

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 10-18-72688
HUD# 07-19-0518-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

ROERS INVESTMENTS, LLC

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

23 INGERSOLL, LLC

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

ESTES COMPANY, LLC

P.O. Box 3608
Davenport, Iowa 52808-3608

SIMONSON & ASSOCIATES ARCHITECTS, LLC

1717 Ingersoll Avenue, Suite 117
Des Moines, Iowa 50309-3329

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,” and the “usable kitchens and bathrooms.”¹

Complainant specifically alleged at 2301 Ingersoll Avenue, Soll Apartments (“Soll”), three features in the common areas and two features within two third-floor units appeared inaccessible to a person utilizing a wheelchair for mobility – (1) the width of the car-accessible parking space was measured at 95”, which is less than the 96” minimum width required; (2) the width of the van-accessible parking space was measured at 96” and the width of the adjoining access aisle was measured at 60 ½”, which is less than the 96”-minimum required for access aisles when van-accessible parking space is less than 132” wide; (3) the heights of the midlines of the keyholes at the top four rows of the mail compartments at the wall-mounted mailbox station were measured at 66” (top row), 62 ½” (second to top row), 59” (third to top row), and at 55 ½” (fourth to top row) – all of which are higher than the 54”-maximum allowed for a parallel approach by persons using a wheelchair; (4) the heights of the interior thresholds at the sliding glass doorways in Units 329 and 333 was estimated to be 1 7/8”, which exceeds the ¼”-maximum allowed for interior thresholds at sliding glass doorways if there is 1:2 beveling present, which was observed to be lacking; and (5) the midline of the bathroom sink in Unit 333 – which did not appear to have removable base cabinets to the Testers – was measured to be 23” away from the door-frame obstruction, which is less than the 24”-minimum required for cabinets that are not removable.

Description of the Subject Property

Subject Property

According to ownership records obtained from the Polk County Assessor’s Office, Soll consists of a four-story mixed use (residential/commercial) building with 165 residential units. According to the building permit online records from the City of Des Moines Community Development website, Soll was built in 2017/2018.² The dwelling units at Soll consist of 14 floor-plan types, which have been grouped by Respondents based on their floor-plan configurations.³ Respondents’ reorganization of the floor-plan types has resulted in three separate groups of units.⁴

The following table 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]; and 216.8A(3)(c)(3)(c)(iv) [Requirement 7 – Usable Kitchens and Bathrooms].

² <http://www.dmgov.org/Departments/CommunityDevelopment/Pages/SearchforPermits.aspx> (Last visited August 28, 2018).

³ See Appendix B for floor plans.

⁴ See Appendix B for matrix indicating the configuration of units by floor-plan group, and by floor.

Unit Type(s)	Inspected Unit Numbers and Types	Total Units Per Group
<u>Junior:</u> Type B, 1 Type B, 2 Type B, and 3 Type A [Smaller 1BR/1BA]	455 (Type B)	65
<u>1 Bedroom:</u> 1.1 Type B, 3 Type B, 3-Type B, and 4 [Standard 1BR/1BA]	129 and 329[Test Unit] (1.1 Type B)	46
<u>2 Bedroom:</u> 1, 1.1 Type A, 2, 3.1, 3.2, 4.1, and 4.2 [2BR/2BA]	454 (1.1 Type A) 133 (4.1) and 333 (4.2)	54
	TOTAL	165

Under both the ICRA and FHA, a “covered multifamily dwelling” is defined as:

1. all dwelling units in buildings containing four or more dwelling units if such buildings have one or more elevators, and
2. all ground floor dwelling units in other buildings containing four or more units⁵

There was an elevator available. Therefore, all 165 units at Soll are subject to the design and construction provisions of the ICRA and FHA. The common and public use areas will also all be required to meet the same accessibility requirements of the ICRA and FHA. The building was issued a Certificate of Occupancy, signed by Cody Christensen, Building Official for the City of Des Moines, on June 4, 2018.

