

# PREDETERMINATION SETTLEMENT AGREEMENT

CP# 09-19-73969  
HUD# 07-19-2744-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

**BRICKTOWNE JOHNSTON, L.C.**

4611 Mortensen Road, Suite 106  
Ames, Iowa 50014-6228

**JENSEN DEVELOPMENT CORPORATION, LTD.**

4611 Mortensen Road, Suite 106  
Ames, Iowa 50014-6228

COMPLAINANT

**ANGELA JACKSON, COMMISSIONER**

Iowa Civil Rights Commission  
400 East 14<sup>th</sup> Street, Room 201  
Des Moines, Iowa 50319-0201

and

**IOWA CIVIL RIGHTS COMMISSION**

400 East 14<sup>th</sup> Street, Room 201  
Des Moines, Iowa 50319-0201

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216. Complainant alleged Respondents designed and constructed covered multifamily dwellings in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the "accessible and usable public and common use areas."<sup>1</sup> Complainant specifically alleged two features in the common areas appeared inaccessible to a person utilizing a wheelchair for mobility, as listed below:

- (1) Two trash enclosures are not on an accessible route because of the obstruction created at each of the enclosures by a 5"-high sidewalk curb.
- (2) The clear width of the path between the kitchen island and the refrigerator was measured at 35" in the Model Unit.

---

<sup>1</sup> See Iowa Code §216.8A(3)(c)(3)(a) [Requirement 2 – Accessible and Usable Public and Common Use Areas].

Description of the Subject Property

Subject Property

According to the Certificates of Occupancy, Brick Towne Johnston (“Brick Towne”) consists of three buildings located at 6430, 6450, and 6460 Merle Hay Road. Two of the buildings are residential-unit buildings – Buildings 6430 and 6460 – each of which has 72 units housed on three stories with 24 units per story. The third building – Building 6450 – is a commercial building, which houses the leasing office, the clubhouse, and the Model Unit.

The buildings at Brick Towne were issued Certificates of Occupancy signed by Douglas Sandvig, Building Official for the City of Johnston. The issue dates for the Certificates of Occupancy issued for each of the buildings and the corresponding 300-day filing dates are listed in the following table.

<b>Building #</b>	<b>Certificate of Occupancy Issue Date</b>	<b>300-Day Date</b>
6430 (Residential-Unit Building)	May 15, 2019	March 10, 2020
6450 (Leasing Office/Clubhouse)	May 23, 2019	March 18, 2020
6460 (Residential-Unit Building)	July 2, 2019	April 27, 2020

The scope of the current agreement includes the 24 ground-floor dwelling units in each of Buildings 6430 and 6460; and the public and common use areas, including the fitness center; clubhouse; lobby; conference center; leasing office and the adjacent public bathrooms; trash enclosures; exterior parking spaces; and two separate clusters of mailbox kiosks.

The dwelling units at Brick Towne consist of two floor-plan types, which includes 21 1BR/1BA and three 2BR/2BA ground-floor units in each of the two residential unit buildings, which totals 48 ground-floor units.<sup>2</sup>

Respondents’ Defenses

When asked in the questionnaire to respond to the allegations, and indicate what was true or false, Respondent Bricktowne Johnston, L.C. (“BJ”) and Respondent Jensen Development Corporation, Ltd. (d/b/a Jensen Group (“JG”)) answered:

Both [i]tems have been repaired.

1. Moved the island.
2. Re[-]poured the concrete

[Allegations are] All true.

Report of Preliminary Findings:

ICRC Investigators inspected three units at Brick Towne as well as the public and common use areas in and surrounding the complex. After conducting an onsite inspection of Unit 101 in Building 6460, Unit 116 in

---

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

Building 6430, and the Model Unit in Building 6450; and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

- 1) No guidance was found in the plans submitted by Respondents that included instructions and diagrams for the installation heights of mailboxes.

There is sufficient clearance in front of all mailbox kiosks 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 two rows of mailboxes at the mailbox kiosks for Buildings 6430 and 6460 were measured at 57 7/8” (top row) and 54 3/8” (second row) – both of which are higher than the 54”-maximum for a parallel approach by persons using a wheelchair allowed by ANSI 1986.<sup>3</sup> The heights of the top two rows of mailboxes renders the mailboxes that are assigned to ground-floor units inaccessible to persons using wheelchairs for mobility – which is calculated to affect the tenants occupying 10 of the ground-floor units. The units listed in the following table have heights exceeding the 54” maximum height:

<b>BUILDING / UNIT NUMBER</b>	<b>HEIGHT TO MIDLINE OF KEYHOLE</b>
6430 / 101	57 7/8”
6430 / 117	57 7/8”
6460 / 101	57 7/8”
6460 / 109	57 7/8”
6430 / 102	54 3/8”
6430 / 110	54 3/8”
6430 / 118	54 3/8”
6460 / 102	54 3/8”
6460 / 110	54 3/8”
6460 / 118	54 3/8”

