

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 01-19-73073
HUD# 07-19-0948-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

TWIN BRIDGES ASSOCIATES, LP

3408 Woodland Avenue, Suite 504
West Des Moines, Iowa 50266-6505

NEWBURY MANAGEMENT COMPANY

3408 Woodland Avenue, Suite 504
West Des Moines, Iowa 50266-6505

ARCHITECTS SCHIPPER KASTNER, P.C.

3716 Ingersoll Avenue, Suite A
Des Moines, Iowa 50312-3440

BUILD TO SUIT, INC.

1805 State Street, Suite 101
Bettendorf, Iowa 52722-4978

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," and the "accessible route into and through the

covered unit.”¹ Complainant specifically alleged, in Units 502, 504, 522, and 523, 1501 State Street, The Bridges Lofts (“Bridges”), four features in the common areas and three features within two of the covered units appeared inaccessible to a person utilizing a wheelchair for mobility, as listed below:

- (1) The heights of the midlines of the keyholes at the top four rows of mailboxes at the mailbox kiosks were measured at 66 ⁵/₈” (top row), 63 ¹/₂” (second row), 60” (third row), and 56 ⁷/₈” (fourth row) – all of which are higher than the 54”-maximum allowed for a parallel approach by persons using a wheelchair.
- (2) The clear opening width of the sliding glass doorway to the balcony in three units was measured to be less than the 31 ⁵/₈” – 30 ⁷/₈” (Unit 521), 30 ³/₄” (Unit 522), and 31” (Unit 523).
- (3) In two units, the clear width of the shower stall was measured at less than the nominal-36” (35 ¹/₂”) minimum width that is required when shower stalls are the only bathing fixture – 30 ¹/₂” (Unit 502) and 31” (Unit 504).

Description of the Subject Property

Subject Property

Bridges consists of two buildings – Phase-A building, which is located at 1501 State Street and Phase-B building, which located at 1515 State Street. The residential buildings and common areas will all be required to meet the same accessibility requirements of the ICRA and FHA. Both buildings were each issued a Certificate of Occupancy signed by Jeremy Petersen, Building Official for the City of Bettendorf – Phase-A building on December 21, 2018 and Phase-B building on March 29, 2019.

The scope of the current agreement includes all of the dwelling units in both buildings and the public and common use areas, including the fitness center; both community rooms (first and fifth floors); leasing office and the adjacent public bathrooms; elevator; garbage chutes; and the wall-mounted mailbox units adjacent to the leasing office.

The dwelling units at Bridges consist of 11 floor-plan types, which have been grouped by ICRC based on their floor-plan configurations.² ICRC’s reorganization of the floor-plan types has resulted in three separate groups of units.³

The following table lists the unit types that were grouped together. It also provides the unit numbers and floor plan types for the inspected units; and the total number of units by group, by phase, and for both buildings.

¹ See Iowa Code §§216.8A(3)(c)(3)(a) [Requirement 2 – Accessible and Usable Public and Common Use Areas]; and 216.8A(3)(c)(3)(c)(i) [Requirement 4 – Accessible Route into and Through the Covered Unit].

² See Appendix B for floor plans.

³ See Appendix B for matrix indicating the configuration of units by floor-plan group, and by floor.

Group [Types]	Inspected Unit Number, Building Phase, and Unit Type	Total Units Per Group
1 [0M] (Studio/1BA)	212 – Phase A – 0M	3
2 [1M] (Studio/1BA)	210 – Phase A – 1M	3
3 [1S] (Studio/1BA)	504 – Phase A – 1S	12
4 [2S] (Studio/1BA)	334 – Phase A – 2S	12
5 [3-1, 4-1, and 6-1] (1BR/1BA)	543 – Phase B – 3-1	64
	535 – Phase B – 6-1	
6 [5-1] (1BR/1BA)	209 – Phase A – 5-1	12
7 [7-1]	201 – Phase A – 7-1	2
8 [8-2 and 9-2]	424 – Phase A – 8-2	24
TOTAL UNITS [Phase A (76 units) + Phase B (56 units)]		132

Respondents’ Defenses

When asked in the questionnaire what was true or false about the allegations, Respondents Twin Bridges Associates, LP (“Twin Bridges”), Newbury Management Company, Build To Suit, Inc., and Architects Schipper Kastner, P.C. answered:

[T]he clear opening dimensions were reviewed, and the sliding patio door manufacturer has indicated that adjustments can/will be made to achieve the minimum required opening of 31-5/8". Those adjustments have been made and effective 2/27/19, the patio doors now meet the requirements.