The scope of the current agreement includes all of the dwelling units and the public and common use areas, including the pool; hot tub; bicycle racks; fitness center and the adjacent public bathrooms; clubhouse; rooftop sky lounge and the adjacent public bathrooms; sundeck; fire pit; grill stations; leasing office; elevator; dumpsters; package delivery lockers; and the wall-mounted mailbox units adjacent to the main entrance.

Respondents’ Defenses

On November 8, 2018, Respondents Roers Investments, LLC (“Roers”), 23 Ingersoll, LLC (“Ingersoll”), Estes Company, LLC (“Estes”), and Simonson & Associates Architects, LLC (“Simonson”), submitted a joint letter in response to the allegations in the complaint, which in part reads:

Simonson along with Roers Investments, and Estes Construction (OAC) received the referenced complaint dated 10.19.2018. The complaint has been reviewed and personnel were dispatched to the property in question to evaluate the property relative to the stated deficiencies. The following is a report on the OAC findings.

- Unit 329, Unit 333 balcony doors exceeding threshold height allowance.

⁵ *Fair Housing Act Design Manual* [“Manual”]: *A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of the Fair Housing Act*. Washington, D.C.: U.S. Dept. of Housing and Urban Development, Office of Fair Housing and Equal Opportunity and the Office of Housing, 1998, at page 7. (<https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>); see 24 C.F.R. §100.205(a); Iowa Code §216.2(4).

- The condition indicated in the complaint was unable to be found. Finish floor to top of threshold was found to be 1/4"
- Unit 333 sink clearance less than 24" in a parallel approach.
 - There are two bathrooms in this unit and a kitchen. In all three circumstances the deficiency was not found. The 30 x 48 clear space in a parallel approach is unencumbered by any obstructions.
- Mail box heights exceeding 54"
 - The top 4 rows of mailboxes do exceed 54" they will be lowered.
- Car accessible parking stall less than 96" in width
 - Chapter 5 of ICC A117.1 indicates the measurements are center to center of the striping. OAC measured 96" center to center of the striping. The field personnel were not able to find an accessible stall that measured 95".
- Van accessible parking less than 132" w/ less than 96" aisle.
 - The van stall was striped at 96" w/ a 60" aisle which is insufficient for accessibility. The stalls will be properly striped for the van accessible use.

I believe the above is a complete accounting of the ICRC complaint. As noted, the deficiencies will be addressed promptly and the OAC team looks forward to meeting with ICRC staff on 12.05.2018 to clear up the remainder of the concerns.

Report of Preliminary Findings:

ICRC Investigators inspected 3 units at Soll, 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 in the previous page, and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

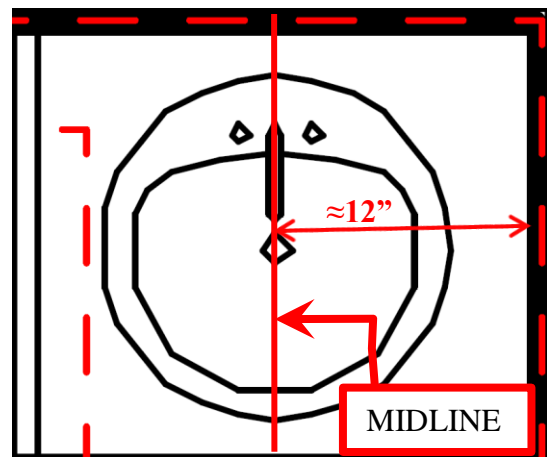
1) The car-accessible parking space was measured by ICRC investigators to have a width of 96", which is in compliance with the 96"-minimum width required in the ADAAG, and verified the measurement reported by Respondents in their written response letter to ICRC questionnaire. Therefore, the information gathered by ICRC Investigators during the inspection does not support the allegation that the car-accessible parking space has a width that is narrower than the 96"-minimum required.

