

# **PREDETERMINATION SETTLEMENT AGREEMENT**

CP# 08-16-69457  
HUD# 07-16-4729-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

**UNIQUE APARTMENT HOMES, LC**

2811 West Street, Unit 101  
Ames, Iowa 50014-7466

**GW COLLEGE, LLC**

P.O. Box 1723  
Ames, Iowa 50010-1723

**PINNACLE PROPERTIES AMES, LLC**

4114 Cochrane Parkway  
Ames, Iowa 50014-7725

**BENJAMIN DESIGN COLLABORATIVE, PC**

401 Clark Avenue, Suite 200  
Ames, Iowa 50010-6179

COMPLAINANT

**ANGELA JACKSON**

Commissioner, Iowa Civil Rights Commission  
400 East 14<sup>th</sup> Street  
Des Moines, Iowa 50319

and

**IOWA CIVIL RIGHTS COMMISSION**

400 East 14<sup>th</sup> Street  
Des Moines, Iowa 50319

### 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 “light, switches, thermostats, electrical outlets in accessible locations” and the “usable kitchens and bathrooms” requirements.<sup>1</sup>

Complainant specifically alleged, in Unit 101, 4128 Lincoln Swing Street, Heights at Lincoln Swing [“Lincoln Swing”], two features within one of the covered ground-floor units appeared inaccessible to a person utilizing a wheelchair for mobility – (1) except for the kitchen and the bathroom, the midline of the lower electrical outlet at the receptacles throughout the unit were located 10 ½ inches above the finished floor, which is less than the 15-inch minimum allowed height for electrical outlets; and (2) the clearance from the midline of the sink to the wall was measured at 18 ½ inches in one bathroom and 18 ¾ inches in the other, both of which are less than the 24-inch clearance required for a parallel approach needed because the cabinets underneath the sinks, as observed by the tester, were not easily removable.

### Description of the Subject Property

#### Subject Property

Lincoln Swing consists of five residential-unit buildings – located at 4120, 4124, 4128, 4132, and 4136 Lincoln Swing Street<sup>2</sup> – with four floors or levels per building. There is no elevator available to residents, which means only the five ground-floor units in each of the five buildings – a total of 25 units – are “covered”<sup>3</sup> by the design and construction provisions of the ICRA and FHA.<sup>4</sup> All five buildings were each issued a Certificate of Occupancy on December 3, 2015, signed by Seana Perkins, Building Official for the City of Ames.

The construction of ground-floor units within the residential unit-building was based on five different designs.<sup>5</sup> The table at the top of the next page lists the unit types, the number of units per type, and the building numbers of the inspected units.

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<sup>1</sup> See Iowa Code §§216.8A(3)(c)(3)(c)(ii) [Requirement 5 – Light Switches, Thermostats, Electrical Outlets in Accessible Locations] and 216.8A(3)(c)(3)(c)(iv) [Requirement 7 – Usable Kitchens and Bathrooms].

<sup>2</sup> Henceforth, each building will be referred to as “Building 4120,” “Building 4124,” “Building 4128,” “Building 4132,” and “Building 4136.”

<sup>3</sup> Fair Housing Accessibility Guidelines, Federal Register, Vol. 56. No. 44, Wednesday, March 6, 1991, Rules and Regulations, page 9500.

<sup>4</sup> 42 U.S.C. §3604(f)(7); Iowa Code §§216.2(4)(a), 216.2(4)(b).

<sup>5</sup> See Appendix B at Sheet A2 for the floor plans, which are known as “Unit 101,” “Unit 102,” “Unit 103,” “Unit 104,” and “Unit 105.”

UNIT TYPE	TOTAL UNITS PER TYPE [INSPECTED BUILDING]
Unit 101 – 2BR/2BA	5 – [Building 4132]
Unit 102 – 3BR/3BA	5 – [Building 4136]
Unit 103 – 1BR/1BA	5 – [Building 4128]
Unit 104 – 3BR/2BA	5 – [Building 4120]
Unit 105 – 4BR/3BA	5 – [Building 4124]
<b>TOTAL</b>	<b>25</b>

The scope of this agreement includes all 25 ground-floor dwelling units and the public and common use areas, including the parking garages, exterior parking lot, waste dumpsters, wall-mounted mailboxes, and the interior hallways.

Respondents’ Defenses:

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

With regard to the measurements listed in the Complaint concerning Unit 101 of 4128 Lincoln Swing, as provided in Paragraph 7, we do not dispute these findings.

Report of Preliminary Findings:

After conducting an onsite inspection of all five units; and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

- 1) The measured heights of the keyholes at the top three mailbox compartments, which belong to ground-floor units, are reported in the table below.<sup>6</sup>

Top Three Mailbox Compartments	Height in Inches
Unit 101	62 ¼
Unit 102	58 ¾
Unit 103	55 ¼

Within each of the five dwelling-unit buildings, the mailbox compartments assigned to Units 101, 102, and 103 are inaccessible to persons who utilize wheelchairs as they exceed the 54-inch maximum height allowed by ANSI 1986.