Respondents submitted an inquiry to the Johnston branch office of the United States Postal Service (“USPS”) regarding the accessibility of its mailboxes. In response, Postmaster Betty Huff proposed that ground-floor tenants who are not able to reach mailboxes in the top two rows because of a disability may complete paperwork and submit it to USPS and request an a lower and more reachable mailbox be assigned to them.<sup>4</sup>

This proposal would allow the non-compliant height of the affected mailboxes to remain as a violation. This would then cause a second violation in addition to the height requirements not being met because this and every other accessibility requirement under the ICRA and FHA must not only be met, but must also be in place at the time the units are occupied without the prerequisite of a tenant’s request.<sup>5</sup> Therefore, another solution – which does not require tenants to complete paperwork and make a request, such as the reassignment of mailbox compartments – that results in none of the ground-floor units having mailbox compartments that exceed the 54” maximum height must be implemented.

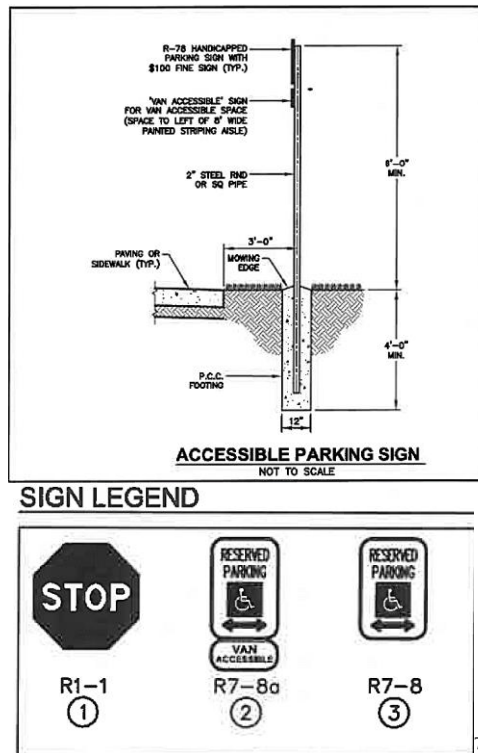
<sup>3</sup> See Appendix A, Photos 1A, 1B, and 1C.

<sup>4</sup> Petersen, Todd. “Re: Bricktowne Johnston CP# 09-19-73969” Message to Emigdio López-Sanders. Oct. 24, 2019, Email.

<sup>5</sup> Letter from Lynn Grosso, Director for Office of Enforcement, United States Department of Housing and Urban Development, to Maria Infanger, Postal Service Attorney, United States Postal Service, May 20, 2008.

2) ICRC Investigators observed the signage at the parking space located north of the access aisle near the southwestern corner of Building 6430 only includes the “VAN ACCESSIBLE” sign and is missing the International Symbol of Accessibility required in Section 703.7.2.1 of the 2010 ADAAG.<sup>6</sup>

The plans submitted by Respondents include instructions for the installation of signage designating spaces as reserved for persons with disabilities. The following diagrams provide the requirements of the installation of these signs:



Based on these diagrams, the plans required the installation of a sign with the International Symbol of Accessibility at every parking space to be designated as reserved for use by persons with disabilities. However, as installed, the signage at the parking space previously described is missing the sign with International Symbol of Accessibility as required in the 2010 ADAAG. The missing signage presents a visual challenge for persons with disabilities to locate the parking space intended to be reserved for them, and may potentially result in misuse of these parking spaces by persons without disabilities.

The ICRC Investigators measured the height to the bottom edge of the sign at the parking space described above at 41 1/2” and at 54” for the sign at parking space south of the access aisle that is adjacent to the east of the Clubhouse building – which is less than the 60”-minimum height required in Section 502.6 from the ADAAG.<sup>8</sup>

No indication was found in the plans of the required minimum height to the bottom edge of signage designating parking spaces as reserved for use by persons with disabilities. The signage at both parking spaces was installed too low – making the spaces more challenging to locate by persons with disabilities.