* * * * *

[M]ailboxes are not permanently assigned to specific dwelling units. The owner/management team currently has procedures in place to assign Type A Dwelling Units to a mailbox within the 54" reach range requirement. Other mailboxes will be assigned/reassigned to accommodate the accessible needs of the tenants. This strategy follows the intent of FHA rules of allowing an apartment operator to adapt their operation to comply with the accessible needs of their tenant. If this protocol is not sufficient, could you please provide a clarification on why all mail boxes are required to meet the reach range?

* * * * *

Page 7.58 of the referenced HUD Fair Housing Act Design Manual includes the following wording:

“In both Specification A and B bathrooms, when a stall shower is the only bathing fixture in the covered dwelling unit it must be at least 36 inches x 36 inches in size.”

The same paragraph goes on to say:

“In Specification B bathrooms, however, in addition to the reinforcing required for grab bars, the shower stall must have reinforcing to allow for later installation of an optional wall-mounted seat in a shower stall measuring a nominal 36 inches square.”

The word “nominal” is a crucial inclusion in the sentence above. Since “nominal” was not used in reference to Specification A bathrooms, its use in regards to Specification B bathrooms is clearly intentional and meaningful. We took this meaning as a blessing of, and guidance towards, the nominal 36"x36" product we selected for these Type B showers.

* * * * *

Summary and Proposed Solution

- Our design and construction teams were cognizant of the Fair Housing requirements throughout the design process.
- During construction, we altered the plans to further enhance the accessibility of several units due to the needs of prospective tenants.
- A large international manufacturer of tub/shower enclosures seemingly also interprets the word "nominal" as they designed and manufactured the installed shower for this situation.

Upon adjustment of the patio doors, we believe that we have faithfully resolved the other items enumerated in the complaint by providing:

- Flexibility to adjust tenant access to mailboxes based on their specific needs.
- Showers that are nominally 36” x 36” with reinforcement for future grab bars.

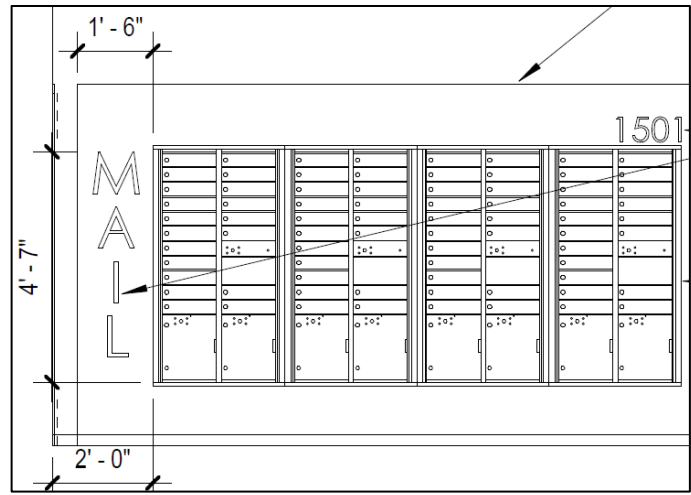
We would propose to provide additional accommodation for accessible bathing needs as follows:

- Notifying residents at time of unit selection (i.e. before move-in) that the inside dimension of showers in these units are 33” and that other fully accessible units are available, as well as Type B units with a tub/shower as opposed to a shower.
- Offering to move residents, at our expense, if, and when they expect visitors who need a wider shower entry.
- Offering to demolish and replace the showers, at our expense, if requested by a resident by establishing and maintaining an escrow fund equivalent to the cost of 12 such replacements.

Report of Preliminary Findings:

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

1) The construction plans submitted by Respondents include instructions and diagrams for the installation heights of mailboxes, as indicated in the following screenshot:



According to the construction plans, the height of the top edge of the highest mailbox compartment was designed to be installed at about 70 ½”, and each mailbox was designed to be about 3 ½” high. The midline of each mailbox compartment corresponds to the midline of the keyholes, which is the height measured by ICRC Investigators at each row of mailboxes.

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 height to the midline of the keyholes at the top four rows of mailboxes were measured at 67 ¾” (top row), 64 ¼” (second row), 60 ¾” (third row), and 57 ¼” (fourth row) – all of which are higher than the 54”-maximum for a parallel approach by persons using a wheelchair allowed by ANSI 1986.⁵ As designed and built, the height of the top four rows of mailboxes renders these mailboxes inaccessible to persons using wheelchairs for mobility.