- 2) The sliding glass doorways in the inspected dwelling units and the interior doorways in Unit 105 are too narrow because they were measured at less than 31 5/8, as listed in the table at the top of the next page, rendering them unusable by persons using wheelchairs.<sup>7</sup>

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<sup>6</sup> See Appendix A, Photo 1A.

<sup>7</sup> See Appendix A, Photos 2A, 2B, 2C, and 2D.

UNIT - BUILDING	DOORWAY LOCATION	CLEAR OPENING WIDTH IN INCHES
Unit 101 – Building 4132 – 2BR/2BA	Sliding glass doorway - porch	30 3/16
Unit 102 – Building 4136 – 3BR/3BA <sup>8</sup>	Sliding glass doorway - porch	30
Unit 103 – Building 4128 – 1BR/1BA	Sliding glass doorway - porch	30
Unit 104 – Building 4120 – 3BR/2BA	Sliding glass doorway - porch	30
Unit 105 – Building 4124 – 4BR/3BA	Sliding glass doorway - porch	30 3/4
	On route from Bathroom 2 <sup>9</sup> to Bedroom 4	29 1/2
	On route from Bathroom 3 Bedroom 3 <sup>10</sup>	29 1/2

3) All of the interior threshold heights at the sliding glass doorways were measured at no less than 1 11/32, which exceeds the 1/4-inch maximum allowed for thresholds without beveling.<sup>11</sup> These thresholds are too high, rendering them unusable by persons using wheelchairs.

4) The height of the midline of bottom electrical outlets in each living room, dining room, and bedroom of all inspected units was measured at no more than 13 inches.<sup>12</sup> The measured heights render these electrical outlets unusable by residents who utilize wheelchairs.

5) The kitchens in each of all inspected units have an island. The width of the path between the island and the opposing counter was measured at no more than 39 1/4 inches.<sup>13</sup>

Although the clear widths of the paths in the kitchens of all units were designed to be 40 inches or more according to the scaled plans, none of the kitchens in the inspected units had paths with clear widths of 40 inches or greater. The kitchens would have been compliant with the 40-inch minimum distance between the kitchen island and the opposing features if they had been installed according to the plans. But as built, they are too narrow, rendering them unusable by persons using wheelchairs.<sup>14</sup>

6) The distance from the midline of the toilet to the bathtub (grab-bar side) in Bathroom 2 of Unit 104 was measured at 17 1/2 inches, which is less than the required minimum of 18 inches; and at 14 1/2 inches to the vanity cabinet (non-grab bar side), which is less than the required 15-

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

<sup>9</sup> Bathrooms are numbered according to the number given to the nearest Bedroom in the plans. For example, Bathroom 1 is adjacent to Bedroom 1.

<sup>10</sup> *Ibid*, Photos 2C and 2D

<sup>11</sup> See Appendix A, Photo 3A.

<sup>12</sup> See Appendix A, Figure 4A.

<sup>13</sup> See Appendix A, Photos 5A and 5B.

<sup>14</sup> See Appendix A, Photos 5A and 5B.

inch minimum, as established in the Manual.<sup>15</sup> This toilet is too close to the bathtub and vanity cabinet to be accessible and usable by persons utilizing wheelchairs for mobility.

7) The distance from the midline of the sink to the nearest obstruction was measured by ICRC investigators in the bathrooms of the inspected units. Except for Unit 103, the midlines of the sinks in the bathrooms of all inspected dwelling units were measured to be less than the 24-inch minimum from the closest obstruction, as indicated in the table below.<sup>16</sup>

Unit	Bathroom Number	Specification ["A" or "B"]	Midline to Closest Obstruction in Inches
101	Bathroom 1	Specification A	17 ½
	Bathroom 2	Specification A	17
102	Bathroom 1	Specification A	15 ½
	Bathroom 2	Specification A	22
	Bathroom 3	Specification B	18 ½
104	Bathroom 1	Specification A	18 ½
	Bathroom 2	Specification A	19
105	Bathroom 1	Specification A	17 ¼
	Bathroom 2	Specification A	21 ½
	Bathroom 3 ["Jack & Jill"] Left Sink	Specification A	14
	Bathroom 3 ["Jack & Jill"] Right Sink	Specification A	14 ¼

8) The clear floor space outside of the swing of the door was measured at less than 30 by 48 inches in the Bathroom 2 in Unit 101 and in Bathroom 1 in Unit 102.<sup>17</sup> If Bathroom 3 in Unit 102, the Specification B Bathroom, is made fully compliant, then Bathroom 1 will be exempt from all clear floor space requirements, including the space outside the swing of the door. The clear floor space in these bathrooms is less than the minimum required by the Guidelines, as stated above, and renders these bathrooms unusable by persons who utilize wheelchairs.

