

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 01-18-71564
HUD# 07-18-8407-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

420 COURT AVE, LLC
5000 Westown Parkway, Suite 400
West Des Moines, Iowa 50266-5921

KNAPP PROPERTIES, L.C.
(DBA KNAPP PROPERTIES INC.)
5000 Westown Parkway, Suite 400
West Des Moines, Iowa 50266-5921

HY-VEE CONSTRUCTION, LC
(DBA HY-VEE CONSTRUCTION)
5605 NE 22nd Street
Des Moines, IA 50313

OPN, INC.
100 Court Avenue, Suite 100
Des Moines, Iowa 50309-2200

COMPLAINANT

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

and

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

Complainant's Allegations:

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

“accessible and usable public and common use areas,” 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.”¹ Complainant specifically alleged, in Unit 322, 420 Court Avenue, Fourth + Court (“Fourth and Court”), one feature in the common areas and three features within one of the covered units appeared inaccessible to a person utilizing a wheelchair for mobility – (1) the height of the midlines of the keyholes of the fourth row from the top of the mail compartments at the wall-mounted mailbox station were measured at 57 ½”, so the top four rows of mailboxes 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 doorway to the balcony in Unit 322 was measured at 3 ½”, which exceeds the ¼”-maximum allowed for interior thresholds at sliding glass doorways without 1:2 beveling, which was observed to be lacking; (3) the heights of the thermostat top controls were measured at 51 ¼” in Unit 322, which is more than the allowed maximum height of 48”; and (5) the clearance from the midline of the bathroom sink to the left wall was measured at 20 ¼”, which is less than the 24”-minimum clearance required for a parallel approach needed because the cabinet below the sink as observed by the tester was not easily removable.

Description of the Subject Property

Subject Property

Fourth and Court consists of one building located at 420 Court Avenue. The residential floors of the building and common use / public areas will all be required to meet the same accessibility requirements of the ICRA and FHA. The building at Fourth and Court was issued a Certificate of Occupancy signed by Corey Christiansen, Building Official for the City of Des Moines, Iowa, on June 8, 2017.

The scope of the current agreement includes all of the dwelling units and the public and common use areas, including the fitness center, community rooms, rooftop terrace, leasing office, elevator, dumpsters, package delivery lockers, and the wall-mounted mailbox units adjacent to the main entrance.

The dwelling units at Fourth and Court consist of 21 floor-plan types, which have been grouped by Respondents based on their floor-plan configurations.² Respondents’ reorganization of the floor-plan types has resulted in three separate groups of units.³

The table at the top of the next page 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.

¹ 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].

² See Appendix B for floor plans.

³ 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
0A, 0B, and 0C [Studio/1BA]	409 (0A) and 424 (0C)	19
1A through 1N, and 1P [1 BR /1BA]	216 (1D) and 322 (1J)	54
2A, 2B, 2C, and 2D [2BR / 2BA]	425 (2B) and 321 (2D – two-level unit)	8
	TOTAL	81

Respondents' Defenses

When asked in the questionnaire what was true or false about the allegations, Respondents answered:

1) Response to Thermostat Height

US Department of Housing and Urban Development, Joint statement of the Department of Housing and Urban Development and the Department of Justice – Accessibility requirements for covered multifamily dwellings under the Fair Housing Act. Published April 30, 2013.

#37 Safe harbors for Compliance with the Act. HUD recognizes 10 safe harbors for compliance with the Act's design and construction requirements.

- ANSI 117.1-1992, Page 4, 4.2.6.1. Unobstructed Side Reach. If the clear floor space allows a parallel approach by a person in a wheelchair, the high side reach permitted shall be 54 inches maximum and the low side reach shall be 15 inches minimum above the floor.

Resolution: None. Thermostats meet requirements.

2) Response to Balcony floor change

Fair Housing Act Design Manual. Page 4.11. Thresholds and Accessible Routes at Exterior Doors. Maximum allowable height difference between interior floor level and exterior floor level at SECONDARY DOOR, with impervious construction is 4”.

Resolution: None. Balconies meet requirements.

3) Response to Bathroom Sink

US Department of Housing and Urban Development, Joint statement of the Department of Housing and Urban Development and the Department of Justice – Accessibility requirements for covered multifamily dwellings under the Fair Housing Act. Published April 30, 2013. #37 Safe harbors for Compliance with the Act. HUD recognizes 10 safe harbors for compliance with the Act's design and construction requirements.