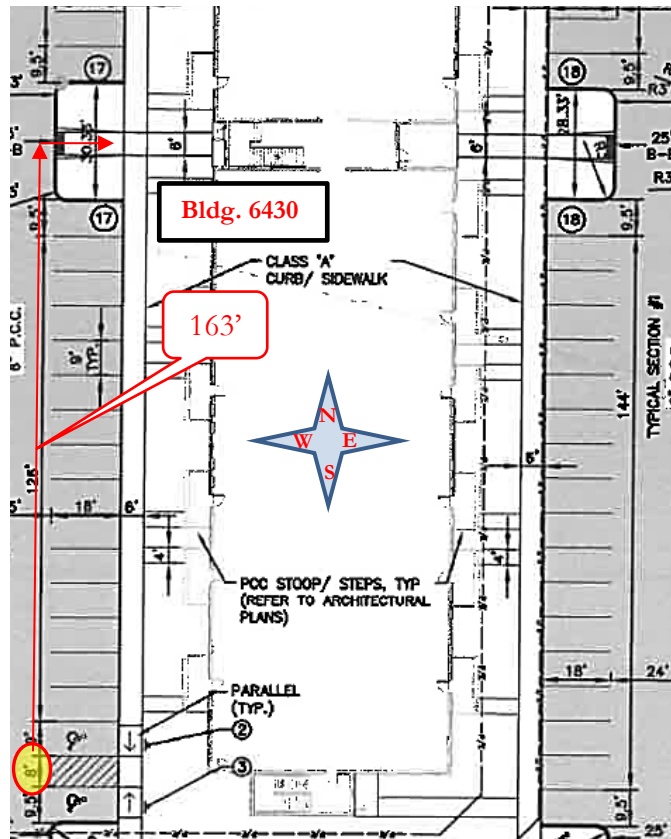
<sup>6</sup> See Appendix A, Photo 2A

<sup>7</sup> See Appendix B1.

<sup>8</sup> See Appendix A, Photos 2B and 2C.

3) The two parking spaces designated as reserved for persons with disabilities – which service Building 6430 – were striped at 163' away from the closest accessible entrance to the building.<sup>9</sup> In comparison, there are standard parking spaces – adjacent to the same building entrance – that are only about 20' away.

The plans submitted by Respondents include diagrams indicating the location of parking spaces that are designated as reserved for persons with disabilities. The following captioned diagram indicates the location where these parking spaces were designed to be striped:



If the same two parking spaces and access aisle had instead been striped adjacent to the main entrance of Building 6430 – where standard parking places are currently striped –the distance traveled by a person in a wheelchair for this path would be approximately 20' instead of 163'.

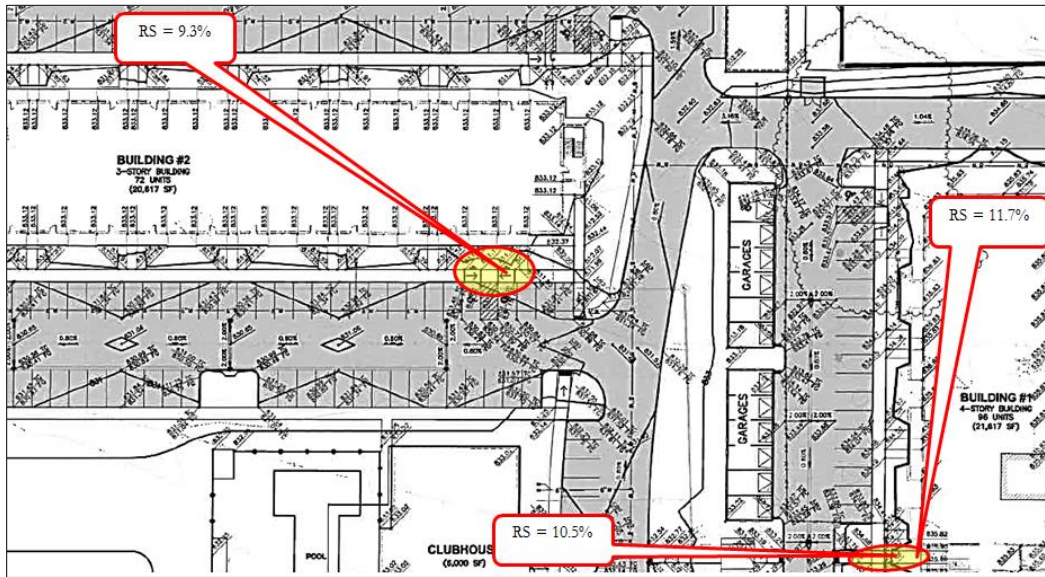
4) The ICRC investigators took several slope measurements at Brick Towne along the sidewalk paths from the access aisles to the nearest accessible building entrance. These paths need to be accessible routes because they are necessary to travel from the accessible parking spaces to the closest accessible entrance at the dwelling-unit buildings. Only those slope measurements exceeding the maximum values previously quoted are included in the following table.

---

<sup>9</sup> See Appendix A, Photo 2D.