9) Except for Unit 103, the height of the bathroom towel bars located directly above toilets with a depth greater than 20 inches, was measured at no less than 52 ½ inches, which exceeded the 46-inch maximum.<sup>18</sup>

Respondents' Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

1) Respondents will retrofit the affected mailbox compartments, so as to bring them in compliance with the height requirements as defined by HUD and any US Postal Service requirements.

<sup>15</sup> See Appendix A, Photos 6A and 6B.

<sup>16</sup> See Appendix A, Photos 7A and 7B.

<sup>17</sup> See Appendix A, Photos 8A and 8B.

<sup>18</sup> See Appendix A, Photos 9A and 9B.

2) Respondents will replace the current handles at the sliding glass doorways with narrower handles to bring the clear opening widths into compliance.

Respondents will close off the “A7” doors providing access from Bathroom 2 to Bedroom 4, and from Bathroom 3 to Bedroom 3 in Unit 105 because there is another entrance to the bathroom that is accessible.

3) Respondents will install ramps with compliant slopes at the interior thresholds at the sliding glass doorways to make them accessible.

4) Respondents will raise the noncompliant electrical outlets such that the height to the midline of the bottom electrical outlet is no less than 15 inches above the finished floor surface.

5) Respondents will measure the clear width of the path around the kitchen islands, and move the countertops of the kitchen islands in all covered units where the width is less than 40 inches.

6) Respondents will replace the current vanity cabinets with removable ones, which will result in (i) the midline of the toilets meeting requirements of ANSI 2009, and (ii) the midline of the sinks being no less than 15 inches away from the closest obstruction.

7) Respondents will reverse the swing of the door in all “Unit 101” units that have less than the 30-by48-inch clear floor space outside the swing of door in the bathrooms. Respondents will select the most efficient option of either (i) reversing the swing of door in Bathrooms 1 or 3 in “Unit 102” units, which according to ANSI 2009 are the Type B, Option B bathrooms; or (ii) reversing the swing of the door in all three bathrooms.

8) Respondents will install an additional towel bar at a height of 46 inches or less in the bathrooms of all covered units with towel bars that are at a height of greater than 46-inch maximum.

#### Assessment of Deficiencies:

Respondents stated all units were built in accordance with the scoping requirements of the 2012 International Building Code [IBC 2012], which incorporates the standards of the 2009 American National Standards [ANSI 2009] for guidance on the technical requirements [i.e., the dimension requirements]. Neither the IBC 2012 nor the ANSI 2009 is one of the safe harbors accepted by HUD.<sup>19</sup>

Respondents maintain the Fair Housing Act Design Manual (“Manual”)<sup>20</sup> allows other standards, including ANSI 2009, to be considered as an acceptable standard for meeting the accessibility requirements of the FHA. While HUD does allow for other standards to be followed, it is only as long as they meet the minimum requirements from the

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<sup>19</sup> <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on March 28, 2014).

<sup>20</sup> See Fair Housing Act Design Manual (“Manual”) online, <https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf> (Last visited March 9, 2017).

Guidelines, which are further expounded in the Manual.<sup>21</sup> Therefore, the Manual, which incorporates ANSI 1986 for some of the technical requirements, must be used to assess and determine compliance with the ICRA and FHA, not IBC 2012 or ANSI 2009. Respondents do not concur with this interpretation; however, as expressed herein below, agree to methods of modification or retrofit of items described in the agreement.

The public areas must meet the requirements of the ADA in addition to those of the FHA, as people other than tenants or tenants' visitors will visit or frequent those areas. The common use areas, however, such as parking spaces, mailboxes, and dumpsters, are governed by the FHA since they are only for use by the tenants of the subject property. The ADA will only be referenced in the current agreement for the public areas, which include the parking lot, sidewalks, and interior hallways.<sup>22</sup> Finally, the requirements of the ADA will be presented as stated in the "2010 American with Disabilities Act Standards: 2004 ADAAG for Titles II and III Facilities" (ADAAG). *See* 42 U.S.C. 12204, Part 1191, Appendix A, and 42 U.S.C 12186(b); 28 CFR Part 36, Appendix B.

Following is the assessment of the reported deficiencies, based on the scoping and technical requirements of the 2010 ADAAG and the Manual:

- 1) ICRC concurs with Respondents' proposal to retrofit the affected mailbox compartments, so as to bring them in compliance with the height requirements as defined by HUD and any US Postal Service requirements.
- 2) ICRC concurs with Respondents' proposal to replace the current handles at the sliding glass doorways of all covered dwelling units with more narrow handles to bring the clear opening widths into compliance with the 31 5/8-inch minimum clear opening width.

ICRC does not concur with Respondents' proposal to close off the "A7" doors providing access from Bathroom 2 to Bedroom 4, and from Bathroom 3 to Bedroom 3 in Unit 105, because as interpreted by Fair Housing Accessibility First,<sup>23</sup> and as required by the Manual,<sup>24</sup> all doors to interior rooms must be "usable."<sup>25</sup>

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<sup>21</sup> Joint Statement of The Department of Housing and Urban Development and the Department of Justice: *Accessibility (Design and Construction) Requirements For Covered Multifamily Dwelling Under The Fair Housing Act*, U.S. Department of Housing and Urban Development (last updated April 13, 2013); Q&A Item #39.