• ICC A117.1-2003, 1004.11.3.1.1 Lavatory. A clear floor space complying with Section 305.3, positioned for a parallel approach, shall be provided. The clear floor space shall be centered on the lavatory.

o Exceptions:

Cabinetry shall be permitted under the lavatory provided such cabinetry can be removed without removal or replacement of the lavatory, and the floor finish extends under such cabinetry.

• Section 305.3. Clear floor space shall be 30 inches wide by 48 inches long.

Resolution: Base cabinets meet requirements of the exception and are removable with finished floor under entire length. If needed for accessibility, the base cabinet would be removed and a modesty panel would be put in place under the sink to protect a person from under counter sink plumbing.

4) Response to Mailboxes

FHA states in buildings with elevators, the operable parts of all mailboxes are within the following acceptable reach ranges: Between 15” and 48” with 30”x48” of clear floor space for a forward approach or between 9” and 54” with 30”x48” of clear floor space positioned for a side parallel approach. Reach range requirements of the FHA differs from those required by the USPS. Install mailboxes according to both the requirements of the FHA and USPS. USPS allows up to 67”.

Resolution: If an accessible mailbox is needed by a tenant, the Landlord will provide one that is accessible per reach range requirements if it isn't already.

Report of Preliminary Findings:

ICRC Investigators inspected six covered units at Fourth and Court, 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 mailboxes for all 81 units at Fourth and Court are housed within four wall-mounted mailbox units, which are located adjacent to the main entrance of the building. The building at Fourth and Court has an elevator. Therefore, the mailboxes for all units must meet reachability requirements.

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:

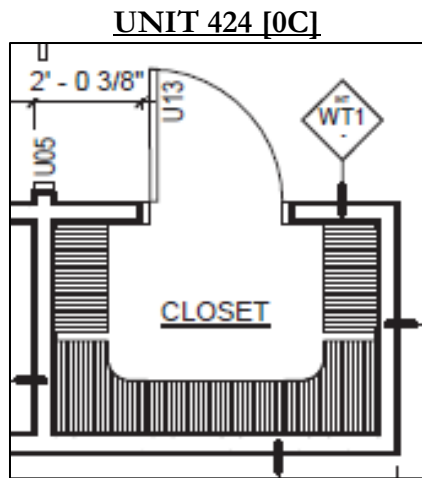
MAILBOX ROW	HEIGHT
Top	67 ½”
Second	64”
Third	60 ½”
Fourth	57 ¼”

The top four rows of mailboxes exceed the 54"-maximum allowed for a parallel approach by ANSI 1986, and render these mailboxes inaccessible.⁴

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

2) The ICRC Investigators took measurements of the clear opening width at the secondary doorways within all inspected units. The clear opening width of the doorway at the walk-in closet in Unit 424 [0C] was measured at 27 5/8".⁵

The plans submitted by Respondents include scaled drawings of the dwelling units. The relevant portion of the plan for Unit 424 is shown below:⁶



Based on the scaled drawing above, clear opening width of the doorway to the walk-in closet in Unit 424 was designed to be about 28". As designed and built, the clear opening width of the secondary doorway to the walk-in closet in Unit 424 is less than the 31 5/8"-minimum requirement. Therefore, this doorway is too narrow, rendering it unusable by persons using wheelchairs.⁷

3) The interior threshold heights at the secondary doorway to the balcony were measured at four of the inspected units. The table below list the units and interior threshold heights that exceeded the 1/4"-maximum height with no 1:2 beveling.

UNIT #	INTERIOR THRESHOLD HEIGHT
216 [1D]	29/32"
322 [1J] – Test unit	3 1/4"
321 [2D]	2 23/32"
409 [0A] ⁸	2 5/8"

⁴ See Appendix A, Photo 1A.

⁵ See Appendix A, Photos 2A.

⁶ See Appendix B.

⁷ See Appendix A, Photo 2A

⁸ See Appendix A, Photo 3A.

These thresholds are too high, rendering the doorways unusable by persons using wheelchairs. No information was discovered in the plans, which indicates the height that the thresholds were designed to be above the interior finished floor surface.

4) The interior threshold heights at the secondary doorway to the balcony were measured at all inspected units. The table below list the units and interior threshold heights that exceeded the 1/4"-maximum height with no 1:2 beveling.