BUILDING	LOCATION	RUNNING SLOPE
6430	Second sidewalk section west from west building entrance <sup>10</sup>	10.5%
6430	First sidewalk section west of west building entrance <sup>11</sup>	11.7%
6460	Parallel curb-ramp section east of access <sup>12</sup> aisle at southeast corner of building	9.3%

For additional clarity of the location where the above measurements were taken, please see the following captioned section of the site plans:



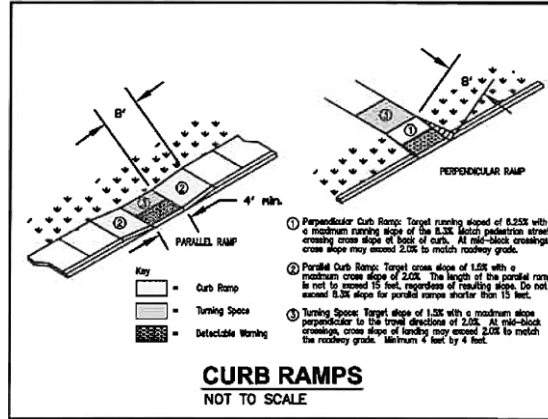
The running slopes reported at the reported sections of these sidewalk paths exceed the above-referenced maximum values for running slopes of (1) the sections that are *not* curb ramps at Building 6430 – 5%-maximum running slope without handrails and the 8.33%-maximum running slope with ADA-compliant handrails; and (2) the section at Building 6460 that is a curb ramp – 8.33% maximum running slope. These paths are inaccessible to persons who utilize wheelchairs for mobility because they are too steep.

The plans submitted by Respondents include the following diagrams with instructions indicating the maximum running slope of curb ramps adjacent to parking spaces that are designated as reserved for persons with disabilities:

<sup>10</sup> See Appendix A, Photos 3A and 3B.

<sup>11</sup> See Appendix A, Photos 3C and 3D.

<sup>12</sup> See Appendix A, Photos 3E and 3F.



The above diagram and instructions were found to be applicable only to the sidewalk section reported for Building 6460. The reported slope value exceeds the 8.33%-maximum allowed for curb ramps. If the curb ramp at Building 6460 had been installed according to the above instructions from the plans, it would have been compliant. However, as it was built, this curb ramp is too steep.

Diagrams or instructions were not found in the plans that indicated the maximum running slope along sidewalk sections that are not curb ramps. The running slopes reported at Building 6430 exceed the 5%-maximum without handrails and the 8.33% maximum with handrails, which makes the route from the access aisle to the building entrance inaccessible because it is too steep.

5) The controls of the security keypads adjacent to the entrances of all the buildings are directly above the grassy surface. This surface is not “stable, firm, and slip resistant,” as required by Section 4.5.1 of ANSI 1986 that was quoted above.<sup>13</sup> Therefore, the security keypads at each one of the buildings are not accessible or usable by persons in a wheelchair.

In order to correct this deficiency, additional concrete will need to be poured right beside the existing sidewalk to create the type and size of surface that is required. The size of new sidewalk must result in a concrete surface measuring no less than 30” by 48”, which is to be centered on the controls either for a forward approach – with the 30”-side centered on the controls – or a parallel approach, with the 48”-side centered on the controls. Also, reachable height for a forward approach without obstructions is 48”, and 54” for a parallel approach.

The midline of the top row of buttons in the security-keypad controls was measured by ICRC Investigators at a height of 49 ¼” above the grassy surface. The vertical midline of the controls are 6 ½” away from the edge of the concrete sidewalk. If the keypad is lowered by 1 ¼” down to 48”, then an area of new concrete that measures no less than 21”-by-60” – with the 21” portion projecting away and to the right from the edge of the sidewalk – would need to be poured to allow someone in a wheelchair to make a forward approach and reach the controls. The 60” side is required to allow a person in a wheelchair to approach the controls and have the 48”-side of the clear floor space projecting away from the wall. Otherwise, if the keypad controls remain at the current height, then the new sidewalk section will need to measure no less than 30 ½”-by-30” – with the 30 ½” side projecting to the right and away from the edge of the sidewalk – to allow persons in a wheelchair to make a parallel approach to the keypad controls.

<sup>13</sup> See Appendix A, Photos 4A, 4 B, 4C, 4D, and 4E.

No instructions or diagrams were found in the plans indicating the type of surface underneath the security keypads.

6) The Guidelines require common access areas, such as rent drop boxes, to be accessible by tenants who use a wheelchair as a mobility assistive device.<sup>14</sup> The rent drop box is located in the Clubhouse building near the main entrance. There is enough clear floor space in front of the rent drop box for residents using wheelchairs to make a parallel approach. The height of the slit in the rent drop box was measured at 64".<sup>15</sup> This height is greater than the 54"-maximum height allowed in ANSI 1986.

No specific instructions were found in the plans for the installation of the rent drop box.

7) A measurement was taken from the midline of the sink to the refrigerator – which is the closest obstruction – at the common-use kitchen in the Clubhouse to verify compliance with the 24"-minimum required clearance for a parallel approach, which is required because the cabinets are not removable as stated by Respondents. The distance from the midline of the sink to the refrigerator is 19 5/8", which is less than the 24"-minimum required.

The plans submitted by Respondents did not include instructions for the installation of the sink in the Clubhouse kitchen. As built, the sink in the Clubhouse kitchen is too close to the refrigerator because the midline of the sink is less than 24" away from the refrigerator, rendering this common-use kitchen unusable by persons using wheelchairs.