<sup>22</sup> The ADAAG defines "Public Use" as "[I]nterior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned." *See* "Definitions" on page 47 of ADAAG available online at [http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards\\_prt.pdf](http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards_prt.pdf). Therefore, since the interior hallways and parking spaces are available for use by prospective tenants, who are part of the general public, these areas are deemed to be "Public Use."

<sup>23</sup> Fair Housing Accessibility FIRST is an organization created for the purpose of providing guidance and training on the accessibility requirements of the FHA. According to its website, Fair Housing Accessibility FIRST is "a new initiative sponsored by the U.S. Department of Housing and Urban Development (HUD) designed to promote compliance with the Fair Housing Act design and construction requirements. The program consists of a comprehensive training curriculum, as well as a toll-free information line and website designed to provide technical guidance to the public." <http://www.fairhousingfirst.org/aboutus.html>.

<sup>24</sup> *See* Manual at page 3.3.

<sup>25</sup> <http://www.fairhousingfirst.org/faq/doors.html> (Last visited on July 6, 2017).

Finally, closing off the non-compliant doors could not be agreed to by ICRC as an acceptable retrofit. According to HUD, this proposed retrofit would result in eliminating an entrance to the bathroom that was required to be usable from the moment it was available for rent:

21. May owners of covered multifamily buildings designed and constructed in compliance with the Fair Housing Act make subsequent changes to the building so that it no longer meets the Act's requirements?

Original and subsequent owners of covered multifamily buildings that were designed and constructed in compliance with the Fair Housing Act's design and construction requirements **must maintain the building's accessible features** so that the building continues to meet the Act's requirements (bold added for emphasis).<sup>26</sup>

Closing off the doorways with the A7 doors would require tenants who sleep in the affected bedrooms to either enter the bathroom through another bedroom to access these bathrooms, or travel a significantly longer and more circuitous path to enter these bathrooms. Therefore, ICRC will require these doorways to be widened to a clear opening width of no less than the 31 5/8-inch minimum required by the Manual.

3) ICRC concurs with Respondents' proposal to install ramps with compliant slopes at the interior thresholds at the sliding glass doorways to make them accessible.

If rubber ramps are used (*see* ramps at <http://www.discountramps.com/ez-edge-threshold-ramps/p/RAEZ-Ramps/>), ICRC will require Respondents to replace the ramps as they become unsafe or unusable due to deterioration from continued use.

4) ICRC concurs with Respondents' proposal to raise the noncompliant electrical outlets such that the height to the midline of the bottom electrical outlet is no less than 15 inches above the finished floor surface.

5) ICRC concurs with Respondents' proposal to measure the clear width of the path around the kitchen islands, and move the countertops of the kitchen islands in all covered units where the width is less than 40 inches.

6) ICRC concurs with Respondents' proposal to replace the current vanity cabinets with removable cabinets, but only as long as they meet (i) the minimum clearance requirements of the Manual for the midlines of the toilets and sinks; and (ii) the knee and toe clearance requirements from the Manual, with finished surfaces for the flooring, wall, and cabinet surfaces in the event the cabinets are removed.

7) ICRC concurs with Respondents' proposal to reverse the swing of the door in all "Unit 101" units that have less than the 30-by48-inch clear floor space outside the swing of door in the bathrooms to create the required minimum 30-by-48 inch clear floor space.

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<sup>26</sup> Joint Statement of The Department of Housing and Urban Development and the Department of Justice: *Accessibility (Design and Construction) Requirements For Covered Multifamily Dwelling Under The Fair Housing Act*, U.S. Department of Housing and Urban Development (last updated April 13, 2013).

ICRC concurs with Respondents' proposal for reversing the swing of doors in "Unit 102" units, with one exception. If the swing of every bathroom door in "Unit 102" units is not reversed, then ICRC will require that the swing of door in Bathroom 3 be reversed for the reasons outlined in the next paragraph.

As stated in the Report of Preliminary Findings, if there is more than one bathroom within a dwelling, and at least one of those bathrooms is a Specification-B bathroom, then at least one Specification-B bathroom must be fully compliant with the maneuverability and clear floor space requirements.<sup>27</sup> Bathroom 3 is the only Specification-B bathroom, and Bathroom 1 is one of the Specification-A bathrooms.

8) ICRC concurs with Respondents' proposal to install an additional towel bar at a height of 46 inches or less in the bathrooms of all covered units with towel bars that are at a height of greater than 46 inches.

#### 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) For purposes of this agreement, when used in this agreement, "Respondents" shall mean Unique Apartment Homes, LC; GW College, LLC; Pinnacle Properties Ames, LLC; and Benjamin Design Collaborative, PC, collectively.