Respondents indicated in their response letter that (1) they measured the width of the access aisle adjacent to the van-accessible parking space at 60"; and (2) would restripe the access aisle to increase the width to be in compliance with the minimum width requirement of access aisles serving van-accessible parking spaces. ICRC Investigators measured the width of this access aisle at 116", which is in compliance with the 96"-minimum width required in the ADAAG for access aisles serving van-accessible parking spaces measuring 96" wide. Therefore, this deficiency was found to be corrected, and requires no further action to bring it into compliance with the accessibility requirements from the ICRA and FHA.

2) Respondents indicated in their response letter that (1) they measured the height for the top four rows of mailboxes at heights exceeding the 54" maximum height; and (2) would lower the mailboxes to bring them into compliance. ICRC Investigators measured the height of the mailboxes at heights less than the 54" maximum height. Therefore, this deficiency was found to be corrected, and requires no further action to bring it into compliance with the accessibility requirements from the ICRA and FHA.

3) Based on the requirements from the Guidelines and ANSI 1986, a 30” by 48” clear floor space size centered on the bathroom sink is required, which means the midline of the sink must not be any closer than 15 inches to an adjacent wall when the sink has sufficient space underneath for knee clearance. ICRC investigators verified there is sufficient knee clearance under the sink in the women’s bathroom adjacent to the fitness center, and that all the surfaces under the sink are finished. The midline of this bathroom sink was measured to be 14 ³/₈” away from the nearest obstruction, which is the wall to the right of the sink.⁶

The plans submitted by Respondents include a scaled drawing of the women’s bathroom adjacent to the fitness center, which shows that the midline of the sink was designed to be approximately 12” away from the wall to the right of the sink. This dimension is portrayed in the captioned diagram below:



As designed and built, the sink in the women’s bathroom adjacent to fitness center is too close to the wall, rendering this common-use bathroom unusable by persons using wheelchairs.

4) The thresholds at the sliding glass doorways of all inspected units lacked 1:2 beveling. The interior threshold heights above the interior finished floor at the sliding glass doorways were measured by ICRC Investigators at 5/16” in Unit 333, 9/16” in Unit 133 and 454, and 17/32” in Unit 329, which exceeds the 1/4-inch maximum allowed for thresholds without beveling.⁸ No specific instructions or diagrams for the installation of the sliding glass doorways were found in the construction plans. These thresholds are too high, rendering the doorways unusable by persons using wheelchairs.

The heights of the interior thresholds reported by Respondents, and cited on pages 3 and 4 of the current agreement, are not consistent with the height measurements taken by ICRC Investigators. ICRC Investigators utilized a digital level which was placed on top of the highest portion of the threshold to ensure the accuracy of the measurement made from the top of the threshold to the interior finished floor level – consistent with the manner that the height measurement is portrayed in the diagram above obtained from the Manual.⁹

⁶ See Appendix A, Photo 1A.

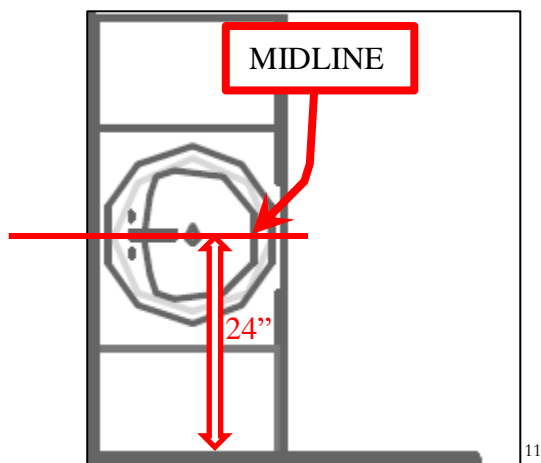
⁷ See Appendix B.

⁸ See Appendix A, Photos 2A and 2B.

⁹ *Ibid*, Photo 2A.