2) The construction plans submitted by Respondents include instructions on sheet G102 for setting the maximum force level required to open interior doors, as shown in the following excerpt:

EGRESS DOOR OPENING FORCE:
INTERIOR SWINGING DOORS 5 LBS⁶

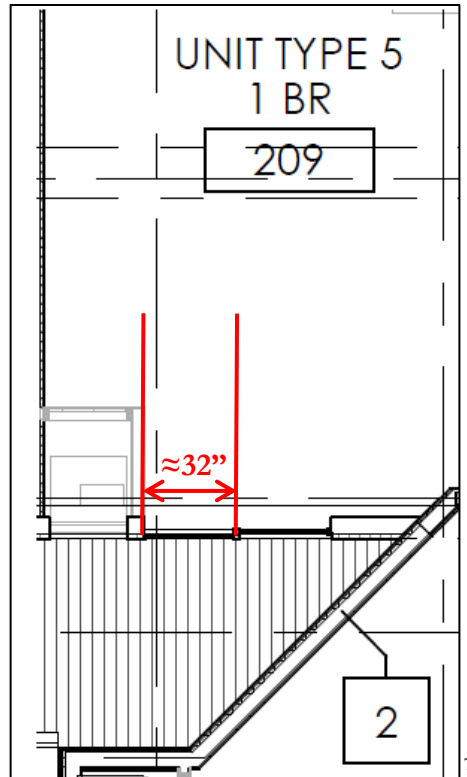
The force required to open the doors to the Community Room and the women’s bathroom exceeded the 5-pound maximum limit allowed by ANSI 1986 for interior-hinged doors. If the self-closers in these doors would have been set according to the instructions in the construction plans, these doors would have been compliant with the 5-lb. maximum force requirement from ANSI 1986. However, as installed, these doors require too much force to open, which makes them unusable for persons with disabilities who have diminished strength to push or pull.

3) The construction plans submitted by Respondents include scaled diagrams for the clear opening width of the sliding glass doorway in Unit 209, as shown in the following captioned screenshot:

⁴ See Appendix B.

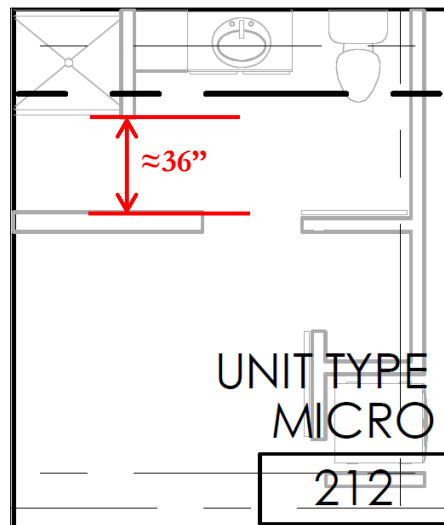
⁵ See Appendix A, Photo 1A.

⁶ See Appendix B.



The sliding glass doorway in Unit 209 would have been compliant with the 31 $\frac{5}{8}$ "-minimum clear opening width requirement if installed according to the plans. But, as built, it is too narrow, rendering it unusable by persons using wheelchairs.⁸

4) The plans submitted by Respondents include scaled drawings of the dwelling units. The relevant portion of the drawing for Unit 212 [0M] is shown at the top of the next page:⁹



⁷ See Appendix B.

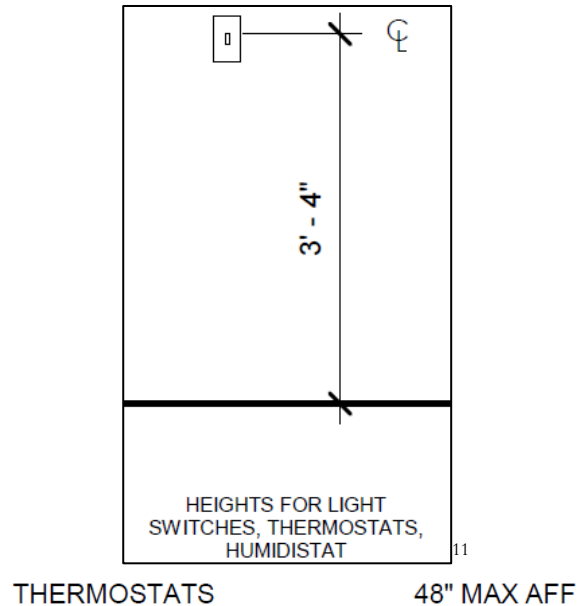
⁸ See Appendix A, Photo 6A

⁹ See Appendix B.

Based on the scaled drawing above, the route to the shower stall area from the bathroom sink in Unit 212 was designed to be about 36" wide. ICRC Investigators measured this route at 28 5/8" wide.¹⁰

As built, this route is too narrow because the measured width is less than the 32"-minimum width required for routes that measure less than 24" long, which renders this route inaccessible for tenants who use wheelchairs.