2) "Owners", when used in this agreement, shall mean Unique Apartment Homes, LC; GW College, LLC; and Pinnacle Properties Ames, LLC, collectively.

3) "BDC", when used in this agreement, shall mean Benjamin Design Collaborative, PC, individually.

4) 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).

5) 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).

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<sup>27</sup> See Manual at page 7.34

6) 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).

7) 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).

8) 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).

9) 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).

10) Respondents acknowledge that owners, developers, and builders 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:

- 1) Accessible building entrance on an accessible route.
- 2) Accessible and usable public and common areas.
- 3) Usable doors.
- 4) Accessible route into and through the covered dwelling unit.
- 5) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- 6) Reinforced walls for grab bars.
- 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 or regulation. 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 Commission may review compliance with this Agreement. And as part of such review, Respondents agree the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.

#### *Disclosure*

12) Because, pursuant to Iowa Code §216.15A(2)(d), the Commission 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 Keith Arneson and John Lott will:

(a) Receive training on the accessible design and construction requirements of State and Federal Fair Housing Laws within 180 days of their receipt of a Closing Letter from the Commission. 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.

(b) Attendance at Design and Construction training session offered during the “Build It Right Iowa” conference held at the ICRC Symposium – to be held on October 27, 2017<sup>28</sup> – will fulfill the requirement for this term. Otherwise, the training shall be conducted by a qualified person, approved by ICRC or the U.S. Department of Housing and Urban Development. Otherwise, attendance at one of the training sessions offered by Fair Housing Accessibility First will also fulfill the requirement for this term.<sup>29</sup>

(c) Respondents also agree to send documentation to ICRC, verifying the fair housing / accessible design and construction training has been completed, within ten (10) days of completing the training.

15) Respondents agree Keith Arneson and current employees of Unique Apartments LC, GW College Park, LLC, Pinnacle Properties Ames, LLC, and Benjamin Design Collaborative who are involved in the design and/or construction of covered multi-family dwelling properties, will, within 120 days from the date of the Closing Letter from ICRC:

(d) 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>.

(e) Submit separate signed written statements via email from each of the Respondents’ representatives named above in paragraph “18,” and their current employees or agents who are involved in the design and/or construction of covered multifamily-dwelling properties indicating:

- i. They have reviewed and become familiar with the Fair Housing Act Design Manual.
- ii. They understand what the Seven Main “Design Requirements of the Guidelines” are by listing them in the written statement.

#### *Required Modifications or Retrofits*

Because BDC does not own, have right to possession or otherwise control the property, and has no right or ability to access any part of the property for the purposes of performing any modifications or retrofits, it is agreed to by and between ICRC and Respondents that any modifications or retrofits described herein below will be implemented, performed and completed by Owners (or any agents, employees or independent contractors Owners may use to accomplish the modifications or retrofits), and not by BDC.

16) Owners agree to make the following modifications or retrofits to the subject property:

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<sup>28</sup> <https://icrc.iowa.gov/news/5th-annual-iowa-civil-rights-symposium-and-2nd-build-it-right-iowa-conference> (Last visited on June 1, 2017).

<sup>29</sup> See the “Training Calendar” section at the website for Fair Housing Accessibility First for sessions that will also allow for compliance with this term: <http://www.fairhousingfirst.org/training/calendar.html>

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

(a) The parties agree that the mailbox keyholes the mailbox compartments assigned to “Unit 101,” “Unit 102,” and “Unit 103” units, as reported on page 4 of the current agreement exceed the 54-inch maximum height allowed by ANSI 1986 – three mailboxes within each mailbox wall-mounted unit (15 total).

(b) Owners agree they will rearrange the mailbox numbers of assigned to “Unit 101,” “Unit 102,” and “Unit 103” units at each of the five buildings such that all 15 of these ground-floor units have mailbox keyholes with midlines that do not exceed the maximum height of 54 inches, as required by ANSI 1986.

*Usable Doors – Clear Opening Width for Secondary Doorways*

(a) The parties agree interior doorways and sliding glass doorways of the inspected units, as reported on page 4 of the current agreement, have a clear opening width that is narrower than the 31 <sup>5</sup>/<sub>8</sub>-inch minimum required by the Manual.

(b) Owners agree they will retrofit the sliding glass doorway in each of the inspected units, as reported in page 4 of the current agreement – by replacing the current sliding glass door handle with a slimmer handle – such as to increase the door-opening width to  $\geq 31 \frac{5}{8}$  inches to bring it into compliance with the ICRA and FHA.

(c) Owners agree to remedy the A7 door in Unit 105, and all similarly situated units wherein a scheduled A7 door was installed that does not provide a clear opening width of 31 <sup>5</sup>/<sub>8</sub> inches or greater, by creating a door opening width of 31 <sup>5</sup>/<sub>8</sub> inches or greater.

