

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 09-19-73968
HUD# 07-19-2743-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

CEDAR RAPIDS SENIOR LIVING, L.L.C.

533 South 3rd Street, Suite 100
Minneapolis, Minnesota 55415-1101

RYAN COMPANIES US, INC.

533 South 3rd Street, Suite 100
Minneapolis, Minnesota 55415-1101

RYAN COMPANIES A+E, INC.

533 South 3rd Street, Suite 100
Minneapolis, Minnesota 55415-1101

COMPLAINANT

ANGELA JACKSON, COMMISSIONER

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

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street, Room 201
Des Moines, Iowa 50319-0201

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216. Complainant alleged Respondents designed and constructed covered multifamily dwellings in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents failed to meet the requirements of accessible design and construction from the ICRA and FHA regarding the "accessible and usable public and common use areas" and the "usable kitchens and bathrooms."¹

¹ See Iowa Code §§216.8A(3)(c)(3)(a) [Requirement 2 – Accessible and Usable Public and Common Use Areas]; and 216.8A(3)(c)(3)(c)(iv) [Requirement 7 – Usable Kitchens and Bathrooms].

Complainant specifically alleged one feature in the common areas and one feature in the units appeared inaccessible to a person utilizing a wheelchair for mobility, as listed below:

- (1) The north parking space designated as reserved for use by persons with disabilities adjacent to the main entrance was measured at 95 $\frac{3}{8}$ " , which is less than the 96"-minimum width.
- (2) The midline of the range in Units 117 and 118 was measured at 16 $\frac{1}{2}$ " away from the nearest obstruction – a wall immediately adjacent to the range – which is less than the 24"-minimum clearance required for a parallel approach by a person using a mobility assistive device such as a wheelchair.

Description of the Subject Property

Subject Property

According to the Certificate of Occupancy, Grand Living consists of one building with 165 residential units housed on four stories, with an elevator in the building.

The building at Grand Living was issued a Certificate of Occupancy signed by Kevin Ciabatti, Senior Building Services Director for the City of Cedar Rapids. The Certificate of Occupancy was issued on June 20, 2019, and the 300-day filing date is April 15, 2020.

The scope of the current report includes all units; and the public and common use areas, including the club room; performance theater; formal dining room; casual dining room; bistro room; private dining room; wellness center; men's locker room; women's locker room; exercise studio; salon; library; grand lounge; leasing office and the adjacent public bathrooms; trash chutes; wall-mounted mailboxes; and exterior parking spaces.

The dwelling units at Grand Living consist of 23 floor-plan types.² The floor-plan types were organized into four groups as based on the similar design and construction of the units. The groups were also organized such that the measurements and observations made in each of the inspected units may reasonably be expected to either be the same or similar in the other units within each of the respective groups. The following table lists the 23 floor-plan types as organized into four groups; and includes the inspected unit numbers, and the total number of units per floor plan type and per group.

² See Appendix A for floor plans.

Floor-Plan Type	Total Units by Type	Floor-Plan Type Group	Inspected Unit / Type	Total Units by Group
MC-ST-1A	28	Studio	226 [ST-1A]	52
ST-1A	22			
ST-1B	1			
ST-1C	1			
MC-1BR-1A	2	1BR	118 [1BR-1A/ Test Unit]	79
MC-1BR-1B	2			
1BR+D-1A	16			
1BR+D-1B	2			
1BR+D-1C	1			
1BR+D-1D	3		213 [1BR-1A]	
1BR+D-2A	3			
1BR-1A	24			
1BR-1B	24			
1BR-1C	2			
2BR+D-1A	7	2BR	343 [2BR-1A]	34
2BR+D-1A-FP	5			
2BR-2D	1		212 [2BR-2D]	
2BR-2B	4			
2BR-2B-FP	2			
2BR-2A	2			
2BR-2A-FP	1			
2BR-1A	4			
2BR-1A-FP	8			

Respondents' Defenses

When asked in the questionnaire to respond to the allegations, and indicate what was true or false, Respondents answered:

Wall adjacent to range inadvertently extends into the 30 inch by 48 inch clear floor space required for centered parallel approach.