5) The construction plans submitted by Respondents indicate thermostats were to be installed at either 40" or 48" above the finished floor, as indicated in the following drawing and instructions:



If the thermostats had been installed according to the construction plans, the height of the thermostats would have been compliant with the 48"-maximum height requirement. However, the height of the top control buttons of the thermostats in Units 209 [5-1] and 210 [0M] was measured at no less than 50 1/4", which exceeds the 48"-maximum height.¹² The thermostats in these units are too high, rendering them unusable by persons using wheelchairs.

6) Units 201 [7-1], 212 [1M], 334 [2S] and 504 [0C] have only one bathing facility. As indicated in the description of the requirement referenced above, the 35 1/2" by 35 1/2" minimum dimensions for shower stalls are measured between the interior side walls and from the interior side of the back wall of the stall to the entry edge, which make up the usable space at the interior of the shower stall. The interior space at the shower stalls in units listed above was measured at no more than 33 1/4" wide by 34" deep, which is less than the 35 1/2" by 35 1/2" minimum clearance required.¹³

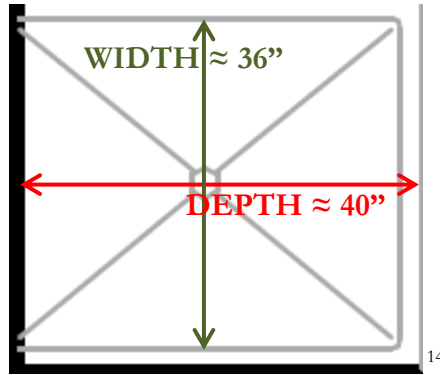
Respondents submitted plans for all units. The plan for the shower stall in the units listed at the bottom of the previous page is shown at the top of the next page:

¹⁰ See Appendix A, Photo 4A.

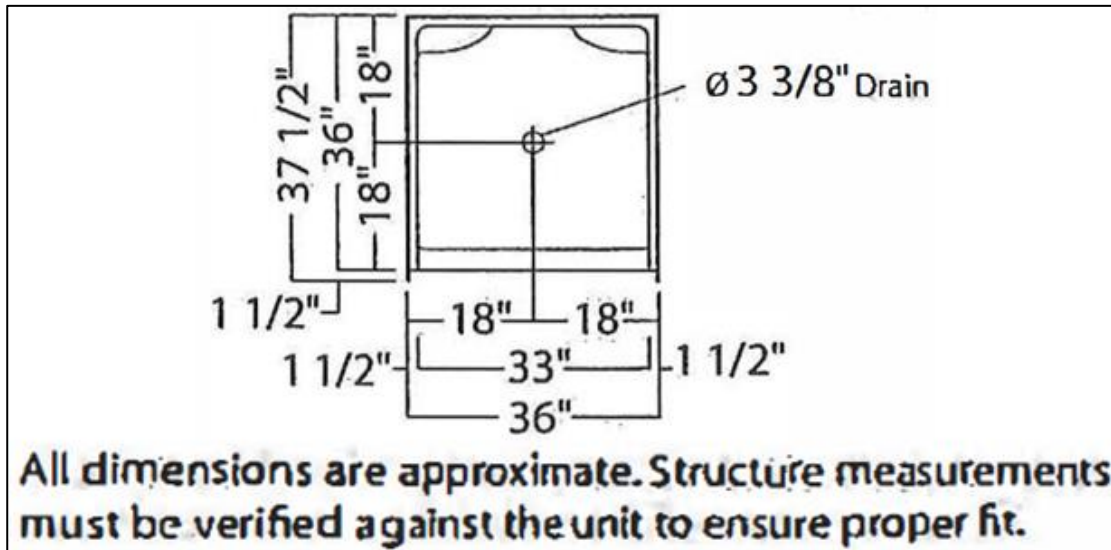
¹¹ See Appendix B.

¹² See Appendix A, Photo 4A.

¹³ See Appendix A, Photos 6A, 6B, and 6C.



Based on this scaled drawing, the interior usable space of the shower stalls was designed to be about 36” wide by about 40”. However, Respondents also submitted a copy of the “Technical Specifications” sheet from the manufacturer of the shower stalls, which they indicated is typical of the stalls they installed in these units. This product sheet includes a drawing that indicates the dimensions of the shower, and guidance on how to interpret the measurements indicated in the drawing, both of which are shown below:



As indicated in the drawing above, the width of the interior space is designed to be 33”. As designed and built, the interior space of the shower stall in these units is less than the 35 1/2” by 35 1/2”-minimum required, which render these shower stalls unusable by persons who use a wheelchair.