*Usable Doors – Threshold for Secondary Door*

(a) The parties agree the height onto the finished floor surface of the interior threshold at the sliding glass doorway of all inspected ground-floor units exceeds the <sup>1</sup>/<sub>4</sub>-inch maximum height allowed for interior thresholds without beveling, as established by the Manual.

(b) Owners agree they will install a ramp – with a running slope of  $\leq 8.33\%$  – at the interior side of the threshold to the sliding glass doorways of all ground-floor units as required by the Manual.

(c) If rubber ramps are used, Owners agree to annually inspect and, if necessary, replace any ramps that have become unsafe or unusable due to deterioration.

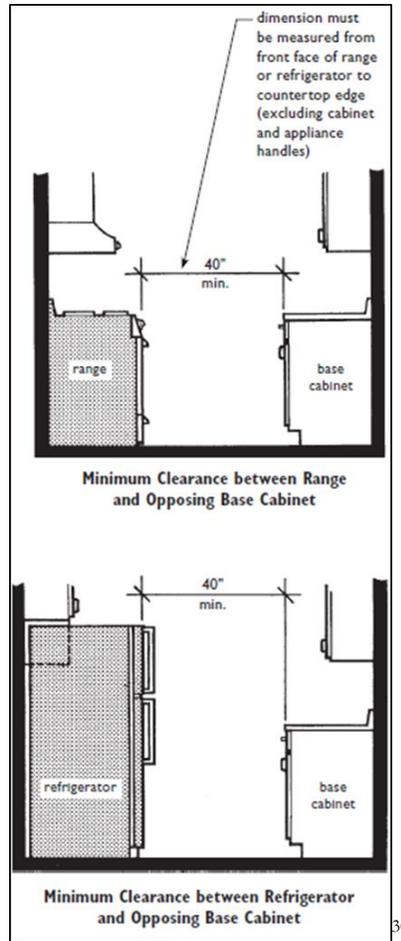
(d) Owners agree to measure the height of the interior side of the threshold at the sliding glass doorways in all of the other ground-floor units not inspected by ICRC investigators. If the height of interior side of the threshold exceeds the <sup>1</sup>/<sub>4</sub>-inch maximum height allowed by the Manual, then Owners agree to retrofit the thresholds in the same manner as described in “(b)” paragraph above to bring it into compliance with the ICRA and FHA.

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

- (a) The parties agree the height of the midline of the bottom electrical outlet in each living room, dining, room, and bedroom of all inspected units is no more the 13 inches above the finished floor, which is less than the minimum height of 15 inches, as required by the Manual.
- (b) Owners agree to measure the height of the midline of the bottom electrical outlet in each living room, dining, room, and bedroom of all other ground-floor units not inspected by ICRC Investigators.
- (c) Owners agree they will raise one of the electrical receptacles in each living room, dining, room, and bedroom of all inspected units; and in non-inspected units – where the height of the midline of the bottom electrical outlet is less than 15 inches as measured by the Owners – such that the midline of the bottom electrical outlet of the moved receptacles is no less than the minimum height of 15 inches, as required by the Manual.

*Usable Kitchens – Kitchen Islands*

- (a) The parties agree the width of the path between the island and opposing counter is no more than 39 ¼ inches in all inspected units, which is less than the 40-inch minimum width required by the Manual.
- (b) Owners agree to increase the clear width of the path between the kitchen island and opposing features to no less than 40 inches in all inspected units by sliding the countertop on the kitchen island further away from the opposing features to meet the 40-inch minimum requirement, and as required in the Manual. Owners agree to measure the clear width of the path as indicated in the figure below.



(c) Owners 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 all other ground-floor units not inspected by ICRC Investigators. If the clear width of the path is less than the 40-inch minimum allowed by the Manual, Owners agree to retrofit the noncompliant kitchens in the same manner as described in “(b)” paragraph above to bring it into compliance with the ICRA and FHA.

*Usable bathrooms – Bathroom Sinks and Toilets*

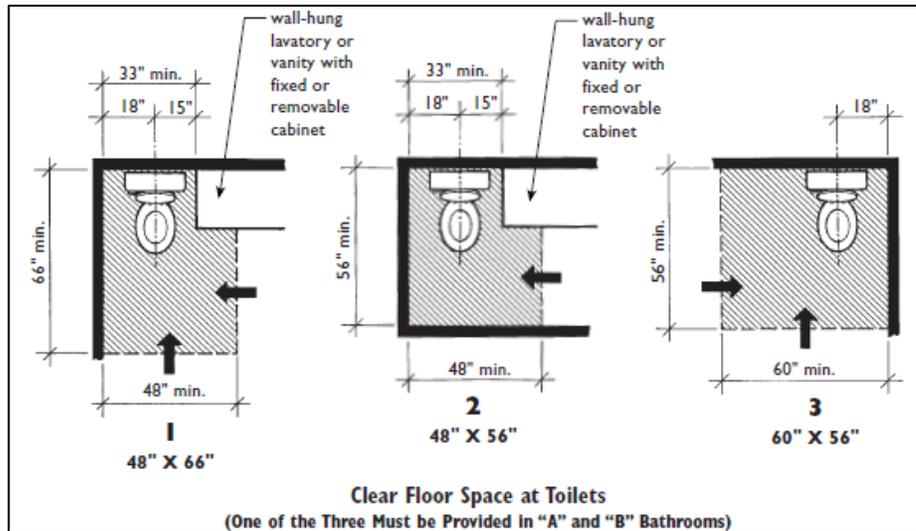
(a) The parties agree the distance from the midline of the sink to the adjacent wall in the bathrooms of the inspected units, as reported on page 5 of the current agreement, was measured at under the 24-inch minimum for bathroom sinks without removable cabinets, as required by the Manual.