Proposed Plan:

Wall adjacent to Range will be *cut-back* so that 30 inch by 48 inch clear floor space required for centered parallel approach will be achieved. One unit to be modified for inspection. Remaining units to be modified per approved plan and schedule.

North car accessible parking space measured 95 3/8 inches.
Proposed Plan:

Plan will be provided to Iowa State Commission - striping to increase achieve 96 inches minimum width required

Report of Preliminary Findings:

ICRC Investigators inspected six covered units at Grand Living. They also inspected the public and common use areas. After conducting an onsite inspection of the units listed in the table on page 3 of the agreement; and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

- 1) The following screenshot (*see* Figure 1) is taken from the site plans, which has been captioned to indicate the location of the measured heights of the signage.

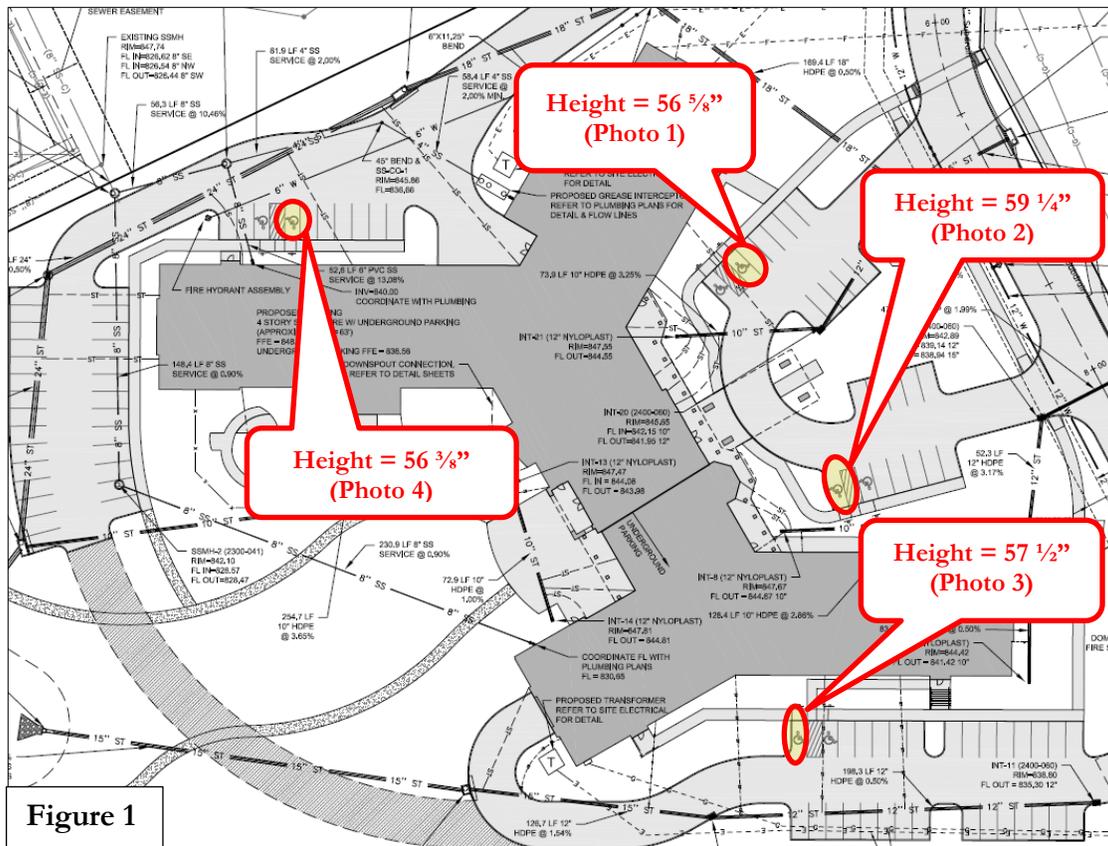
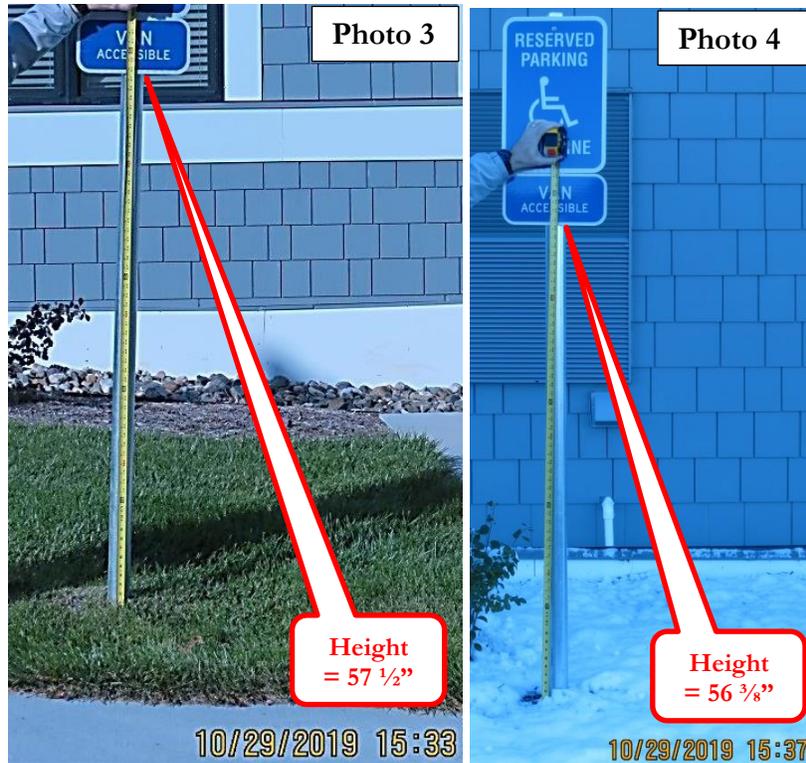