UNIT #	INTERIOR THRESHOLD HEIGHT
216 [1D]	29/32"
322 [1J] – Test unit	3 1/4"
321 [2D]	2 23/32"
409 [0A] ⁹	2 5/8"

These thresholds are too high, rendering the doorways unusable by persons using wheelchairs.

No information was discovered in the plans, which indicates the height that the thresholds were designed to be above the interior finished floor surface.

5) The height of the top control buttons of the thermostats in all inspected units was measured at no less than 51 1/8", which exceeds the 48"-maximum height.¹⁰ The thermostats are too high, rendering them unusable by persons using wheelchairs.

No specific instructions or diagrams were discovered in the plans submitted by Respondents about the installation heights of thermostats.

6) The plans submitted by Respondents include scaled drawings of the dwelling units. The relevant portion of the drawing for Units 216 [1D] and 409 [0A] are shown below:¹¹



Based on the scaled drawings above, the midline of the kitchen sink at Units 216 and 409 was designed to be about 30" away from the opposing counter. ICRC Investigators measured this distance in both units at 17".¹² The clearance from the midline of the sink to the opposing counter would have been

⁹ See Appendix A, Photo 3A.

¹⁰ See Appendix A, Photo 4A.

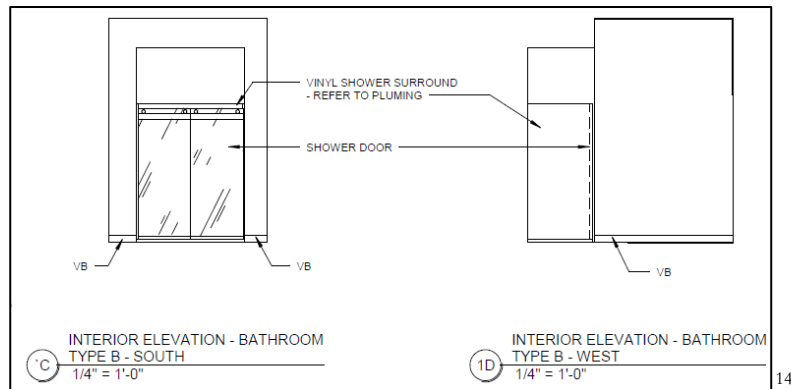
¹¹ See Appendix B.

¹² See Appendix A, Photo 8A.

compliant with the 24”-minimum requirement as referenced above if installed according to the plans. But, as built, the kitchen sink is too close to the opposing counter, rendering it unusable by persons using wheelchairs.

7) Units 216 [1D], 322 [1J], 409 [0A] and 424 [0C] have only one bathing facility. The open clearance at the entrance to the stall shower – with the sliding glass door fully opened to result in the widest clearance possible – was measured at no more than 21 7/8”, which is significantly less than the 36”-minimum clear width required.

Respondents submitted plans for all units. The plan for the bathroom door used in these units is shown below:¹³



Based on the scaled drawing, the doors were designed to be 30” wide. As designed and built, the clearance width of the entrance to the shower stall in these units is less than the 36”-minimum required. These violations render the bathrooms in these units unusable by persons using wheelchairs.

8) In Units 216 [1D], 322 [1J], 409 [0A] and 424 [0C], the distance from the midline of the sink to the nearest obstruction was measured at no more than 20 1/8” from the adjoining wall.¹⁵ Respondents maintain the bathroom vanity cabinets are removable. In order for a cabinet to be designated as removable, the Guidelines require (i) that the cabinet be easily and quickly removed; and (ii) the floor under the sink and the wall surrounding the space under the sink to be finished.¹⁶

Respondents’ Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

1) Respondents will (i) in the short term accommodate tenants who need an accessible mailbox by relabeling mailboxes such that the unreachable mailboxes will be swapped for reachable mailboxes; and (ii) in the long term, work with the USPS to develop a plan for the 32 unreachable mailboxes to meet FHA requirements.

¹³ See Appendix B.

¹⁴ See Appendix B.

¹⁵ See Appendix A, Photo 6B.

¹⁶ See Manual at page 7.12.

Respondents will remove the doors of walk-in closets to meet 32” clearance, which is similar to majority of the units without doors to closets.