(b) The parties agree the distance from the midline of the toilet to the bathtub (grab-bar side) in Unit 104 is 17 ½ inches, which is less than the 18 inch-minimum requirement; and is 14 ½ inches to the vanity cabinet (non-grab bar side), which is less than the 15-inch minimum requirement, as established in the Manual.

<sup>30</sup> See Manual at page 7.7.

(c) Owners agree they will correct the deficiencies noted in paragraph “(a)” above by replacing the current vanity cabinets with removable cabinets such that:

i. The midline of the toilets meet the requirements of the Manual, as shown in the figure below:



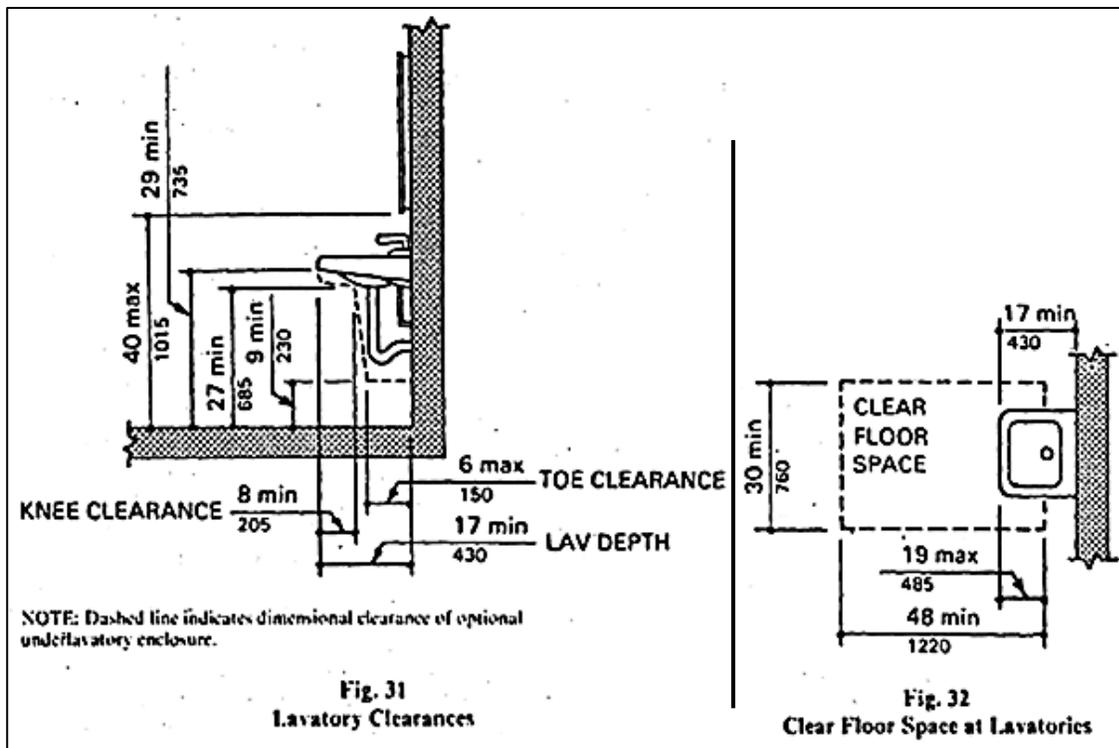
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ii. The midline of each sink is no less than 15 inches away from the closest obstruction.

iii. The space underneath the sinks meet the knee and toe clearance requirements, and the flooring, wall, and cabinet surfaces are “finished” as required in the Manual<sup>32</sup> to meet the usability requirements of the FHA and ICRA – once the cabinets are removed – and as shown in the figure below.

<sup>31</sup> Manual at page 7.43.

<sup>32</sup> See Manual at page 7.52.



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(c) Owners agree to measure (i) distance from the nearest wall to the midline of the sink in the bathrooms of all other ground-floor units not inspected by ICRC Investigators; and (ii) the distances from the obstructions at both sides of the toilet to the midline of the toilet. If these distances are less than the minimum requirements from the Manual – as outlined in “(b)” paragraph above – Owners agree to retrofit the noncompliant bathrooms in the same manner as described in “(b)” paragraph above to bring it into compliance with the ICRA and FHA.