Figure 1

³ See Appendix A.

ICRC Investigators measured the height to the bottom edge of the sign at the parking spaces described in above at heights ranging from 56 ³/₈" to 59 ¹/₄"– which are all less than the 60"-minimum height required in Section 502.6 from the 2010 ADAAG. ICRC took the following photographs (see Photos 1, 2, 3, and 4) to document their measurements:

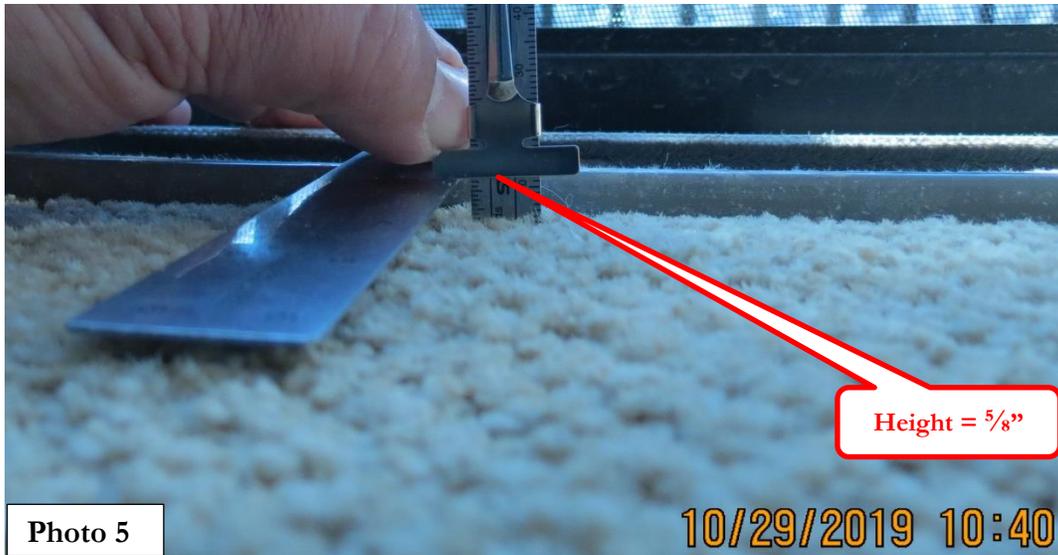




The plans required the signage to be installed at a height of no less than 60”, as measured to the bottom edge of the signage. If the signage had been installed consistent with the designed minimum height, it would have been compliant with the 60” minimum height requirement. However, as installed, the signage – at the inspected parking spaces designated as reserved for use by persons with disabilities – are too low, which make the spaces more challenging to locate by persons with disabilities.