Respondents’ Response to Report of Preliminary Findings:

Following is a summary of Respondents’ responses to the reported deficiencies:

- 1) Respondents will install additional mailboxes on the west wall of the mail vestibule, such that the top row of mailboxes assigned to tenants are installed at heights not exceeding the 54”-maximum allowed by ANSI – and which will be completed no later than October 31, 2019.

¹⁴ See Appendix B.

¹⁵ See Appendix C.

- 2) Respondents will adjust the self-closers of the doors to the Community Room and the Women's bathroom to comply with the 5 lbs.-maximum required by ANSI – and which will be completed no later than July 31, 2019.
- 3) Respondents will (i) adjust the clear opening width of the sliding glass doorway in Unit 209 to comply with the 31 5/8"-minimum width required in the Manual; (ii) inspect the remaining 11 5-1, and if found to be narrower than the 31 5/8"-minimum width required, complete the same retrofit as for Unit 209; and (iii) complete this retrofit no later than July 31, 2019.
- 4) Respondents will (i) widen the clear width of the path from the sink to the shower stall in the bathroom of Unit 212 to bring it into compliance with the 32"-minimum clear width required; (ii) inspect the two other 0M units and complete the same modification if this path is narrower than the 32"-minimum width required; and (iii) complete this retrofit no later than December 31, 2019.
- 5) Respondents will (i) remount the thermostats in Units 209 [5-1] and 210 [0M] at heights not exceeding the 48"-maximum height required by the Manual and as measured to the top control buttons; (ii) inspect the other 5-1 and 1M units and complete the same modification if the thermostats are at heights exceeding the 48"-maximum; (iii) complete these retrofits no later than July 31, 2019.
- 6) Respondents acknowledge the minimum size of shower stalls that are the only bathing facility in a dwelling unit is 35 1/2" x 35 1/2" – which is a “nominal” 36” by 36” that is required in the Manual. However, Respondents maintain they did not realize the shower stalls selected to be installed at the subject property did not meet the minimum dimensional requirements because the definition of this standard in the Manual is ambiguous – (i) the Manual does not clearly state the specific linear dimension meant by a “nominal” 36” by 36”; and (ii) this requirement is only specifically defined in a HUD training manual instead of the Manual. Additionally, Respondents maintain the industry definitions of “nominal” minimum shower sizes indicated to them at the time they designed and built the subject property that they were in compliance with the accessibility requirement from the ICRA and FHA.

Respondents will notify all current and future tenants occupying Unit types 7-1, 1M, 2S, and 0C about their option to request their current shower stall be replaced with one that measures 35 1/2” by 35 1/2”. Respondents will also submit verification to ICRC of a \$50,000 account established to cover the costs of work and materials needed for completing shower-stall replacements for any current and future tenants requesting this retrofit.

Assessment of Deficiencies:

Respondents stated (i) all units were built in accordance with the scoping requirements of the International Building Code 2015 [IBC 2015], which incorporates the standards of the American National Standards 2009 [ANSI 2009] for guidance on the technical requirements [i.e., the dimension requirements];¹⁶ and (ii) – as previously quoted – Respondents indicated they were also aware of the FHA requirements of accessibility during the design and construction of Bridges. Neither the IBC 2015 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 2015 or ANSI 2009.

¹⁶ <https://codes.iccsafe.org/content/IBC2015/chapter-35-referenced-standards> (Last visited on March 5, 2019).

¹⁷ <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on March 5, 2019).