5) In Unit 133, the midline of the sink in the Master Bathroom was measured to be 23 ³/₈" from the adjoining wall, which is less than the 24"-minimum requirement if the base cabinets are not removable.¹⁰ The base cabinets in this bathroom appeared not to be removable to ICRC Investigators because they did not observe the presence of side brackets underneath the sink to support the sink in the event the base cabinets are removed.

The plans submitted by Respondents include a scaled drawing of the Master Bathroom in Unit 133, which shows that the midline of the sink was designed to be approximately 24" away from the wall to the left of the sink. This dimension is portrayed in the captioned diagram below:



If the Master Bathroom would have been built exactly as it was designed, it would have been compliant with the 24"-minimum clearance requirement. However, as built, this bathroom sink is too close to the wall, rendering this bathroom unusable by persons using wheelchairs.

Although this bathroom was designed to be in compliance with the 24"-minimum clearance requirement for bathrooms without removable cabinets, the design did not allow for any of the minor construction tolerances that frequently occur. Not incorporating construction tolerances into the design of the Master Bathroom sink may have contributed to this deficiency.

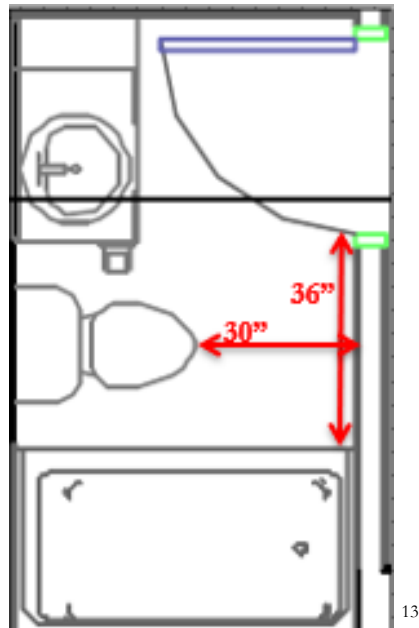
Respondents stated Unit 133 is designed and built the same as Unit 333. It is alleged in the current complaint that the midline of the sink in the hallway bathroom of Unit 333 is 23" away from the doorway, and was therefore unusable because the estimated distance is less than the required 24"-minimum. ICRC Investigators measured the distance between the midline of the sink and the doorway obstruction in the hallway bathroom in Unit 133 at 29". The information gathered by ICRC Investigators does not support this allegation in the complaint.

6) The plans submitted by Respondents include scaled drawings of the dwelling units. The relevant portion of the drawing for Unit 455 [Junior] is shown at the top of the next page:¹²

¹⁰ See Appendix A, Photo 3A.

¹¹ See Appendix B.

¹² See Appendix B.



Based on the scaled drawing above, the clear floor space outside the swing of the door in the bathroom was designed to be about 30” by 36”, with the 30” side of the clear floor space being parallel and flush to the bathtub.

The drop cloth was placed with the 30” side flushed against the bathtub. The opened door was found to overlap the 30”-by-48” drop cloth by 11”.¹⁴ This means that the clear floor space outside the swing of the door in this bathroom is less than 30”-by-48”. As designed and built, the clear floor space outside the swing of door is insufficient, rendering this bathroom unusable by persons using wheelchairs.

Respondents’ Response to Report of Preliminary Findings:

Respondents submitted written responses to the reported deficiencies, which are summarized below:

- 1) Respondents will move the countertop of the sink in the women’s bathroom located near the fitness center to increase the distance from the midline of the sink to the wall to no less than 15”.
- 2) Respondents will install accessible transition bevels with 1:2 slopes at the doorways to the balcony in units that have thresholds exceeding the ¼”-maximum height.
- 3) Respondents will move the countertop to increase the distance from the midline of the bathroom sink to the wall – in the Master Bathroom of Unit 133 – to no less than 24”. Respondents will measure the distance from the midline of the sink to the adjacent wall in all bathrooms of all similarly designed and built units, and make the same adjustment in units with bathroom-sink midlines that are less than 24” away from the adjacent walls.
- 4) Respondents will reinstall the bathroom door in Unit 455 – when tenants request it – to reverse the swing of door, and increase the clear floor space outside the swing of door to no less than 30” by 48”.

