height to the bottom of the control ring of the thermostats in all inspected rental units – Units 202, 306, and 311 – exceed the maximum height of 48 inches, as allowed by the Manual.

(b) Respondents agree they will (1) retrofit the thermostats at all inspected rental units, described in the previous paragraph, such that they are operable via a remote control provided to the residents of these units at no charge to the residents; and (2) store the remote control – during the times the dwelling units are unoccupied – at an accessible location within the dwelling unit at a height that does not exceed the 48”-maximum allowed by the Manual. If there is no remote control available, the thermostats will be controlled by the resident’s computer. If the resident does not have a computer, or another manner of remote and accessible control, or their computer is not compatible with or otherwise have sufficient technology to work with the program or application provided by Respondents, the Respondents will lower relocate the thermostat such that the display and all controls are at a height  $\leq$  the 48”-maximum height allowed by the Manual.

(c) Respondents agree (1) to verify the height to the bottom edge of the control ring of the thermostats at all the other rental units does not exceed the 48”-maximum height; and (2) complete the same retrofit described in the previous paragraph at all the rental units with thermostats that exceed the 48”-maximum height as measured to the bottom of the control ring.

(d) Respondents agree to complete the retrofit described in the current subsection within 30 days from the date of the Closing Letter from ICRC or sooner if requested by a resident with a disability.

*Usable Kitchens – Clear Floor Space Centered at Refrigerator*

(a) The parties agree the width of the path between the refrigerator and the opposing fixtures is too narrow in (1) Units 202 and 311 because it is less than the 48”-minimum required for a forward-approach, which is the only approach to the refrigerator that is available; and (2) in Unit 306 because the width of this path is less than the 40”-minimum width required by the Manual whenever a parallel approach to the refrigerator is available.

(b) Respondents agree to complete the following retrofits:

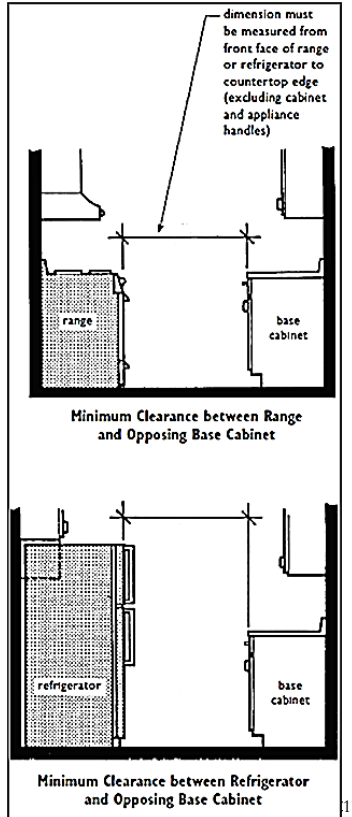
(i) Replace the current refrigerators in Units 202, 306, and 311 with counter (25” maximum)-depth refrigerators.

(ii) Install the counter-depth refrigerator in Units 202 and 311 further away from the adjacent opposing wall such that the midline of the refrigerator is no less than 24” away from the wall.



(iii) Owner agrees (1) to verify that the clear width of the path between the refrigerator and the opposing fixtures in all rental units is not less than the either the 48” or 40”-minimum width according to the description of this requirement in paragraph (a) of the current section; and (2) complete the same retrofits described in the previous two paragraphs at all those units where the path between the refrigerator and the opposing fixture that is too narrow according to the width requirements described in paragraph (a) of the current section, and to bring them into compliance with the ICRA and FHA.

(c) Respondents agree to measure the clear width of the path in the kitchens as indicated in the figure below:



(d) Respondents agree to complete the retrofits described in the current subsection within one year from the date of the Closing Letter from ICRC or sooner if requested by a resident with a disability.

*Usable Bathrooms – Clearance at Shower Stall*

(a) The parties agree (1) that the clear opening width of the doorway to the shower stall at all rental units is too narrow because the measured width is less than the 36”-minimum clearance required; and (2) that it is unknown if the reinforcement areas that allow for the possible future installation of a wall-mounted bench at the shower stalls of the rental units were installed during construction, as required by the Manual in the shower stalls at Specification-B bathrooms at covered dwelling units with only one bathing fixture.

(b) Respondents agree to (1) replace the glass partition to the shower stall at all rental units with a shower curtain; and (2) to provide a free-standing shower bench or stool<sup>18</sup> to residents at all rental units.

<sup>17</sup> See Manual at page 7.7.

(c) Respondents agree to complete the retrofits described in the current subsection within one year from the date of the Closing Letter from ICRC or sooner if requested by a resident with a disability.

*Usable bathrooms – Bathroom Sinks*

(a) The parties agree the height to the top of the rim at the sink of the Specification-B bathrooms<sup>19</sup> - which have removable vanity cabinets – of Units 306, 311 and 503 were measured at more than the 34”-maximum, as required by the Manual.

(b) Respondents agree they will remove the base of the removable vanity cabinets and reinstall these cabinets at the Specification-B bathrooms of Units 306, 311, and 503 such that the height to the top of the rim of the bathroom sink will be no more than 34” above the finished floor as required in the Manual.

(c) Respondents agree (1) to verify that the height to the top of the sink rim in the Specification-B bathrooms with removable vanity cabinets at all the other similarly-designed/built units does not exceed the 34”-maximum height; and (2) complete the same retrofit described in the previous paragraph at all those units with sink rim tops that exceed the 34”-maximum height.

(d) Respondents agree they will complete the retrofits described in the current section at all non-compliant units within one year from the date of the Closing Letter from ICRC or sooner if requested by a resident with a disability.

*Usable Bathrooms – Towel Bars*

(a) The parties agree bathroom towel bars in all inspected units are unusable for persons using wheelchairs because they are installed at a height of at least 60” above toilets that have a depth of 29” – which exceeds (1) the 54-inch maximum height if there is sufficient clearance for persons who use a wheelchair to make a parallel approach; and (2) the 24”-maximum reach depth over obstructions, as allowed by ANSI 1986.

(b) Respondents agree they will install towel hooks at a height of no greater than 54 inches on a different wall away from the toilets in the bathrooms of all rental units – such that there is sufficient clearance for persons who use a wheelchair to make a parallel approach – as required by ANSI 1986.

(c) Respondents agree they will complete the retrofits described in the current subsection at all rental units within 30 days from the date of the Closing Letter from ICRC.

*Retrofit Requests*

20) Respondents agree to notify all current residents, 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 residents.

21) Respondents agree to complete all retrofits requested by a resident 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 resident.

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<sup>18</sup> A free-standing shower bench or stool is allowed in lieu of a wall-mounted bench. *See* Manual at page 7.57.

<sup>19</sup> *See* Manual at page 7.37 for Specification-B bathroom example.

22) Respondents agree that those residents 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. Owner agrees to pay all costs generated by such accommodations.

*Mandatory Reports*

23) 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 35 units.

24) Respondents agree to send a copy to ICRC of all written requests for retrofits that they receive from residents in response to the written notice sent to residents that is required in Term 20.

25) 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.

26) 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)).

27) 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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Lofts at Red Cedar, L.L.C.  
RESPONDENT

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Date

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Knutson Construction Services Midwest, Inc.  
RESPONDENT

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Date

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Ament, 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