8) After receiving notification of the current complaint on September 6, 2019, and before the ICRC inspection on October 22, 2019, Respondents state they built curb ramps at the pedestrian sidewalk path to the trash enclosures to comply with the accessible-route requirement. ICRC Investigators verified the presence of the curb ramps at both trash enclosures, and measured the running and cross slopes of the curb ramps, which were found to be compliant with the allowed slope-maximum values. Based on the gathered information and verification by ICRC Investigators, the deficiency alleged at the trash enclosures has been corrected. ICRC requires no further action by Respondents in regard to this allegation at trash enclosures.

9) After receiving notification of the current complaint on September 6, 2019, and before the ICRC inspection on October 22, 2019, Respondents state they relocated the kitchen island further away from the refrigerator to comply with the 40"-minimum width requirement. ICRC Investigators measured the clear width of the path between the kitchen island and the refrigerator at 40 3/4", and therefore compliant with the requirement referenced above. Based on the gathered information and verification by ICRC Investigators, the deficiency alleged at the kitchen for the model unit has been corrected. ICRC requires no further action by Respondents in regard to this allegation at the Model Unit.

10) ICRC Investigators measured the clear width of the path between the refrigerator and opposing countertop at 35" in the kitchen of Unit 101 in Building 6460 and at 34 5/8" in the kitchen of Unit 116 in Building 6430 – which is less than the 40"-minimum required in the guidelines.<sup>16</sup>

Respondents submitted plans for all units. The plans for the kitchen in the units described in the last paragraph are shown below:

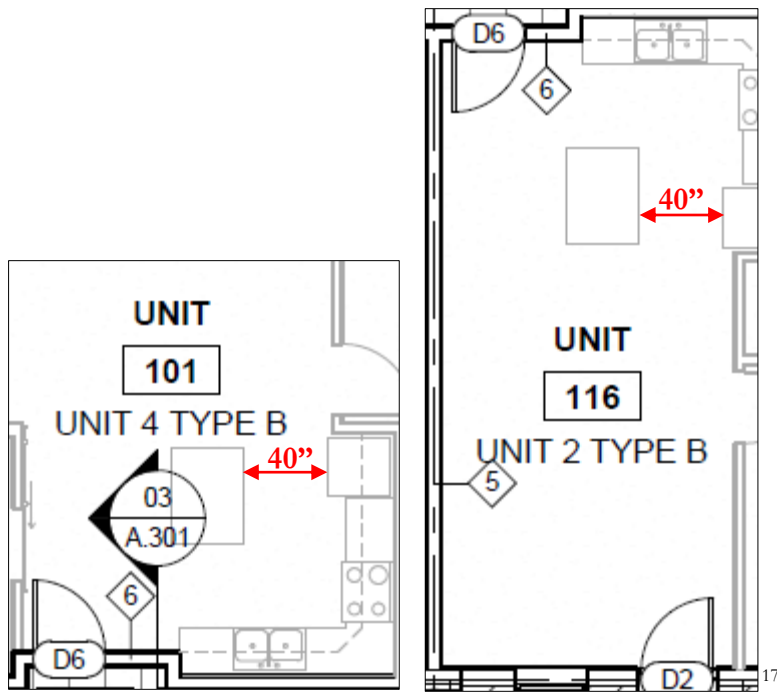
---

<sup>14</sup> See Manual at page 2.3.

<sup>15</sup> See Appendix A, Photos 3A and 3B.

<sup>16</sup> See Appendix A, Photo 7A.





As indicated in the scale drawings above, the clear width of the path between the refrigerator and opposing countertop was designed to be 40” in both units. If the kitchens in both units had been built as they were designed, they would have been compliant. However, as built, this path is too narrow rendering the kitchen unusable by persons who use a wheelchair.

Even though the design of the kitchen is compliant, it was designed to only meet the 40”-minimum clear width requirement, which does not allow for the typical deviation from plans – referred to as “construction tolerance” – that is commonly observed upon completion of the construction. If no allowances are made for construction tolerances during the design phase of property development, the chances of non-compliance during the final construction phase increase.

Respondents’ Response to Report of Preliminary Findings:

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

- 1) Respondents will coordinate with the Johnston Postmaster to retrofit the mailboxes reported on page 3 of the current agreement such that the height to the midline of the keyhole of the mailbox compartments does not exceed 54”-maximum height for those compartments assigned to ground floor units.
- 2) Respondents will replace the signage at the parking adjacent to the north of the access aisle near the southwestern corner of Building 6430 and install it at a height of 60” as measured to the bottom edge of the signage.

---

<sup>17</sup> See Appendix B2.