- 2) Respondents will make available portable ramps to those units and tenants who need and request the ramps to meet the FHA door-threshold and ramp guidelines; and include language in leasing agreements indicating that ramps are available upon request.
- 3) Respondents will either modify the thermostats to be operational with a remote control provided to the tenants, or reinstall the thermostats at a lower height to meet FHA requirements.
- 4) Respondents submitted photos of the area under the sink with the base cabinet removed, which indicated that the cabinets under the kitchen sink are removable, except for portions of the wall to the rear that are not painted. Respondents will finish all unfinished areas – including flooring and walls – currently covered by the removable base cabinets under the kitchen sinks to meet FHA requirements.
- 5) Respondents will remove the glass door at the shower stalls and replace them with either a shower curtain and rod or a tri-panel glass shower door for tenants who need and request them, such that there will be a 5’ clearance for entering the shower, which exceeds the 3’-minimum clearance requirement, and will therefore be accessible.
- 6) Respondents submitted photos of the area under the sink with the base cabinet removed, which indicated that the cabinets under the bathroom sink are removable, except for portions of the wall to the rear that are not painted. Respondents will finish all unfinished areas – including flooring and walls – currently covered by the removable base cabinets under the kitchen sinks to meet FHA requirements.

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 2012 nor the ANSI 2009 is one of the safe harbors accepted by HUD.¹⁷ 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 fitness center, community rooms, rooftop terrace, dumpsters, package delivery lockers, 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 Fourth and Court and their guests. The ADA will only be referenced in the current report for the public areas, which include leasing office, elevator, and interior hallways.¹⁸ 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”

¹⁷ <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on July 19, 2018).

¹⁸ 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. 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.”

(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 Respondents' (i) short-term proposal to notify tenants – who have mailboxes that are unreachable because they are too high – about their option to request to swap for a reachable mailbox with another tenant who is not disabled; and (ii) their long-term proposals to coordinate with the United States Postal Service (“USPS”) to retrofit the 32 mailbox compartments that are unreachable because they are too high such that these mailbox compartments will then have the midlines of the keyholes at heights of no greater than the 54”-maximum height allowed by the Manual, if at all possible within the space allowed in the common area. If the USPS and Respondents are not able to coordinate a solution in compliance with (ii) above then Respondents shall find another location within the common area to locate 32 new mailbox compartments in the Common Area and then relabel all mailbox compartments which do meet the 54” maximum height allowed by the Manual, leaving the top four rows of mailbox compartments, in place but not labeled and not for use by any tenant in the building.

ICRC will require this retrofit to be completed within 120 days from the date of the Closing Letter from ICRC. ICRC will require Respondents to 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.

2) ICRC agrees with Respondents' proposal remove the doors at walk-in closet in Unit 424 to increase the clear opening width to the nominal 32” (31 ⁵/₈”)-minimum.

ICRC will also require Respondents to verify compliance with the 31 ⁵/₈”-minimum requirement of the clear opening width at the walk-in closets in all units within the same floor-plan group – reported in the table on page 3 of the current agreement – as Unit 424.

ICRC will require these retrofits to be completed at the inspected units and at all other similarly-situated units – which Respondents verify to have walk-in closet doorways that are too narrow– within 90 days from the date of the Closing Letter from ICRC. Also, ICRC will require that this and all other required retrofits be completed sooner if requested by tenants in non-compliant units. Finally, ICRC will require for tenants to be notified within 30 days of the date of the Closing Letter from ICRC about this option to have retrofits completed sooner.

3) ICRC agrees with the Respondents' proposal to place accessible ramps flush against the interior threshold at Units 216, 321, 322, and 409, and ask current and future tenants whether or not they want the ramps to be installed. For any tenants who decline the ramp installation, Respondents will be required to install the ramps after those tenants move out and before the next tenant moves in. ICRC also agrees with including this retrofit in a pre-lease checklist, but only to verify whether new tenants prefer to have the ramp removed from the unit instead of indicating that the ramp will be installed upon a request from a tenant.

ICRC will also require Respondents to verify compliance with the 1/4”-maximum height requirement of the height at the interior threshold of the doorway to the balcony in all units within the same floor-plan groups – reported in the table on page 3 of the current agreement – as the inspected units.

ICRC will require these retrofits to be completed at the inspected units and at all other units – which Respondents verify to have interior thresholds that are too high – within 60 days from the date of the Closing Letter from ICRC.

4) ICRC agrees with Respondents' proposal to either modify the thermostats to be operational with a remote device provided to the tenants; or reinstall the thermostats at or below the 54"-maximum height at Units 216, 321, 322, 409, 424, and 425. ICRC will also require Respondents to verify compliance of the height of the thermostats in all units with similar floor plans as the aforementioned inspected units, as reported in the table on page 3 of the current agreement.