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 – which include the fitness center, both community rooms (first and fifth floors); garbage chutes; and the wall-mounted mailbox units adjacent to the leasing office – however, are governed by the FHA since they are only for use by the residents of Bridges and/or their guests. The ADA will only be referenced in the current agreement for the public areas, which include the leasing office and adjacent public bathrooms, sidewalks, elevators, and the 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” (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' proposal to install additional mailboxes on the west wall of the mail vestibule, such that the top row of mailboxes assigned to tenants are installed at heights not exceeding the 54"-maximum allowed by ANSI – and which will be completed no later than October 31, 2019.
- 2) ICRC agrees with Respondents' proposal to adjust the self-closers of the doors to the Community Room and the Women's bathroom to comply with the 5 lbs.-maximum required by ANSI – and which will be completed no later than July 31, 2019.
- 3) ICRC concurs with Respondents' proposal to (i) adjust the clear opening width of the sliding glass doorway in Unit 209 to comply with the 31 ⁵/₈"-minimum required in the Manual; (ii) inspect the remaining 11 5-1, and if found to be too narrow, complete the same retrofit as for Unit 2019; and (iii) complete this retrofit no later than July 31, 2019.
- 4) ICRC agrees with Respondents proposal to (i) widen the clear width of the path from the sink to the shower stall in the bathroom of Unit 212 to bring it into compliance with the 32"-minimum clear width required; (ii) inspect the two other 0M units and complete the same modification if this path is narrower than the 32"-minimum width required; and (iii) complete this retrofit no later than December 31, 2019. ICRC will require all retrofits required within the dwelling units to be completed sooner if requested by a tenant with a disability.
- 5) ICRC concurs with Respondents' proposal to (i) remount the thermostats in Units 209 [5-1] and 210 [0M] at heights not exceeding the 48"-maximum height required by the Manual and as measured to the top control buttons; (ii) inspect the other 5-1 and 1M units and complete the same modification if the thermostats are at heights exceeding the 48"-maximum; (iii) complete these retrofits no later than July 31, 2019.
- 6) ICRC concurs with Respondents' acknowledgement that the minimum size of shower stalls – when they are the only bathing facility in a dwelling unit – is a “nominal” 36” by 36” (i.e., 35 ½” by 35 ½”) – which is required in the Manual. ICRC also agrees Respondents did not realize the shower stalls selected to

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 <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards.pdf> (Last visited on March 5, 2019). 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.”

be installed at the subject property did not meet the minimum dimensional requirements because the definition of this standard in the Manual is ambiguous – (i) the Manual does not clearly state the specific linear dimension meant by a “nominal” 36” by 36”; and (ii) this requirement is only specifically defined in a HUD training manual instead of the Manual. However, ICRC disagrees with Respondents’ reliance on the industry definitions of “nominal” minimum shower sizes to determine compliance with the accessibility requirement from the ICRA and FHA because – as also acknowledged by Respondents – only HUD has the authority to apply the statutory requirements for compliance. Based on Respondents’ acknowledgement of these requirements, ICRC will strictly enforce the shower stall size requirement at any future properties that are developed, designed, or built by Respondents.

ICRC concurs with Respondents’ proposal to (i) notify all current and future tenants occupying Unit types 7-1, 1M, 2S, and 0C about their option to request their current shower stall be replaced with one that measures 35 ½” by 35 ½”; and (ii) submit verification to ICRC of a \$50,000 account (“Retrofit Account”) established to cover the costs of work and materials needed for completing shower-stall replacements for any current and future tenants requesting this retrofit.

Additionally, ICRC will require the following:

(1) The notices to tenants in Unit types 7-1, 1M, 2S, and 0C – to be delivered within 14 days from the date of the Closing Letter from ICRC – will clearly indicate to tenants that the retrofit will be completed at no cost to them.

(2) The same notice will be given to all future tenants occupying these unit types at the time they sign the lease agreements for a period of no less than five years from the date of the Closing Letter from ICRC.

(3) The funds will be administered by Respondent Newbury Management Company [doing business as “Newbury Living”].

(4) Respondent Newbury Living may reimburse itself out of the Retrofit Account for reasonable administration expenses associated with administering the Retrofit Account, provided that (i) such expenditures are approved by ICRC, and are not used to supplement the salaries or compensate employees or agents of any of the named Respondents; and (ii) the total administrative costs do not exceed 15 % of material/labor costs associated with the retrofits requested by tenants to be performed at these unit types.

(5) The Retrofit Account is kept open for a period of no less than five years.

(6) The shower-stall retrofits are completed within 30 days of the date on the written requests.

(7) Within 180 days of the date Closing Letter from ICRC, and thereafter on the anniversary of this date for a period of no less than five years, Respondent Newbury Living will submit a report to ICRC that includes all documents concerning the shower-stall retrofits requested by tenants, including: (i) copies of all written requests submitted by tenants of these unit types; (ii) date and photos of completed retrofits; and (iii) an account of any expenditures Respondent Newbury Living has made from the Fund Account.

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) Michael Dean, Derrick Johnson, and Steve Pennock 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) 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 paragraph 14 of the current section will:

(a) Review and become familiar with the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998), which may be obtained online at <http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.

(b) Submit separate signed written statements via email from the persons identified in paragraph 14 of the current section 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.
- iii. They acknowledge their responsibility to ensure all design and construction at all future covered properties will be performed by their employees and/or agents in compliance with the Seven Main “Design Requirements of the Guidelines.”

(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 all wall-mounted mailbox units exceed the 54”-maximum height allowed by ANSI 1986.