¹³ *Id.*

¹⁴ *See* Appendix A, Photos 4A and 4B.

When tenants request it, Respondents will measure the clear floor space outside the swing of door in the bathrooms of all similarly designed and built units, and make the same adjustment in units where the clear floor space outside the swing of door is less than 30” by 48”.

Assessment of Deficiencies:

According to the construction plans submitted by Respondents, all units were built in accordance with the scoping requirements of the 2012 International Building Code [IBC 2012], which incorporates the standards of the 2009 American National Standards [ANSI 2009] for guidance on the technical requirements [i.e., the dimension requirements]. Neither the IBC 2012 nor the ANSI 2009 is one of the safe harbors accepted by HUD.¹⁵ 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 pool; hot tub; bicycle racks; fitness center; clubhouse; rooftop sky lounge; sundeck; fire pit; grill stations; leasing office; elevator; 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 Soll and their guests. The ADA will only be referenced in the current agreement for the public areas, which include the leasing office, exterior parking spaces, sidewalks, elevators, public bathrooms adjacent to the fitness center and the rooftop sky-lounge, and the hallways.¹⁶ 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 concurs with Respondents’ proposal to move the countertop to increase the distance from the midline of the sink to the wall – in the women’s bathroom adjacent to the fitness center – to no less than 15”. ICRC will require that this retrofit be completed within 90 days from the date of the Closing Letter from ICRC.
- 2) ICRC concurs with Respondents’ proposal to install accessible transition bevels with 1:2 slopes at the doorways to the balcony in units that have thresholds exceeding the ¼”-maximum height. ICRC will require that this retrofit be completed within 90 days from the date of the Closing Letter from ICRC or sooner if requested by a tenant because of a disability.
- 3) ICRC concurs with Respondents’ proposal to (i) move the countertop in the Master Bathroom of Unit 133 to increase the distance from the midline of the sink to the wall to no less than 24”; and (ii)

¹⁵ <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on Dec. 19, 2018).

¹⁶ 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.”

complete the same retrofit in the bathrooms of similarly designed and built units verified by Respondents to have sinks with midlines that are less than 24” away from the adjacent wall.

4) ICRC concurs with Respondents’ proposal to (i) reinstall the bathroom door in Unit 455 to reverse the swing of door, and increase the clear floor space outside the swing of door to no less than 30” by 48”; and (ii) complete the same retrofit in all similarly designed and built units verified by Respondents to have less than the 30” by 48” clear floor space outside the swing of the bathroom door.

However, ICRC will require that this retrofit be completed without first requiring a tenant to request it. If this retrofit is not completed without a tenant’s request, this accessibility barrier would be allowed to remain uncorrected in violation of the ICRA and FHA requirements, which ICRC is charged with enforcing. Therefore, ICRC will require that this retrofit be completed at all units with insufficient clear floor space outside the swing of door within 90 days from the date of the Closing Letter from ICRC.

Concurrent Development of Covered Properties

Although Respondent Roers Investments, LLC has also developed three other covered properties – Confluence on Third, Flux Apartments, and Core Apartments – which are associated with ICRC complaints that include alleged violations of the requirements of accessible design and construction from the ICRA and FHA, these properties were all developed concurrently with Soll and prior to the ICRC’s first notice to Respondent Roers Investments, LLC of violations of state and federal accessible design and construction requirements in the development of these four developments. Therefore, ICRC agrees to waive any allowable civil penalties, either in the current agreement or in the agreements for the other properties identified in the herein paragraph, which would normally be required in the event of repeated violations of the accessibility requirements. However, ICRC may determine such additional terms will be included in future settlement agreements if either Roers Investments, LLC – or the other parties named as Respondents in the complaints for the covered properties listed above – are again alleged to have violated the accessibility requirements from the ICRA and FHA.