Additionally, if Respondents select to modify the thermostats such that they are operational with a remote device, ICRC will require Respondents to keep the remote device at an accessible default location in the unit. ICRC will also require Respondents to install a notice near the default location of the remote device that advises tenants about its location, and that although the remote device may be moved, it must be placed back in the same default location upon vacating the unit. ICRC will also require these retrofits to be completed at the inspected units and at all other units – which Respondents verify to have thermostats that are too high – within 120 days from the date of the Closing Letter from ICRC.

Additionally, Respondents may offer the option to tenants who already own a smart phone, of retrofitting the thermostats to be operated via a smart-phone application, if available, at no charge to the tenant. For these tenants, the smart phone application and hands free thermostat is considered acceptable in place of the remote device, but only as long as the tenants have sufficient memory available in their smart phones for the application to be downloaded and installed. Otherwise, Respondents will be required to either relocate the thermostats at reachable heights or retrofit the thermostats such that they are operable with a remote device if future tenants either do not have a smart phones, have a smart phone with insufficient memory.

ICRC will require that this and all other required retrofits be completed sooner if requested by tenants in non-compliant units. Finally, ICRC will require for tenants to be notified within 30 days of the date of the Closing Letter from ICRC about this option to have retrofits completed sooner.

5) ICRC agrees with Respondents' determination that the cabinet underneath the kitchen sink in Units 216 and 409 are removable – except for the portions of the wall behind the sink that are not painted – as based on the two photographs submitted showing the areas underneath and behind the sink with the cabinets removed. Therefore, ICRC determines that once all surfaces underneath and behind the sinks are finished, the kitchen sinks will be compliant with the 15"-minimum clearance requirement between the midline of the sink and the nearest obstruction because this clearance was measured by ICRC Investigators at 17", which is more than the minimum required.

ICRC agrees with Respondents' proposal to finish all unfinished areas underneath and behind the removable kitchen sinks – including flooring and walls – to meet FHA and ICRA requirement as stated in the Manual. ICRC will also require Respondents to verify the same surfaces underneath and behind the kitchen sinks are finished in all units with similar floor plans as Units 216 and 409, as reported in the table on page 3 of the current agreement.

ICRC will also require this retrofit to be completed at Units 216 and 409, and at all other similarly designed units indicated in the table on page 3 of the current agreement – which Respondents verify to have unfinished walls or flooring – within 180 days from the date of the Closing Letter from ICRC. Finally, ICRC

will require for tenants to be notified within 30 days of the date of the Closing Letter from ICRC about this option to have retrofits completed sooner.

6) ICRC concurs with Respondents' proposal to remove the glass door at the shower stalls and replace them with either a shower curtain and rod or a tri-panel glass shower door such that there will be a 5' clearance for entering the shower, to comply with the 3'-minimum clearance required in the Manual in Units 216, 321, 322, 409, 424, and 425

However, ICRC will require for this retrofit to be completed without first requiring tenants to indicate that they want the retrofit to be completed. Instead, ICRC will allow Respondents to give current tenants the option to opt out of this retrofit, which makes the shower inaccessible according to the Manual. ICRC will also require Respondents to make the retrofit automatically at the time of unit turnover – which makes the shower accessible – if current tenants reject the completion of this retrofit, and before the unit is shown to prospective tenants. ICRC will also allow Respondents to give future tenants the option to opt out of this retrofit, which again makes the shower inaccessible.

ICRC will also require this retrofit to be completed at Units 216, 321, 322, 409, 424, and 425; and at all other units at Fourth and Court with a shower stall as the only bathing fixture in the dwelling unit – within one year from the date of the Closing Letter from ICRC for the current and future tenants who have not rejected the retrofit as described in the first paragraph of this section.

Finally, ICRC will require that this and all other required retrofits be completed sooner if requested by tenants in non-compliant units, and for tenants to be notified about this option to have retrofits completed within 30 days from the date of the Closing Letter from ICRC.

7) ICRC agrees with Respondents' determination that the cabinet underneath the bathroom sink in Units 216, 322, 409, and 424 are removable – except for the portions of the wall behind the sink that are not painted – as based on the two photographs they submitted of the areas underneath and behind the sink with the cabinets removed. Therefore, ICRC determines that once all surfaces underneath and behind the sinks are finished, the bathroom sinks will be compliant with the 15"-minimum clearance requirement between the midline of the sink and the nearest obstruction because this clearance was measured by ICRC Investigators at no less than 19 5/8", which is more than the minimum required.