2) After receiving notification of the current complaint on September 5, 2019, and before the ICRC inspection on October 29, 2019, Respondents state they restriped the north parking space designated as reserved for use by persons with disabilities – alleged in the current complaint to have a width of less than the 96”-minimum – to provide a parking space with a width of no less than 96”. ICRC Investigators measured the width of this parking space, which was found to be compliant with the 96”-minimum width requirement. Based on the gathered information and verification by ICRC Investigators, the deficiency alleged at this parking space has been corrected. All other parking spaces designated as reserved for use by persons with disabilities were verified by ICRC Investigators to comply with the 96”-minimum width requirement. ICRC requires no further action by Respondents in regard to this allegation.

3) The interior threshold at the sliding glass doorway to the balcony in Unit 212 [2BR-2D] was observed to have no beveling and was measured at a height of 5/8”, which exceeds the 1/4”- maximum allowed for thresholds without beveling. ICRC Investigators took the following photograph (*see* Photo 5) to document their measurement:



The plans require the height of all thresholds – including those at the sliding glass doorways – to be no higher than the $\frac{1}{4}$ " maximum that is required if there is no 1:2 beveling. If the sliding glass doorway had been installed consistent with the designed maximum threshold height indicated in the plans, it would have been compliant with the $\frac{1}{4}$ "-maximum threshold height requirement. However, as installed, the threshold at the sliding glass doorway is $\frac{5}{8}$ "

4) The midline of the range in Unit 118 [1BR-1A] was measured to be $16\frac{1}{2}$ " away from the left wall – which protrudes $6\frac{1}{2}$ " in front of the range – and which is less than the 24"-minimum required. ICRC Investigators took the following photograph (*see* Photos 6 and 7) to document their measurement:

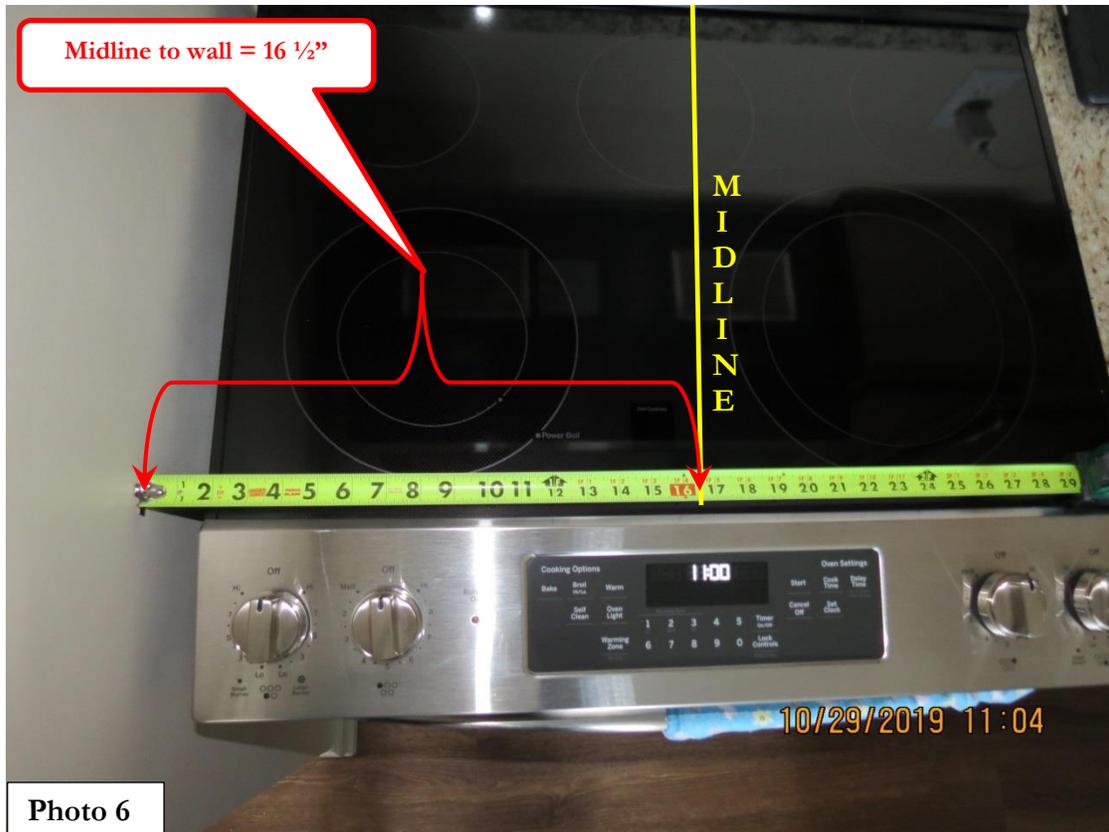


Photo 6

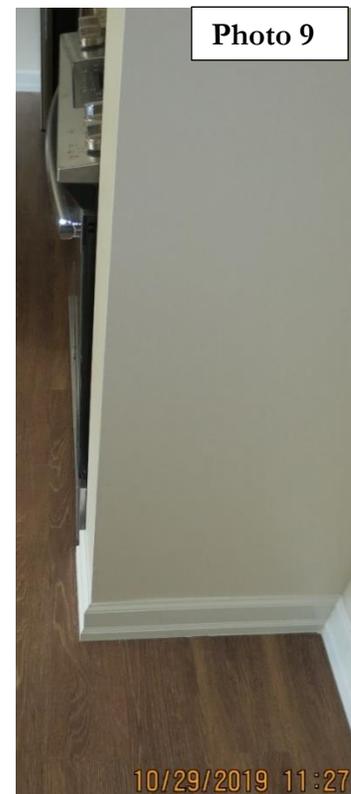


Photo 7

The front face of the wall adjacent to the range was designed to be flush with the front face of the range, which would have allowed for the 48" side of the required clear floor space to be centered on the

midline of the range that is necessary for the parallel approach by a person using a wheelchair. If this wall had been installed consistent with the specifications in the plans, it would have been compliant with the 24”-minimum of clear floor space that is required on both sides of the midline of the range. However, as built, this wall is too close to the midline of the range – which makes the range unusable by persons who have a mobility impairment and use a wheelchair.

During the inspection of the subject property, ICRC Investigators observed Respondents successfully completed a retrofit of the wall adjacent to the range in Unit 213 – where the wall had been sufficiently cut back to make the front face of the wall flush with the front face of the range. The following photographs show the completion of this retrofit:



As stated by Respondents and based on the construction plans, all of the deficiencies were due to errors in the construction and not in the design of Grand Living.

Respondents’ Response to Report of Preliminary Findings:

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

- 1) Respondents state they have reinstalled the signage designating parking spaces to increase the height of 60” as measured to the bottom edge of the signage. Respondents have submitted photographs to document compliance.
- 2) Respondents state they have either raised the carpet to decrease the vertical height at the interior threshold of the sliding glass doorway to less than 1/4” or installed a 1:2 bevel to correct threshold heights

that do not exceed the 3/4” height at the 49 units with balcony access. Respondents have submitted photographs to document compliance.

3) Respondents state they have modified the wall adjacent to the left of the range – at the 45 units they have identified as requiring this retrofit – by cutting it back so that the front face of the wall is flush with the front face of the range – as was completed at Unit 213 – and create a 30”-by-48” clear floor space centered and flush with the front face of the range.

Respondents state they have completed this retrofit at all 45 units, and submitted photographs to document compliance.

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];⁴ and (ii) – as previously quoted – Respondents indicated they were also aware of the FHA requirements of accessibility during the design and construction of Grand Living. Neither the IBC 2015 nor the ANSI 2009 is one of the safe harbors accepted by HUD.⁵ 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.