- 3) Respondents will install a 50' sidewalk east of the access aisle serving the parking spaces designated as reserved for use by persons with disabilities that service Building 6430, to provide a shorter accessible route than the existing 163'-long route.
- 4) Respondents will replace the sidewalks reported on pages 6 and 7 of the current agreement with sidewalks that have slopes complying with the 5%-maximum running slope – for non-ramp sections – and 8.33%-maximum running slopes – for the ramp sections.
- 5) Respondents will install additional sidewalk surface underneath the security keypads at the entrances to all security keypads to comply with the minimum 30" by 48" flush against the exterior building wall surface and centered and on the security keypads.
- 6) Respondents stated the rent drop-box was relocated at a reachable height in compliance with the 54"-maximum height requirement, and submitted a photograph in support of their claim.
- 7) Respondents stated the refrigerator in the clubhouse kitchen was replaced with another one that has decreased depth such that the front face of the refrigerator in the clubhouse kitchen now extends only by 5/8" beyond the front face of the countertop in front of the sink instead of by 7", as it was during the inspection of the subject property. Respondents submitted a photograph in support of their claim.
- 8) Respondents stated they moved the kitchen islands in the dwelling units to increase the clearance of the path to comply with the 40" minimum requirement and submitted two photographs in support of their claim.

#### 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];<sup>18</sup> and (ii) – as previously quoted – Respondents indicated they were also aware of the FHA requirements of accessibility during the design and construction of Brick Towne Neither the IBC 2015 nor the ANSI 2009 is one of the safe harbors accepted by HUD.<sup>19</sup> Therefore, the Manual and the Guidelines, which incorporate ANSI 1986 for some of the technical requirements, must be used to assess and determine compliance with the ICRA and FHA, not IBC 2015 or ANSI 2009.

The public areas must meet the requirements of the ADA in addition to those of the FHA, as people other than residents or residents' visitors will visit or frequent those areas. The common use areas – 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 Brick Towne 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.<sup>20</sup> Finally, the

---

<sup>18</sup> <https://codes.iccsafe.org/content/IBC2015/chapter-35-referenced-standards> (Last visited on March 5, 2019).

<sup>19</sup> <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on March 5, 2019).

<sup>20</sup> The ADAAG defines "Public Use" as "[I]nterior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned." See "Definitions" on page 47 of ADAAG available online at <https://www.ada.gov/reg2010/2010ADASTandards/2010ADASTandards.pdf> (Last visited on March 5, 2019).

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 coordinate with the Johnston Postmaster to retrofit the mailboxes reported on page 3 of the current agreement such that the height to the midline of the keyhole of the mailbox compartments does not exceed 54”-maximum height for those compartments assigned to ground floor units.
- 2) ICRC agrees with Respondents’ proposal to replace the signage at the parking adjacent to the north of the access aisle near the southwestern corner of Building 6430 and install it at a height of 60” as measured to the bottom edge of the signage.
- 3) ICRC agrees with Respondents’ proposal to install a 50’ sidewalk east of the access aisle serving the parking spaces designated as reserved for use by persons with disabilities that service Building 6430, to provide a shorter accessible route than the existing 163’-long route.
- 4) ICRC concurs with Respondents’ proposal to replace the sidewalks reported on pages 6 and 7 of the current agreement with sidewalks that have slopes complying with the 5%-maximum running slope – for non-ramp sections – and 8.33%-maximum slopes – for the ramp sections. If Respondents opt for installing sidewalks with values in between 5% and 8.33% at the non-ramp sections, then ICRC will require the installation of ADA-compliant handrails on both sides of those paths.
- 5) ICRC agrees with Respondents proposal to install additional concrete sidewalk surface underneath the security keypads at the entrances to all security keypads to comply with the minimum 30” by 48” flush against the exterior building wall surface and centered on the security keypads.
- 6) ICRC reviewed the photograph submitted by Respondents showing the height of the rent drop-box is now at 51”, which verifies Respondents’ claim that they reinstalled the rent drop-box at a lower height in compliance with the 54”-maximum requirement. The rent drop-box is now at a reachable height. Therefore, ICRC requires no further action in regards to this deficiency.
- 7) ICRC reviewed the photograph submitted by Respondents showing the front face of the refrigerator in the clubhouse kitchen now only extends by  $\frac{5}{8}$ ” beyond the front face of the countertop in front of the sink instead of by 7”, as it was during the inspection of the subject property, which verifies their claim that they replaced the refrigerator with another one that has decreased depth in an attempt to eliminate the obstruction caused by the refrigerator. Although persons using a wheelchair would not be able to make a parallel approach to the kitchen sink that is completely flush against the countertop – as it is required in the Guidelines – they would still be able to use the sink because the reach distance to the faucet controls is significantly less than 24”-maximum allowed by ANSI.

---

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.”

8) ICRC agrees with Respondents' proposal to move the kitchen island in Unit 101 in Building 6460 and Unit 116 in Building 6430 to increase the clearance of the path to comply with the 40" minimum requirement. Respondents submitted a photograph indicating a clear width between the kitchen island and opposing features of no less than 42 5/8", which is compliant because it exceeds the 40"-minimum clear width. However, it is unknown the units where these photographs were taken at. Therefore, ICRC will require that the same retrofit indicated in the photographs submitted by Respondents to also be completed at all units where the path around the kitchen island is less than the 40"-minimum that is required by the Guidelines.