ICRC agrees with Respondents' proposal to finish all unfinished areas underneath and behind the removable bathroom sinks – including flooring and walls – to meet FHA and ICRA requirement as stated in the Manual. ICRC will also require Respondents to verify the same surfaces underneath and behind the kitchen sinks are finished in all units with similar floor plans as Units 216, 322, 409, and 424, as reported in the table on page 3 of the current agreement.

ICRC will also require this retrofit to be completed at Units 216, 322, 409, 424, and 425; and at all other similarly designed units indicated in the table on page 3 of the current agreement – which Respondents verify to have unfinished walls or flooring – within 90 days from the date of the Closing Letter from ICRC. Finally, ICRC will require for tenants to be notified within 30 days of the date of the Closing Letter from ICRC about this option to have retrofits completed sooner.

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, which may be signed and transmitted by electronic delivery, including email. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document by delivery of all original counterpart signature pages to the ICRC.

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) Stuart Ruddy, Josh Thrap, and Katie Harms 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 attending the “Build It Right Iowa Conference” on April 5, 2019 (<https://icrc.iowa.gov/news/6th-iowa-civil-rights-symposium-and-3rd-build-it-right-iowa-conference>), scheduling a training session with ICRC via email at BuildItRightIowa@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) Respondents will 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

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

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 (“USPS”) 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 tenants who use a wheelchair to make a parallel approach – as required by ANSI 1986. If the USPS and Respondents are not able to coordinate a solution in compliance with the statement above then Respondents shall find another location within the common area to locate 32 new mailbox compartments in the Common Area and then relabel all mailbox compartments which do meet the 54” maximum height allowed by the Manual, leaving the top four rows of mailbox compartments, in place but not labeled and not for use by any tenant in the building.
- (c) Respondents agree to complete the retrofits described in the current subsection within 120 days from the date of the Closing Letter from ICRC.
- (d) Respondents agree they will notify current future tenants occupying units with unreachable mailboxes in the top four rows in writing within 30 days from the date of the Closing Letter from ICRC about their option to swap mailboxes for units occupied by tenants without mobility impairments, such that their new mailbox compartment will have a keyhole with a midline at height of 54” or less.
- (e) Respondents agree send a copy of the notice referred to in (d) paragraph above to ICRC at emigdio.lopez-sanders@iowa.gov for review and approval
- (f) ICRC agrees to review the notice referred to in (d) paragraph above, and reply to Respondents via email within three business days from the date of the email from Respondents submitting the above-required notice.
- (g) Respondents agree to send the written notification referred to in (d) paragraph above to the tenants occupying the 32 units with unreachable mailboxes within 30 days from the date of the Closing Letter from ICRC.
- (h) Respondents also agree to send a statement to ICRC within 30 days from the date of the Closing Letter from ICRC verifying that the note referred to in (d) paragraph above was, in fact, distributed to each of the tenants with mailbox compartments in the top four rows of mailboxes, including the unit numbers of the six units with unreachable mailboxes where the note was sent.

Usable Doors – Clear Opening Width for Secondary Doorways

- (a) The parties agree the interior doorways of the inspected units, as reported on page 5 of the current agreement, have a clear opening width that is narrower than the 31 ⁵/₈”-minimum required by the Manual.
- (b) Respondents agree they will remove the existing door at the walk-in closet in Unit 424 to increase the door-opening width to $\geq 31 \frac{5}{8}$ ”.
- (c) Respondents agree to measure the interior doorways of all other units similarly-situated to Unit 424, which are described in the table on page 3 of the current agreement. If the clear-opening width of the walk-

in closets inspected by Respondents is $< 31 \frac{5}{8}$ "', then Respondents agree to remove the door to bring them into compliance with the ICRA and FHA.

(d) Respondents agree to complete the retrofits described in the current subsection within 120 days from the date of the Closing Letter from ICRC.

Accessible Route Into and Through the Covered Unit – Threshold at Doorway to Balcony

(a) The parties agree the height from the interior finished floor surface to the top of the threshold at the doorway from the living room to the balcony of Units 216, 321, 322, and 409 exceeds the $\frac{1}{4}$ "-maximum height allowed by the Manual for interior thresholds without 1:2 beveling, which is not present at these doorways.

(b) Respondents agree they will install accessible ramps with (1) a running slope $\leq 8.33\%$, (2) a cross slope $\leq 2\%$; and (3) a width ≥ 32 " at the interior side of the thresholds to the doorway from the living room to the balconies in Units 216, 321, 322, and 409, to bring them into compliance with the ICRA and FHA.

