PREDETERMINATION SETTLEMENT AGREEMENT

CP# 09-19-74021 HUD # 07-19-2822-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

PARK 88, L.L.C. 101 South Reid Street, Suite 201 Sioux Falls, South Dakota 57103-7062

C. R. LLOYD ASSOCIATES, INC.¹

101 South Reid Street, Suite 201 Sioux Falls, South Dakota 57103-7062

LLOYD CONSTRUCTION COMPANY

101 South Reid Street, Suite 201 Sioux Falls, South Dakota 57103-7062

VAN DE WALLE ARCHITECTS, L.L.C.

212 South Phillips Avenue, Suite 200 Sioux Falls, South Dakota 57104-6390

CIVIL DESIGN ADVANTAGE, L.L.C.

3405 SE Crossroads Drive, Suite 201 Grimes, Iowa 50111-5051

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:

¹ The Complaint initially named Lloyd Companies, Inc. as the developer of the property at issue. ICRC subsequently determined that subsidiary C.R. Lloyd Associates, Inc. was actually the developer. Therefore, C.R. Lloyd Associates, Inc. has been substituted as Respondent for Lloyd Company's Inc. by agreement of the parties to this Predetermined Settled Agreement.

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216. Complainant alleged Respondents designed and constructed covered multifamily dwellings in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the "accessible and usable public and common use areas," the "accessible route into; and through the covered unit," and the "usable kitchens and bathrooms."² Complainant specifically alleged two features in the common areas and three features in the units appeared inaccessible to a person utilizing a wheelchair for mobility, as listed below:

- (1) The height to the bottom edge of the signage designating the parking space as reserved for use by persons with disabilities that is located to the southwest of the playground was measured 55 ¹/₂" which is less than the 60" minimum makes the parking space more challenging to locate by persons with disabilities.
- (2) The pergola/grill, pickle-ball court, playground, and dog park are not on an accessible route because of the lack of a route surface that is "stable, firm, and slip resistant."
- (3) The midline of the bathroom sink in Unit 413 was measured at 18" away from the adjacent wall, which is less than the 24"-minimum that is required to allow for the parallel approach by a person using a wheelchair, which is required because the cabinet under the sink is not removable.
- (4) The midline of the kitchen sink in Unit 411 was measured at 16" away from the adjacent wall, which is less than the 24"-minimum that is required to allow for the parallel approach by a person using a wheelchair, which is required because the cabinet under the sink is not removable.
- (5) The interior side of the threshold at the sliding glass doorway in Unit 128 was observed to lack 1:2 beveling and its height was measured at 1 ¹/₂", which exceeds the ¹/₄"-maximum that is allowed if the threshold does not have 1:2 beveling.

Description of the Subject Property

<u>Subject Property</u>

According to the Certificate of Occupancy, Park88 Apartments & Townhomes ("Park88") consists of five buildings. The residential apartment-unit building has underground parking; is located at 595 88th Street; and consists of 113 residential units housed on four stories and the interior common areas. The townhome-unit buildings are located at 8720, 8740, 8760, and 8780 Cody Drive, with 12 townhome units per building according to Respondents.

The buildings at Park88 were issued temporary certificates of occupancy signed by Ron Van Genderen, Chief Building Official for the City of West Des Moines. The issued dates for the certificates of occupancy and the corresponding 300-day filing dates are listed in the following table.

² See Iowa Code \S 216.8A(3)(c)(3)(a) [Requirement 2 – Accessible and Usable Public and Common Use Areas]; 216(3)(c)(3)(c)(i) [Requirement 4 – Accessible Route Into and Through the Covered Dwelling]; and 216(3)(c)(3)(c)(iv) [Requirement 7 – Usable Kitchens and Bathrooms].

Building #	Certificate of Occupancy Issue Date	300-Day Date
595 88 th Street (apartment-unit building)	April 16, 2019	February 10, 2020
8720, 8740, 8760, and 8780 Cody Drive (townhome-unit buildings)	September 23, 2019	July 21, 2020

The scope of the current agreement includes all 113 units in the apartment-unit building; and the public and common use areas – including the fitness center; community room; community kitchen; lobby; leasing office and the adjacent public bathrooms; interior trash chutes; guest suite; resident storage units; dog wash station; bike storage racks; bike repair station; swimming pool; playground; grilling station; pickle-ball court; outdoor patio adjacent to community room; outdoor community spaces on the 3rd and 4th floors; dog park; exterior parking spaces; underground parking garage; and interior and exterior mailbox units.