*Usable bathrooms – Clear Floor Space Outside of Swing of Door*

(a) The parties agree the clear floor space outside of swing of the door in the bathrooms for Units 101 and 102 is less than 30 by 48 inches, as reported on page 6 of the current agreement, which is less than the minimum required by the Manual.

(b) Owners agree they will reinstall the door in Bathroom 2 in Unit 101, and in Bathroom 1 in Unit 101, to reverse the swing of the door, such that it will swing away from the bathroom, and create the minimum clear floor space dimensions of 30 by 48 inches, as required by the Manual.

(c) Owners agree to measure the clear floor space outside the swing of the door in the bathrooms at all other “Unit 101” and “102” units not inspected by ICRC Investigators. If the clear floor space is less than the 30 by 48-inch minimum required by the Manual, Owners agree to retrofit the bathroom door in the same manner as described in “(b)” paragraph above to bring the bathroom into compliance with the ICRA and FHA.

<sup>33</sup> See *American National Standard for Buildings and Facilities – Providing Accessibility for Physically Handicapped People*, Federal Register, Vol. 55, No. 116, Friday, June 15, 1990, page 24453.

### *Usable Bathrooms – Towel Bars*

- (a) The parties agree the height of the bathroom towel bars in all of the inspected units is no less than 52 ½ inches, which exceeds the 46-inch maximum height allowed by ANSI 1986 for features with obstructions that have depths  $\geq$  20 inches at dwelling units required to be reachable.<sup>34</sup>
- (b) Owners agree they will reinstall the towel bars at a height of no greater than 46 inches in the bathrooms of all ground-floor units, as required by ANSI 1986.

### *Required Timelines for Completion of Modifications or Retrofits*

- 17) Owners agree that the above-required modifications or retrofits to the public and common use areas of the subject property (mailboxes) within 180 days from the date of the Closing Letter from ICRC, or upon request from a tenant with a mobility impairment.<sup>35</sup>
- 18) Owners agree to notify all current tenants occupying ground-floor units, via a letter, within 60 days from the date of the Closing Letter from ICRC about the option to make a reasonable accommodation request because of a disability for any of the above-required modifications or retrofits in their units, at no charge to the tenants.
- 19) Owners agree, for any tenant who makes a reasonable accommodation request that concerns one or more of the above-required modifications or retrofits, they will allow the tenant to make the decision whether the above-required modifications or retrofits are made during their tenancy. Owners also agree those tenants who make that decision 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, Owners agree to move the affected tenants to another suitable unit on a temporary basis, until the unit is made safe or the renovation work is completed. Owners agree to pay all costs generated by such move.
- 20) Owners agree to make the above-required modifications or retrofits to each of the units as each of the units becomes vacant, before it is occupied for the first time, or sooner if a current tenant makes a request for reasonable accommodation referenced in above paragraph “19”. Owners agree to make the required modifications or retrofits before each of the units is rented again.

### *Mandatory Reporting Requirements*

- 21) Owners agree to notify ICRC (Attn: Emigdio Lopez-Sanders; Iowa Civil Rights Commission, 400 East 14<sup>th</sup> Street, Des Moines, Iowa 50319-0201) when they have completed the required modifications or retrofits for each of the units and the public and common use

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<sup>34</sup> See Appendix A, Photo 11A.

<sup>35</sup> The “Closing Letter” provides notice to the parties that the case has been closed. Once this agreement is fully executed, the Commission will issue its Closing Letter. It will be mailed to all parties and their representatives. A fully executed copy of the agreement will accompany the Closing Letter.

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 modifications or retrofits have been completed in all 25 units.

22) Owners agree to submit a copy of the letter required above in paragraph “21” to ICRC for review and approval within 14 days of receiving a Closing Letter from ICRC, and before sending the letters.

23) ICRC will review and reply to Respondents about the request for approval within three business days of receiving a copy of the advertising and letters.

24) Owners agree to send a copy to ICRC (Attn: Emigdio Lopez-Sanders; Iowa Civil Rights Commission, 400 East 14<sup>th</sup> Street, Des Moines, Iowa 50319-0201) of all written reasonable accommodation requests for the above-required retrofits and modifications.

25) Owners agree, as the required modifications or 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.

26) If the inspection indicates outstanding deficiencies, Owners shall correct all such deficiencies within a reasonable period of time as agreed to between Owners and ICRC.

27) The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless Owners 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 modifications or retrofits as specified in this Agreement.

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Unique Apartment Homes, LC  
RESPONDENT

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Date

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GW College, LLC  
RESPONDENT

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Date

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Pinnacle Properties Ames, LLC  
RESPONDENT

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Date

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Benjamin Design Collaborative, PC  
RESPONDENT

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Date

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Angela Jackson  
COMPLAINANT

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Date

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Kristin H. Johnson, Executive Director  
IOWA CIVIL RIGHTS COMMISSION

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Date