(c) Respondents agree to measure the interior threshold heights at the doorway from the living room to the balconies of all units that are similarly-situated to Units 216, 321, 322, and 409, and which are described in the table on page 3 of the current agreement. If the interior floor surface is carpeted, then Respondent agree to fully compress the carpet and padding when obtaining the measurement.

(d) If the interior threshold height at the units inspected by Respondents is more than $\frac{1}{4}$ "', then Respondents agree to retrofit the doorway from the living room to the balcony in the manner as described in (b) and (c) paragraphs above to bring them into compliance with the ICRA and FHA.

(e) Respondents agree to add an option to the pre-lease checklists for tenants to request the removal of the accessible ramps.

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

(g) If Respondents allow the removal of ramps from dwelling units because of tenants' requests, Respondents agree to reinstall the ramps at those units – as described in (b) paragraph above – after the current tenant moves out and 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 or sooner if requested by a tenant with a disability.

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

(a) The parties agree the height to the top control buttons of the thermostats in Units 216, 321, 322, 409, 424, and 425 was measured at no less than $51 \frac{1}{8}$ "', which exceeds the 48"-maximum height allowed by the Manual.

(b) Respondents agree they will either vertically relocate the thermostats in all units to a lower height, such that the display screen and all operating buttons do not exceed maximum height of 48", as required by

the Manual; or modify the thermostats to also be operational via a remote device that they will provide at no cost to each tenant, or via a smart phone application only if the tenant already owns a smart phone with sufficient memory available to allow the downloading and installing of the application to operate the thermostat.

(c) If selecting the option for modifying the thermostats to also be operable via a tenant-owned smart phone – after the units become unoccupied and before these units become occupied by the next tenant – Respondents agree to either relocate thermostats at heights of no greater than the 48”-maximum allowed by the Manual or modify the thermostat to also be operable via a remote device if the next tenant does not own a smart phone with sufficient memory to download and install the required application to operate the thermostat.

(d) If selecting the option for modifying the thermostats to also be operable via remote device, Respondents agree:

(1) Respondents will keep the remote device at a default location – within each unit – that is accessible, and reachable at a height that does not exceed the 48”-maximum allowed by the Manual.

(2) Respondents will communicate the default location – which is to include the height – of the remote control or remote device to ICRC via email at emigdio.lopez-sanders@iowa.gov within 30 days from the date of the Closing Letter from ICRC.

(3) Respondents will permanently post a notice at a prominent location that is adjacent to the default location of the thermostat, which will include the following information:

(i) The default location of the remote device for thermostat.

(ii) Tenants’ ability to choose the location of the remote device for the thermostat during their tenancy.

(iii) Tenants’ requirement to place the remote device for the thermostat at the same default location before vacating the unit.

(e) Respondents agree they will submit the proposed language for the notice required in (3) paragraph to ICRC via email at emigdio.lopez-sanders@iowa.gov for review within 30 days from the date of the Closing Letter from ICRC.

(f) ICRC agrees to review the notice, and reply to Respondents via email within three business days from the date of the email from Respondents submitting the above-required notice.

(g) Respondents agree they will verify that remote devices are at the accessible default locations at the end of each tenancy, which may include replacing any missing remote controls and placing them at the accessible default location if left by the at a different location within the unit.

(h) Respondents agree (i) to measure the height to the top controls of the thermostats at all the other similarly-units – which are described in the table on page 3 of the current agreement; and (ii) complete the same retrofits described in (b), (c), and (d) paragraphs above at all units with thermostats that exceed the 48” maximum height.

(i) Respondents agree to complete the retrofit described in the current subsection within 120 days from the date of the Closing Letter from ICRC or sooner if requested by a tenant with a disability.

Usable Kitchens – Sinks

(a) The parties agree the distance from the midline of the kitchen sink to the nearest obstruction in Units 216 and 409 were measured at (i) more than the 15”-minimum required by the Manual for a forward approach, which is possible if the cabinets under the sink are removable; and (ii) less than the 24”-minimum required by the Manual for a parallel approach that is the only possible approach by someone using a wheelchair if the cabinets are not removable.

(b) The parties agree the cabinets underneath the kitchen sinks in these units are removable *only* as long as the wall behind and the flooring underneath the sink are finished with the same type and color of wall paint, and same style of flooring as the currently exposed surfaces.