The dwelling units at Park88 consist of 15 floor-plan types.³ Six of the floor-plan types were organized by Respondents into two 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 remaining nine floor plans could not be grouped because each one was unique. The following table lists the floor plan types as either grouped or standalone; and includes the inspected unit numbers, and the total number of units per floor plan type and per group.

In addition to the apartments, there are four 12-unit townhome buildings which consist of 48 multi-level units.

 $^{^3}$ See Appendix A for floor plans.

Unit Types	Total Units Per Type	Group Number	Floor Plan	Inspected Unit Number	Total Units Per Group or Standalone
А	13		Efficiency		41
B	27	1	1 [0BR/1BA]	411	41
N	1				
E G	5 34	2	1BR/1BA	413	42
I	34		IDK/IDA	415	
C	8	Standalone	2BR/2BA [corner unit]	128	8
D	7	Standalone	2BR/2BA	422	7
F	4	Standalone	3BR/2BA [corner unit]	219	4
Н	4	Standalone	2BR/2BA ["elbow" unit]	306	4
J	1	Standalone	2BR/2BA	116	1
K	1	Standalone	1BR/1BA	112	1
L	1	Standalone	Efficiency [0BR/1BA]	113	1
М	3	Standalone	1BR/1BA [plus den]	201	3
О	1	Standalone	Efficiency [0BR/1BA]	101	1
	TOTAL = 113 APARTMENTS				

Liable Parties

Based upon the guidance found in the Joint Statement from HUD and the U.S. Department of Justice (DOJ), owners, builders, architects, designers, civil engineers, and property managers are considered liable parties whenever they contribute to any of the alleged design and construction violations.⁴

Respondent Civil Design Advantage, L.L.C. requested to be removed as a named Respondent from the current complaint because they maintain the terms of the contract between them and Respondent C.R. Lloyd Associates, Inc. (doing business as "Lloyd Companies") exempted them from the responsibility to include sidewalk paths to the exterior common areas as part of their design of Park88. However, Respondent C. R. Lloyd Associates, Inc., maintains the terms of the aforementioned contract actually makes Civil Design Advantage, L.L.C. responsible for including sidewalk paths to the exterior common areas as

⁴ 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, (April 13, 2013), http://portal.hud.gov/hudportal/documents/huddoc?id=JOINTSTATEMENT.PDF (Last visited on June 9, 2020).

part of the design of Park88. Therefore, there is no consensus about removing Civil Design Advantage, L.L.C. as a named Respondent from the current complaint. Based upon a thorough review of the aforementioned contract, the ICRC has concluded the level of responsibility that Civil Design Advantage has in including sidewalks as part of the path to the exterior common areas is subject to dispute. Therefore, Civil Design Advantage L.L.C. will remain as a named Respondent in the current complaint.

Respondents' Defenses

Respondents indicated what they considered to be true or false about the allegations in response to one of the questions in the questionnaire.

Respondent C.R. Lloyd Associates, Inc. answered:

1. Paragraph 1 of the Complaint does not call for a response from these Respondents. To the extent that a response is required, it is admitted the Complaint is filed by Angela Jackson, Commissioner of ICRC.

2. Paragraph 2 of the Complaint does not call for a response from these Respondents. To the extent a response is required, it is admitted that Complainant has the authority to file the present Complaint.

3. Paragraph 3 of the Complaint does not call for a response from these Respondents. To the extent a response is required, it is admitted that the Complaint alleges "noncompliance with design and construction requirements" but the substance of the allegation is denied unless otherwise admitted herein.

4. Paragraph 4 of the Complaint does not call for a response from these Respondents. To the extent a response is required, it is admitted that the subject of the Complaint concerns alleged violations of the Federal and State Fair Housing laws, but the substance of the allegation is denied unless otherwise admitted herein.

5. Paragraph 5 of the Complaint correctly states the address of the Property, and is therefore admitted.

6. Paragraph 6 of the Complaint is admitted in part and denied in part. C.R. Lloyd Associates, Inc., a subsidiary of Lloyd Companies, Inc., was the Developer of the Property. It is admitted that Park 88, LLC is the Owner of the Property, that VanDeWalle Architects, LLC is the Architect, that Civil Design Advantage, LLC is the Civil Engineer, and that Lloyd Construction Company is the Builder.

7. In response to paragraph 7 of the Complaint, upon information and belief it is admitted that two persons presented at Park 88 Apartments on behalf of ICRC on July 24, 2019. It is unknown by Respondents, and therefore denied, whether the persons advised that they were seeking an apartment for a third person who had a disability and required the use of a wheelchair.