Predetermination Settlement Agreement

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

Acknowledgment of Fair Housing Laws

1) Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the “Iowa Civil Rights Act of 1965” (ICRA); or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).

2) Respondents acknowledge the ICRA makes it unlawful to discriminate in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status. Iowa Code § 216.8(1)(b).

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

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

Requirement 1 – Accessible building entrance on an accessible route.

Requirement 2 – Accessible and usable public and common areas.

Requirement 3 – Usable doors.

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

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

Requirement 6 – Reinforced walls for grab bars.

Requirement 7 – Usable kitchens and bathrooms.

Voluntary and Full Settlement

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

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

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

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

Disclosure

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

Release

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

Fair Housing / Accessible Design and Construction Training

14) Respondents agree that:

(a) Nate Inman (Estes Company, LLC), Adam Steffl (Roers Investments, LLC), and Eric Wessels (Simonson & Associates Architects, LLC) will receive training on the accessible design and construction requirements of State and Federal Fair Housing Laws within 180 days from the date of the Closing Letter from ICRC. 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 BuilItRightIowa@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

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

Accessible and Usable Public and Common Use Areas – Women’s Bathroom Sink at Fitness Center

(a) The parties agree the distance from the midline of the sink to the adjacent wall in the bathroom adjacent to the fitness center was measured at less than the 15”-minimum required for bathroom sinks when the sink has sufficient space underneath for knee clearance, as required by the Manual and 2010 ADAAG.

(b) Respondents agree they will reinstall the countertop of the sink in the women’s bathroom adjacent to the fitness center further away from the wall, such that the midline of the sink will be no less than 15” from the nearest obstruction, as required in the Manual and 2010 ADAAG, for sinks with sufficient knee and toe clearance to allow for a forward approach by persons using a wheelchair.

(c) Respondents agree to complete the retrofit in the current section within 90 days from the date of the Closing Letter from ICRC.

Accessible Route into and Through the Covered Unit – Threshold for Secondary Door to Balcony

(a) The parties agree the interior threshold height onto the finished floor surface at the unbeveled threshold of the doorway to the balcony in Units 133, 329, 333, and 454 is higher than the ¼-inch

maximum height allowed for thresholds without beveling and less than the 3/4"-maximum allowed with beveling, as required by the Manual.

(b) Respondents agree to install an accessible transition bevel with a 1:2 slope in Units 133, 329, 333, and 454 at the interior side of the threshold in the doorway to the balcony, as required by the Manual to be compliant with the 3/4"-maximum height allowed at the beveled interior thresholds of secondary sliding-glass doorways.

(c) Respondents agree they will inspect the interior thresholds at the doorway providing access to the balcony of the other units that were not inspected by ICRC Investigators – and are in the same floor-plan groups as Units 133, 329, 333, and 454, as defined in the table on page 3 of the current agreement – to verify compliance with either the 1/4" maximum threshold height if no 1:2 beveling is present or the 3/4"-maximum threshold height if the 1:2 beveling is present. Respondents agree to complete the retrofit required in paragraph (b) above at all units verified to have non-compliant thresholds.

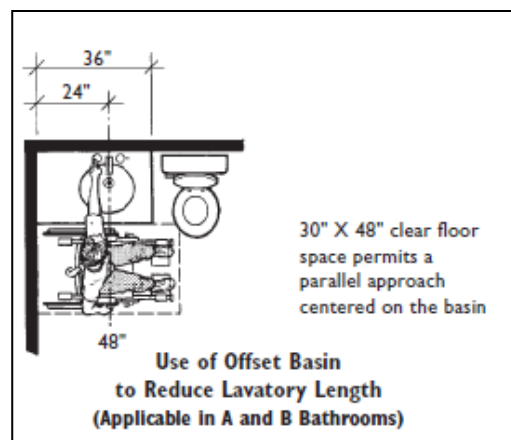
(d) Respondents agree to complete the retrofit, as required in paragraph (b) above, if necessary, to accommodate the onset of mobility-impairment health condition for those tenants.