(b) Respondents agree they will install additional mailbox wall-mounted units on the west wall of the mail vestibule, such that the height to the midline of the keyhole at the new mailbox compartments on the fifth row and below does not exceed the 54”-maximum height allowed by ANSI 1986.

(c) Respondents agree they will label the mailbox compartments described in paragraph “(b)” above such that all units with mailbox compartments that are currently at heights exceeding the 54”-maximum height will then be located at heights either equal to or below the 54”-maximum allowed as measured to the midline of the keyhole of each mailbox compartment.

(d) Respondents agree they will complete this retrofit no later than October 31, 2019.

Usable Doors – Door Opening Force

(a) The parties agree the door-opening force for the doors to the Community Room on the fifth floor and the Women’s bathroom near the leasing office exceed the 5-lbs. maximum force allowed by ANSI 1986 for interior doorways.

(b) Respondents agree to adjust the self-closers at the doors to the Community Room on the fifth floor and the Women’s bathroom near the leasing office to reduce the opening force at these doors to no more than 5 lbs. to bring them into compliance with the 5-lbs. door-opening force maximum allowed by ANSI 1986.

(c) Respondents agree to complete the retrofits described in the current subsection no later than July 31, 2019.

Usable Doors – Clear Opening Width for Secondary Doorways

(a) The parties agree the sliding glass doorway of Unit 209 [5-1 unit] has a clear opening width that is narrower than the 31 ⁵/₈”-minimum required by the Manual.

(b) Respondents agree they will retrofit the sliding glass doorway of Unit 209 to increase the door-opening width to $\geq 31 \frac{5}{8}$ ”.

(c) Respondents agree to measure the sliding glass doorways of the other 11 5-1 units. If the clear-opening width of any of the sliding glass doorways at the units inspected by Respondents is $< 31 \frac{5}{8}$ ”, then

Respondents agree to retrofit the sliding glass doorways to widen them and bring them into compliance with the ICRA and FHA.

(d) Respondents agree to complete the retrofits described in the current subsection no later than July 31, 2019.

Accessible Route Into and Throughout the Covered Dwelling Unit – Clear Width of Interior Route

(a) The parties agree the clear width of the route from bathroom sink to shower stall in the bathroom of Unit 212 [1M] is less than the 32”-minimum required for accessible routes that are 24” or less in length as required by ANSI 1986.

(b) Respondents agree they will widen the route from the sink to the shower stall in the bathroom of Unit 212 [1M] such that this route will have a clear width of no less than the 32”-minimum required by ANSI 1986.

(c) Respondents agree to measure the clear width of the route from the bathroom sink to the shower stall in the bathroom of the other two 1M units. If the clear width of the route from the sink to the shower stall at the other two 1M units inspected by Respondents is < 32”, then Respondents agree to widen this route in the same manner as in Unit 212 and bring them into compliance with the ICRA and FHA.

(d) Respondents agree to complete the retrofits described in the current subsection no later than December 31, 2019, 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 209 [5-1] and 210 [0M] was measured at no less than 50 ¼”, which exceeds the 48”-maximum height allowed by the Manual.

(b) Respondents agree they will remount the thermostats in Units 209 [5-1] and 210 [0M] at a height of no more than the 48”-maximum allowed by the Manual, as measured to the top operable buttons.

(c) Respondents agree to measure the height to the top controls of the thermostats in the other two 0M units and in the other 11 5-1 units. If the height to the top controls of the thermostats exceeds the 48” maximum height allowed by ANSI 1986, Respondents agree to remount those thermostats in the same manner as in Units 209 [5-1] and 210 [0M].

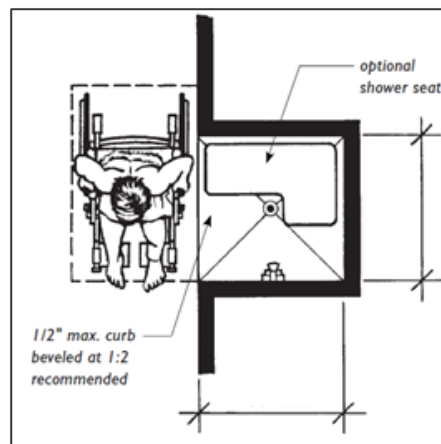
(d) Respondents agree to complete the retrofits described in the current subsection no later than July 31, 2019.

Usable bathrooms – Shower Stalls – Notices

(a) The parties agree the depth and width of the shower stalls in Units 207 [7-1] 212 [1M], 334 [2S] and 504 [0C] are less than the nominal 36” by 36” required by the Manual, and which is actually 35 ½” by 35 ½” according to the *Strategies for Compliant Bathrooms* training manual from HUD¹⁹.