In response to the allegations in paragraph 7 of the Complaint regarding the individual units, Respondents state as follows:

<u>Unit 128</u>: it is admitted that the threshold of the interior sliding glass doorway to the patio / balcony measures at $1 \frac{1}{2}$. Modifications to the doorway threshold are currently in planning and will be completed.

<u>Unit 411</u>: it is denied that the cabinet under the sink kitchen is not removable. The cabinet face is, in fact, removable.

<u>Unit 413</u>: it is admitted that the vanity cabinet under the sink in the bathroom is not removable. Modifications to the design of the vanity cabinet are currently in planning and will be completed.

In response to the allegations regarding the common area in paragraph 7 of the Complaint, Respondents state as follows: it is admitted that the pergola, grill, pickle-ball court, playground and dog park are not uninterruptedly connected via sidewalk. Modifications to these areas are being considered.

In response to the allegations in paragraph 7 of the Complaint regarding the public parking areas, Respondents state as follows: it is admitted that the sign for parking spaces designated for persons with disabilities identified on the Complaint measured at 55 1/2 inches. Modification to the height of the parking sign is currently in planning or has been completed.

8. Paragraph 8 of the Complaint does not call for a response from these Respondents.

9. In response to paragraph 9 of the Complaint, it is admitted that no federal funding was provided for this Property.

10. In response to paragraph 10 of the Complaint, it is admitted that the statutes referred to therein are applicable to the Property. It is further admitted, as noted above, that certain minor modifications to the Property may need to be, or have been, completed.

The remainder of the allegations in the Complaint, if any, are denied. Respondents reserve the right to revise or supplement their answers provided herein.

Respondent Civil Design Advantage, L.L.C. answered:

Response is specific to the accessible route and height of ADA signage. Specific park land features in the common areas were not known during site plan development and unclear where additional sidewalk would be needed. Park land design improvements were not in CDA's scope. Site signage was not in CDA scope.

Respondent Van De Walle Architects, L.L.C. answered:

The complaint alleges noncompliance in design and construction of accessibility requirements of State and Federal Fair Housing Laws. To the best of my knowledge, belief and opinion, the construction documents issued by our office do comply with all State and

Federal Fair Housing Laws. If constructed according to plans, units 128, 411, and 413 should comply with State and Federal Fair Housing Laws.

The following is my opinion on the complaint per each unit. a. Unit 128: Per the plans, this unit type is shown with a swing door. The complaint states this unit has a sliding door.

b. If Unit 128 indeed has a sliding patio door, the threshold should have been constructed according to our plan sheet A5.4 (option 1 showing $\frac{1}{4}$ " threshold) or A5.5 (option 2 showing a $\frac{3}{4}$ " threshold w/ 1:2 bevel).

If Unit 128 has a swing door per the construction documents, a low-profile ADA threshold should have been installed per the Door Schedule General

Note #02.

I presume the door threshold was not provided according to the construction documents.

c. Unit 411: Per supplemental drawings issued by my office on 09/14/2018, a removable sink base cabinet should have been provided and installed by the general contractor. I presume the removable sink bases were not installed according to the supplemental drawings.

d. Unit 413: Per the plans, the bathroom sink was shown centered on the vanity at 30" from the side wall. I presume the ownership group made changes during the shop drawing process and changed the location of the sink without my knowledge.

e. The exterior items listed in the complaint were outside my office's scope of work. The developer/general contractor requested and hired the civil engineer directly. I cannot comment on what I believe to be true or false in regards to these items.

Park88 – Covered Units

According to the Building Permit Application, Park88 consists of a residential apartment-unit building with underground parking, and 113 residential units housed on four stories. There are two elevators in the residential apartment-unit buildings, which means that all 113 apartment-units at each of the two residential buildings are "covered"⁵ by the design and construction provisions of the ICRA and FHA.⁶

There are also four 12-unit townhome buildings (48 units) according to the Building Permit Application and Respondents. The townhome units consist of 48 multi-level units, which includes 12 townhome units [Unit Type X] that ICRC initially determined to be single-level units, and therefore "covered" by the design and construction provisions of the ICRA and FHA.⁷

However, the Chief Building Official for the City of West Des Moines later verified that the Unit Type-X townhomes were actually multi-level units because all of the interior spaces at both levels of these

⁵ Fair Housing Accessibility Guidelines, Federal Register, Vol. 56. No. 44, Wednesday. March 6, 1991, Rules and Regulations, page 9500.