### 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) Todd Petersen and Jim Koch 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 [BuildItRightIowa@iowa.gov](mailto:BuildItRightIowa@iowa.gov); by attending the Build It Right Iowa conference on Friday, April 3, 2020 (see <https://icrc.iowa.gov/7th-iowa-civil-rights-symposium-and-4th-build-it-right-iowa-conference>); 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 coordinate with the Postmaster at the United States Postal Service branch located in Johnston to relabel the mailbox compartments at the mailbox kiosks, such that the height to the midline of the keyhole at the mailbox compartments on assigned to the ground-floor units does not exceed the 54”-maximum height allowed by ANSI 1986.

(c) Respondents agree they will complete this retrofit no later than 90 days from the date of the Closing Letter from ICRC.

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

(a) The parties agree (i) the parking space designated as reserved for use by persons with disabilities that is located north of the access aisle near the southwestern corner of Building 6430 only included the “VAN ACCESSIBLE” sign and is missing the International Symbol of Accessibility required in the 2010 ADAAG; and (ii) that the height is less than the 60”-minimum that is required to the bottom edge of the parking signs designating parking spaces as reserved for use by persons with disabilities – as required in the 2010-ADAAG – at the parking space that is described in “(i)” section above, and at the parking space located south of the access aisle that is adjacent to the east of the Clubhouse building.

(b) Respondents agree they will (i) install signage that includes the International Symbol of Accessibility required in Section 703.7.2.1 of the 2010 ADAAG and shown in the image below at the parking space designated as reserved for use by persons with disabilities that is located north of the access aisle near the southwestern corner of Building 6430 and above the existing “VAN ACCESSIBLE” sign.



**Figure 703.7.2.1  
International Symbol of Accessibility**

(c) Respondents agree they will the signage described in “(b)” above, and reinstall the sign at the parking space located south of the access aisle that is adjacent to the east of the Clubhouse building, such that the height to the bottom edge of these signs is no less than the 60-inch minimum height required by 2010 ADAAG.

(d) Respondents agree they will complete the retrofits in this section no later than 90 days from the date of the Closing Letter from ICRC.

*Accessible and Usable Public and Common Use Areas – Accessible Route from the Parking Spaces Designated as Reserved for Persons with Disabilities Serving Building 6430 to the Building Entrance*

(a) The parties agree the parking spaces designated as reserved for use by persons with disabilities that serve Building 6430 were striped at 163’ away from the closest building entrance that is located at the southwest of Building 6430, which is significantly greater than the 20’ distance from the parking spaces *not* designated as reserved for used by persons with disabilities located near the same building entrance.

(b) Respondents agree they will install a new sidewalk from the parking spaces described in “(a)” paragraph above extending to the east to create a 50’ path connecting these parking spaces to south entrance of Building 6430 as indicated in the following captioned figure submitted by Respondents:



(c) Respondents agree they will install the sidewalk section required in “(b)” paragraph above in compliance with Section 4.3 from ANSI 1986 as described below:

- Width of no less than the 36”-minimum width
- Slope values of no more than 2%-maximum cross-slope and 5%-maximum running slope.
- No changes in level exceeding 1/4” maximum

(d) Respondents agree they will complete the retrofits in this section no later than 90 days from the date of the Closing Letter from ICRC.



*Accessible and Usable Public and Common Use Areas – Sidewalk Paths and Ramps at Buildings 6430 and 6460.*

(a) The parties agree the sidewalk sections reported on pages 6 and 7 of the current agreement have running slopes exceeding the slope values established by ANSI 1986 and 2010 ADAAG – 5% maximum running-slope without ADA-compliant handrails for the non-ramp sections; and 8.33% maximum running-slope with ADA-compliant handrails at the non-ramp sections *and* the 8.33%-maximum running slope at the ramp sections without handrails – because they are part of the accessible route to the building entrances they serve.

(b) Respondents agree they will reinstall the non-compliant sidewalk sections exceeding maximum running slope requirements – 5%-maximum running slope without ADA-compliant handrails and 8.33%-maximum running slope with ADA-compliant handrails for the ramp sections *OR* 8.33%-maximum running slope at the ramp sections without ADA-compliant handrails – referred to on pages 6 and 7 of the current agreement such that those sidewalk sections, once reinstalled, will have a cross-slope that does not exceed the 2%-maximum, and a running-slope that does not exceed either the 5%-maximum without ADA-compliant handrails or the 8.33%-maximum with ADA-compliant handrails for the non-ramp sections *OR* the 8.33%-maximum running slope without the ADA-compliant handrails at the ramp sections, as required by 2010 ADAAG and ANSI 1986.