¹⁹ https://www.fairhousingfirst.org/documents/BATHROOM_FINAL_BOOK.pdf at page 59 (Last visited on June 26, 2019).

- (b) Respondents agree to draft a notice for current and future tenants occupying Unit types 7-1, 1M, 2S, and 0C, which advises them about the option to request Management, in writing, to have their shower stall replaced – at no cost to the tenants – with a larger stall that measures no less than 35 ½” by 35 ½”.
- (c) Respondents agree they will submit the notice to ICRC via email at emigdio.lopez-sanders@iowa.gov for review within 14 days from the date of the Closing Letter from ICRC. ICRC agrees to review the notice and respond to Respondents within three business days from the date of the email from Respondents.
- (d) Respondents agree they will deliver the same notice required in paragraph “(b)” above to each current tenant with a shower stall in each of the units of Unit types 7-1, 1M, 2S, and 0C within 30 days from the date of the Closing Letter from ICRC.
- (e) Respondents agree they will include the same notice required in paragraph “(b)” above with the documents given to new tenants at the time each lease agreement is signed for all future tenants occupying each of the units of Unit types 7-1, 1M, 2S, and 0C – for a period of no less than five years from the date of the Closing Letter from ICRC.
- (f) Respondents also agree to send a statement to ICRC within 45 days from the date of the Closing Letter from ICRC verifying that the notice referred to in “(c)” paragraph above was, in fact, distributed to the tenants occupying each of the units of Unit types 7-1, 1M, 2S, and 0C, and including the unit numbers of the units where the note was sent.
- (g) Respondents agree to replace shower stalls with larger ones measuring no less than 35 ½” by 35 ½” within 30 days from the date of the written request from a tenant and agree to verify these dimensions by taking the measurements between the interior side walls and from the interior side of the back wall of the shower stall to the entrance threshold – which make up the usable space at the interior of the shower stall – and is measured according to the following illustration from page 7.59 in the Manual:



Usable bathrooms – Shower Stalls – Retrofit Fund Account

- (a) Respondents agree to deposit a total sum of \$50,000.00 into an account (“Retrofit Account”) for the sole purpose of providing for all costs – both materials/labor and administrative – associated with the

shower-stall retrofits required in the last subsection, as based upon tenants' written requests – within 14 days from the date of the Closing Letter from ICRC.

(b) Respondents agree the Retrofit Account will be opened by and administered exclusively by Respondent Newbury Living.

(c) Respondents agree to submit a scanned copy of the deposit slip receipt from the financial institution where the Retrofit Account via email to ICRC at emigdio.lopez-sanders@iowa.gov within 30 days from the date of the Closing Letter from ICRC.

(d) Respondents agree Respondent Newbury Living will maintain the Retrofit Account open for a period of no less than five years from the date of the Closing Letter from ICRC.

(e) Respondents agree Respondent Newbury Living may reimburse itself out of the Retrofit Account for reasonable administration expenses associated with administering the Retrofit Account, provided that (i) such expenditures are approved by ICRC, and are not used to supplement the salaries or compensate the employees or agents of any of the Respondents named in the current complaint; and (ii) the total administrative costs do not exceed 15% of the material/labor costs associated with each of the shower stall retrofits that are required if requested by tenants according to the last subsection.

(f) Respondents agree Respondent Newbury Living will submit a report to ICRC – within 180 days from the date of the Closing Letter from ICRC and thereafter on the yearly anniversary of this date – that includes all documents concerning the shower-stall retrofits requested by tenants, including:

(i) Copies of all written requests submitted by tenants;

(ii) Photos with dates showing the completed retrofits; and

(iii) An itemized account of any expenditure that Respondent Newbury Living has made from the Retrofit Account. If no requests for shower-stall retrofits have been received, Respondents agree Respondent Newbury Living will indicate this fact in their reports.

(g) Respondents agree Respondent Newbury Living will submit documentation from the financial institution to ICRC via email at emigdio.lopez-sanders@iowa.gov no later than 30 days from the date the account is closed that shows the Retrofit Account was opened for at least five years from the date of the Closing Letter from ICRC.

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 of the written the request 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 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

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 132 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.

Twin Bridges Associates, LP
RESPONDENT

Date

Newbury Management Company
RESPONDENT

Date

Architects Schipper Kastner, P.C.
RESPONDENT

Date

Build To Suit, Inc.
RESPONDENT

Date

Angela Jackson, Commissioner
COMPLAINANT

Date

Linda Grathwohl, Interim Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date