(c) Respondents agree they will remove the cabinets underneath the kitchen sinks in Units 216, 409, and all other similarly-situated units as described in the table on page 3 of the current agreement to verify that the wall behind the sink and the flooring underneath the sink are finished – walls painted in the same manner and color, and the flooring is of the same style as the exposed surfaces.

(d) If any portion of the walls or flooring is unfinished as required by the Manual and described in (c) paragraph above, Respondents agree to finish the unfinished surfaces to match the exposed surfaces adjacent to the sink and bring the kitchen sinks into compliance with the ICRA and FHA.

(e) Respondents agree to complete the retrofit described in the current subsection within 180 days from the date of the Closing Letter from ICRC or sooner if requested by a tenant with a disability.

Usable Bathrooms – Clearance at Shower Stall

(a) The parties agree that the clear opening width of the doorway to the shower stall at units is too narrow because the measured width is less than the 36”-minimum clearance required as required by the Manual in the shower stalls at covered dwelling units with only one bathing fixture.

(b) Respondents agree to replace the glass partition at the shower stalls of all units with either a shower curtain and rod or a tri-panel glass shower door to increase the clearance width of the entrance to the shower to no less than the 36”-minimum required in the Manual.

(c) If a current tenant objects the completion of the retrofits described in paragraph (b) above which makes the shower stall inaccessible – Respondents agree to complete this retrofit – making the shower stall accessible again – within seven days after the current tenant moves out and before showing the unit to prospective tenants..

(d) Respondents agree to complete the retrofits described in paragraph (b) above within 14 days from the date of a tenant’s request, if necessary to accommodate the onset of mobility-impairment health condition for that tenant.

(e) Respondents agree to complete the retrofits described in the current subsection within one year from the date of the Closing Letter from ICRC – for any tenants who did not object the retrofit described in paragraph (b) of the current section – or sooner if requested by a tenant with a disability.

Usable bathrooms – Sinks

(a) The parties agree the distance from the midline of the bathroom sink to the nearest obstruction in Units 216, 322, 409, and 424, were measured at (i) more than the 15”-minimum required by the Manual for a forward approach, which is possible if the cabinets under the sink are removable; and (ii) less than the 24”-minimum required by the Manual for a parallel approach that is the only possible approach by someone using a wheelchair if the cabinets are not removable.

(b) The parties agree the cabinets underneath the bathroom sinks in these units are removable *only* as long as the wall behind and the flooring underneath the sink are finished with the same type and color of wall paint, and same style of flooring as the currently exposed surfaces.

(c) Respondents agree they will remove the cabinets underneath the bathroom sinks in Units 216, 322, 409, and 424, and all other similarly-situated units as described in the table on page 3 of the current agreement to verify that the wall behind the sink and the flooring underneath the sink are finished – walls painted in the same manner and color, and the flooring is of the same style as the exposed surfaces.

(d) If any portion of the walls or flooring is unfinished as required by the Manual and described in (c) paragraph above, Respondents agree to finish the unfinished surfaces to match the exposed surfaces adjacent to the sink and bring the bathroom sinks into compliance with the ICRA and FHA.

(e) Respondents agree to complete the retrofit described in the current subsection within 120 days from the date of the Closing Letter from ICRC or sooner if requested by a tenant with a disability.

Retrofit Requests

17) Respondents agree to notify all current tenants, via a letter, within 30 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.

18) 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.

19) 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 some other appropriate living 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

- 20) 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 81 units.
- 21) 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 17.
- 22) 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.
- 23) 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 14th Street, Des Moines, Iowa 50319-0201, OR via email at emigdio.lopez-sanders@iowa.gov).
- 24) 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.

[SIGNATURES ON FOLLOWING PAGE(S)]

420 COURT AVENUE, LLC

By: WCKLC-Court, L.C., an Iowa limited liability company, Member

By: WCKLC-Sarasota, L.C., an Iowa limited liability company, Member

By: _____
Gerard D. Neugent, Manager

By: Hy-Vee, Inc., an Iowa corporation, Member

By: _____
Peter Hosch, Vice President

By: _____
Nathan Allen, Assistant Secretary

Date

Knapp Properties, L.C.
RESPONDENT

Date

Hy-Vee Construction, LC
RESPONDENT

Date

OPN, Inc.
RESPONDENT

Date

Angela Jackson, Commissioner
COMPLAINANT

Date

Kristin H. Johnson, Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date