⁶42 U.S.C. 3604(f)(7); Iowa Code 3216.2(4)(a), 216.2(4)(b).

⁷Id..

townhome units were determined to be finished, livable, and habitable, as based on the 2015 edition of the International Residential Code.⁸ Therefore, based on the additional information gathered by ICRC, the measurements and observations made by ICRC Investigators at the inspected townhome unit, which were reported as deficiencies in the Report of Preliminary Findings, are no longer determined to be violations of the accessibility requirements, and will be omitted from the "Report of Preliminary Findings" section in the current agreement. Based on the additional information that was gathered, ICRC agrees that the Unit Type-X Townhomes are exempt from the requirements of accessible design and construction from the ICRA and/or FHA. Therefore, ICRC shall no longer pursue the claims previously made of alleged deficiencies with the accessibility requirements of the ICRA and/or FHA at the Unit Type-X Townhomes.

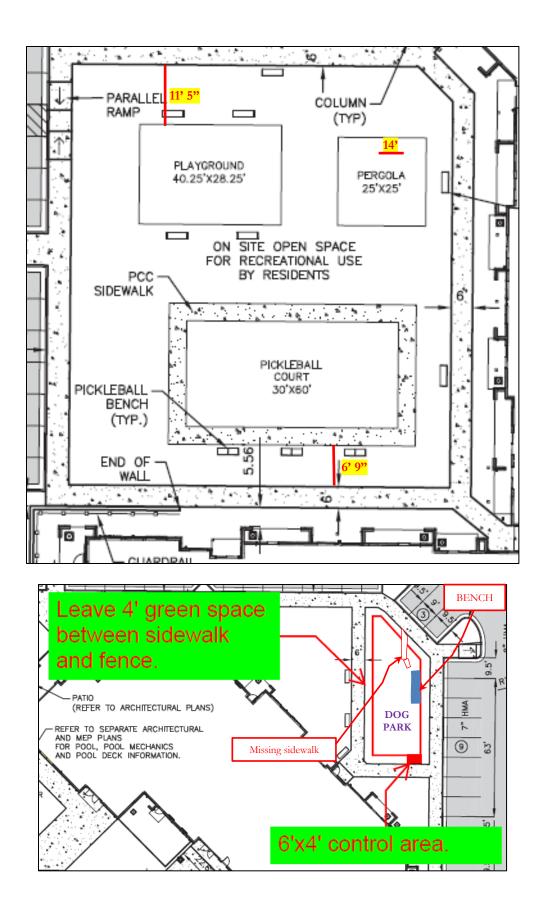
Report of Preliminary Findings:

ICRC Investigators inspected 15 dwelling units at Park88 as well as the public and common use areas in and surrounding the complex. ICRC Investigators found and reported the following deficiencies based on the onsite inspection:

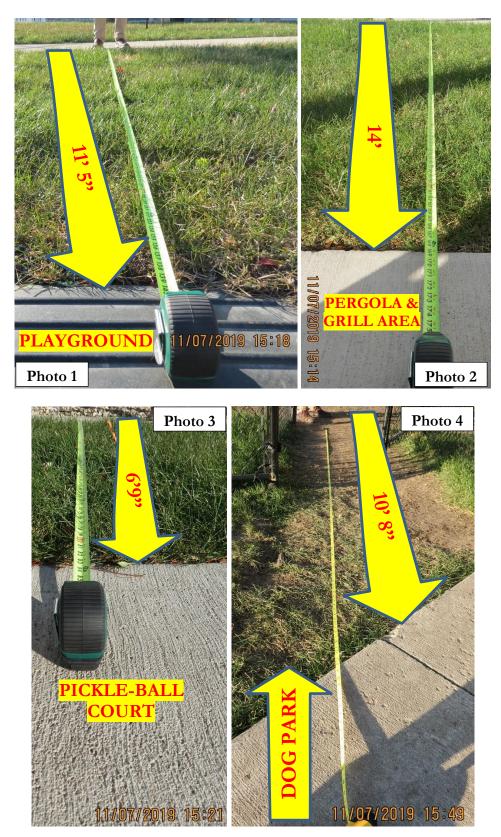
1) After receiving notification of the current complaint on September 19, 2019, and before the ICRC inspection on November 7, 2019, Respondent C.R. Lloyd Associates, Inc. ["Respondent Lloyd Associates"] state they reinstalled the signage at the parking spaces designated as reserved for persons with disabilities to comply with the 60"-minimum height requirement. ICRC Investigators verified compliance with this requirement by measuring the height to the bottom edge of the parking signage at the spaces designated as reserved for use by persons with disabilities at more than 60". Based on the gathered information and verification by ICRC Investigators, the deficiency alleged in regards to the parking signage has been corrected. ICRC requires no further action by Respondent Lloyd Associates or any of the other Respondents in regards to this allegation at the parking signage.