Areas of Grand Living which are open to the general public are considered Places of Public Accommodation as defined by Title III of the ADA and must meet the requirements of the ADA in addition to the FHA. The only area open to the general public at Grand Living is the rental office. However, the common use areas that are only open to residents and their guests – including, but not limited to – the routes to and from the dwelling units, the club room; performance theater; formal dining room; casual dining room; bistro room; private dining room; wellness center; men’s locker room; women’s locker room; exercise studio; salon; library; grand lounge; leasing office and the adjacent public bathrooms; trash chutes; wall-mounted mailboxes; and exterior parking spaces – are governed by the FHA since they are only for use by the residents of Grand Living and/or their guests. The ADA will only be referenced in the current report for the public areas, which include the leasing office, public bathrooms that serve the leasing office, and the assessible parking space and accessible route leading to the rental office from that accessible parking space. . Finally, the requirements of the ADA will be presented as stated in the “2010 American with Disabilities Act Standards: 2004 ADAAG for Titles II and III Facilities” (ADAAG). *See* 42 U.S.C. 12204, Part 1191, Appendix A, and 42 U.S.C 12186(b); 28 CFR Part 36, Appendix B.

Following is the assessment of Respondents’ proposed retrofits and determination, based on the scoping and technical requirements of the 2010 ADAAG and the Manual:

1) ICRC has reviewed the photographs submitted by Respondents and agrees with their claim that these photographs support their claim that they reinstalled the signage designating parking space that serves the leasing office to increase its height to no less than 60” as measured to the bottom edge of the signage. ICRC does not require further action from Respondents to correct this deficiency.

⁴ <https://codes.iccsafe.org/content/IBC2015/chapter-35-referenced-standards> (Last visited on Nov. 20, 2019).

⁵ <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on Nov. 20, 2019).

2) ICRC has reviewed the photographs submitted by Respondents and agrees with their claim that these photographs support their claim that they have either raised the carpet to decrease the vertical height at the interior threshold of the sliding glass doorway to less than 1/4" or installed a 1:2 bevel to correct threshold heights that do not exceed the 3/4" height. ICRC does not require further action from Respondents to correct this deficiency.

3) ICRC has reviewed the photographs submitted by Respondents and agrees with their claim that these photographs support their claim that they have modified the wall adjacent to the left of the range – at the 45 affected units – by cutting it back so that the front face of the wall will be flush with the front face of the range and create a 30"-by-48" clear floor space centered and flush with the front face of the range. ICRC does not require further action from Respondents to correct this deficiency.

Therefore, ICRC acknowledges there are no modifications or retrofits required by this Settlement Agreement as all deficiencies have been corrected and the subject property has been brought into full compliance with the accessibility requirements of the FHA and ICRA.

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.

Disclosure

11) 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

12) 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) They 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 consultant, approved by ICRC or the U.S. Department of Housing and Urban Development.

(b) They will send documentation to ICRC, verifying the fair housing / accessible design and construction training has been completed by Respondents, within ten days of completing the training.

15) Respondents agree:

(a) That the training will entail a review of 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) A written statement will be sent via email to ICRC indicating that the training was provided to Respondent's construction and architectural staff working on projects subject to such requirements and included:

- i. A review of the Fair Housing Act Design Manual.
 - ii. A review of the Seven Main “Design Requirements of the Guidelines”.
 - iii. An acknowledgment that they are responsible to ensure all design and construction at all future covered properties will be performed in compliance with the Seven Main “Design Requirements of the Guidelines.”
- (c) To complete the foregoing training within 180 days of the date of the Closing Letter from the ICRC.

Mandatory Reports

16) Respondents agree to send all reports and written statements required in this agreement to ICRC (Attn: Emigdio Lopez-Sanders; Iowa Civil Rights Commission, 400 East 14th Street, Des Moines, Iowa 50319-0201, OR via email at emigdio.lopez-sanders@iowa.gov).

17) 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. Complainant acknowledges there are no further modifications or retrofits required by this Settlement Agreement as all modifications have been made to the satisfaction of Complainant.

GLCR Investments, L.L.C.,
On behalf of and as manager for
RESPONDENT Cedar Rapids Senior Living, L.L.C.

Date

Ryan Companies US, Inc.
RESPONDENT

Date

Ryan Companies A+E, Inc.
RESPONDENT

Date

Angela Jackson, Commissioner
COMPLAINANT

Date

Elizabeth Johnson, Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date