(e) Respondents agree to complete the retrofit required in the current subsection within 90 days from the date of the Closing Letter from ICRC.

Usable bathrooms – Bathroom Sinks

(a) The parties agree the distance from the midline of the sink to the adjacent wall in the Master Bathroom of Unit 133, was measured at less than the 24"-minimum for bathroom sinks without removable cabinets, as required by the Manual.

(b) Respondents agree they will retrofit the non-complaint bathroom sinks in Unit 133 by replacing the countertop and moving the sink further away from the adjacent wall, such that the midline of the sink will be no less than 24" from the nearest obstruction as required in the Manual, and as shown in the figure below from the Manual:



¹⁷ See Manual at 7.47

(d) Respondents agree they will inspect the Master Bathroom of the other units that were not inspected by ICRC Investigators, and are in the same floor-plan group as Unit 133 – as defined in the table on page 3 of the current agreement – to verify compliance with 24”-minimum distance from the midline of the sink to the closest obstruction, which is required in bathroom without removable cabinets. Respondents agree to complete the retrofit required in paragraph (b) above at all units verified to have non-compliant bathroom sinks.

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

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

Usable bathrooms – Clear Floor Space Outside of Swing of Door

(a) The parties agree the clear floor space outside of swing of the door in the bathroom of Unit 455 is less than 30” by 48”, which is less than the minimum required by the Manual.

(b) Respondents agree they will reinstall the door in the bathroom of Unit 455 to reverse the swing of the door, such that it will swing away from the bathroom, and create the minimum clear floor space dimensions of 30” by 48”, as required by the Manual.

(c) Respondents agree they will inspect the bathroom of the other units that were not inspected by ICRC Investigators, and are in the same floor-plan group as Unit 455 – as defined in the table on page 3 of the current agreement – to verify compliance with 30” by 48”-minimum clear floor space outside the swing of door. Respondents agree to complete the retrofit required in paragraph (b) above at all units verified to have non-compliant bathrooms.

(d) Respondents agree to complete the retrofit, as required in paragraph (b) above, if necessary, to accommodate the onset of mobility-impairment health condition for those tenants.

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

Retrofit Requests

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

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

20) Respondents agree that those tenants who request retrofits to be performed in their unit because of a disability will be allowed to remain in their units while the renovations are being completed, so long as their continued stay is safe and does not unduly disrupt the renovation work. If their continued stay is not safe or unduly interferes with renovation work, Respondents agree to make available an alternative unit or

reasonable accommodations at alternative location on a temporary basis, until the unit is made safe or the renovation work is completed. Respondents agree to pay all costs generated by such accommodations.

Mandatory Reports

- 21) Respondents agree to notify ICRC when they have completed the required retrofits for each of the units and the public and common use areas. Such notification shall be made within 90 days of completion. These required notifications to ICRC after each unit or common area is modified or retrofitted will continue until all required retrofits have been completed in all 165 units.
- 22) Respondents agree to send a copy to ICRC of all written requests for retrofits that they receive from tenants in response to the written notice sent to tenants that is required in Term 18.
- 23) Respondents agree, as the required retrofits are made to a particular unit ICRC may then inspect such unit, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within 30 days of the inspection to Respondents. If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by ICRC.
- 24) Respondents agree to send all reports and written statements required in this agreement to ICRC (Attn: Emigdio Lopez-Sanders; Iowa Civil Rights Commission, 400 East 14th Street, Des Moines, Iowa 50319-0201, OR via email at emigdio.lopez-sanders@iowa.gov).
- 25) The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the properties as specified in this agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required retrofits as specified in this agreement.

23 Ingersoll, LLC
RESPONDENT

Date

Roers Investments, LLC
RESPONDENT

Date

Estes Company, LLC
RESPONDENT

Date

Simonson & Associates, LLC
RESPONDENT

Date

Angela Jackson, Commissioner
COMPLAINANT

Date

Linda Grathwohl, Interim Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date