(c) If Respondents opt to install the sidewalks required in “(b)” paragraph at the non-ramp sections with running slope values  $\geq 5\%$  and  $\leq 8.33\%$ , they agree they will install a handrail on both sides of these sidewalk sections in compliance with the FHA and ICRA, and meeting the technical requirements specified in Section 505 of the 2010 ADAAG.<sup>21</sup>

(d) Respondents agree they will complete the retrofits in this section no later than 90 days from the date of the Closing Letter from ICRC.

*Accessible and Usable Public and Common Use Areas – Security Keypad*

(a) The parties agree that the security keypads are directly above the grassy surface adjacent to the building entrance at all three buildings – Buildings 6430, 6450, and 6460 –which is not “stable, firm, and slip resistant,” as required by ANSI 1986.

(b) Respondents agree they will pour concrete under the security keypads – at Buildings 6430, 6450, and 6460 – to create a surface that is “stable, firm, and slip resistant,” has a slope of no more than 2% in any direction, and results in a clear floor space of no less than 30” by 48”, with the 48”-side centered on the vertical midline of the security keypad

(c) Respondents agree they will complete the retrofits in this section no later than 90 days from the date of the Closing Letter from ICRC.

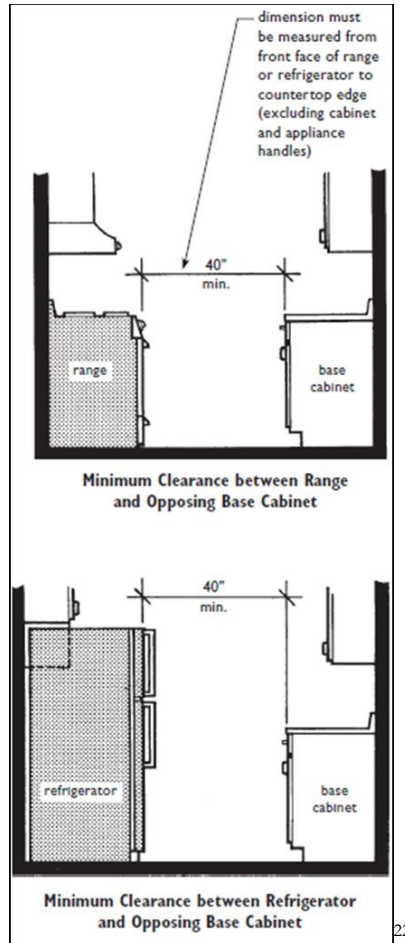
*Usable Kitchens – Kitchen Islands*

(a) The parties agree the width of the path between the refrigerator and the opposing countertop is 35” in the kitchen of Unit 101 in Building 6460 and at 34 <sup>5</sup>/<sub>8</sub>” in the kitchen of Unit 116 in Building 6430 – which is less than the 40”-minimum required in the Guidelines.

---

<sup>21</sup> [https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards\\_prt.pdf](https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf) (Last visited on June 1, 2017).

(b) Respondents agree to increase the clear width of the path between the refrigerator and opposing countertop to no less than 40” in Unit 101 in Building 6460 and Unit 116 om Building 6430 by moving the kitchen island further away from the opposing features to meet the 40”-minimum clear width, as required in the Guidelines. Respondents agree to measure the clear width of the path as indicated in the following figure.



(c) Respondents agree to measure the clear width of the path between the kitchen island and opposing features in the manner described in paragraph “(b)” above in the other ground-floor units in Buildings 6430 and 6460. If the clear width of the path is less than the 40”-minimum required by the Guidelines, Respondents agree to retrofit the noncompliant kitchen in the same manner as described in “(b)” paragraph above to bring them into compliance with the ICRA and FHA.

(d) Respondents agree they will complete the retrofits in this section no later than 365 days from the date of the Closing Letter from ICRC or sooner if requested by a tenant with a mobility impairment.

---

<sup>22</sup> See Manual at page 7.7.

### *Retrofit Requests*

- 17) Within 30 days from the date of the Closing Letter from ICRC, Respondents agree to notify all current tenants – who need the kitchen-island retrofit to be completed in their units because of a mobility impairment – via a letter, about the option to have management complete the kitchen-island retrofit performed in their unit at no charge to the tenants.
- 18) Respondents agree to complete all retrofits requested by a tenant due to a disability within 14 days from the date of the written the request submitted by the tenant.
- 19) Respondents agree that those tenants who request the kitchen-island retrofit to be performed in their units 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 48 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 retrofit is 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 14<sup>th</sup> Street, Des Moines, Iowa 50319-0201, OR via email at [emigdio.lopez-sanders@iowa.gov](mailto:emigdio.lopez-sanders@iowa.gov)).
- 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.

---

Bricktowne Johnston, L.C.  
RESPONDENT

---

Date

---

Jensen Development Corporation, Ltd.  
RESPONDENT

---

Date

---

Angela Jackson, Commissioner  
COMPLAINANT

---

Date

---

Elizabeth Johnson, Executive Director  
IOWA CIVIL RIGHTS COMMISSION

---

Date