2) The pergola, grill, pickle-ball court, and playground are located south and the dog park is adjacent to the northwest of the apartment-unit building. The route from the closest sidewalk to each of these common areas was measured as indicated in the following captioned sections from the site plans:

⁸ See definitions of "habitable space" and "livable space" online at <u>https://codes.iccsafe.org/content/IRC2015/chapter-2-definitions</u> (Last visited on April 23, 2020).



ICRC Investigators took the following photographs to document their measurements (see Photos 1, 2, 3, and



The route to these common areas includes grassy surfaces that are not "stable, firm, and slip resistant," as required by Section 4.5.1 of the ANSI 1986, that was previously quoted.⁹ Therefore, the pergola, grill, pickle-ball court, playground, and the dog park are not accessible to persons who use a wheelchair for mobility.

3) The Guidelines require common access areas, such as the dog-wash station to be accessible by tenants who use a wheelchair as a mobility assistive device.¹⁰ There is enough clear floor space in the front of the dog-wash station for tenants using wheelchairs to make a parallel approach. The spray valve is located directly above the right side of the tub portion of the dog-wash station. Therefore, the tub creates an obstruction. The horizontal depth of the tub is 25 ½", which exceeds the 24" maximum depth allowed by ANSI 1986.¹¹ The height of the spray valve handle was measured at 60", which exceeds 46"-maximum allowed by ANSI 1986, when an obstruction with a depth of no greater than 24" is present.

ICRC Investigators took the following photograph (see Photo 6) to document their height measurement:

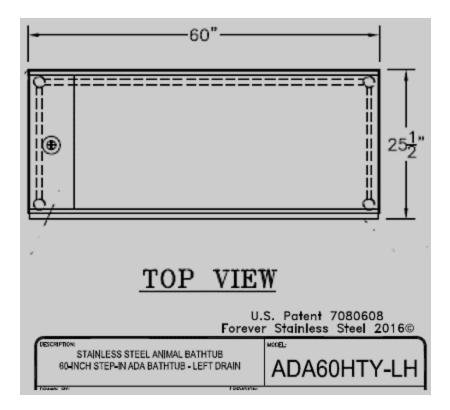
⁹ See Appendix A, Photos 2A, 2B, and 2C.

¹⁰ See Manual at page 2.3.

¹¹ Federal Register, Vol. 55, No. 116, Friday, June 15, 1990, at page 24426.



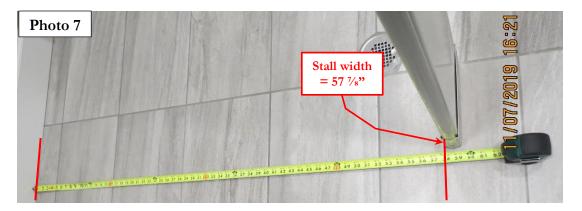
Respondent Lloyd Associates submitted the product information sheet for the dog-wash station, which includes a diagram with information about the horizontal-depth dimension of the tub as shown in the following portion of the construction plans:



The depth of the tub and height of the spray valve render the dog-wash station inaccessible and unusable by tenants utilizing a wheelchair.

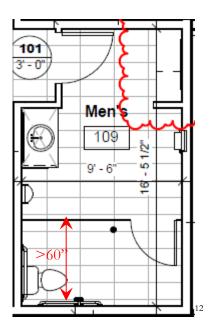
4) In accessible toilet stall the men's bathroom – which is located near the leasing office – the width of the clear floor space was measured at 57 $\frac{7}{8}$ ", which is less than the 60"-minimum width required in the Manual.

ICRC Investigators took the following photographs (see Photos 7 and 8) to document their measurement:





The plans submitted by Respondents include a scaled drawing of the men's bathroom, which shows that the width of the stall was designed to be >60". This dimension is portrayed in the captioned diagram below:



If the stall wall partition had been installed as designed, this bathroom stall width would have been compliant with the minimum width requirement for accessible stalls. However, as it was installed, this bathroom stall is too narrow, which makes it unusable by persons who use a wheelchair for mobility.

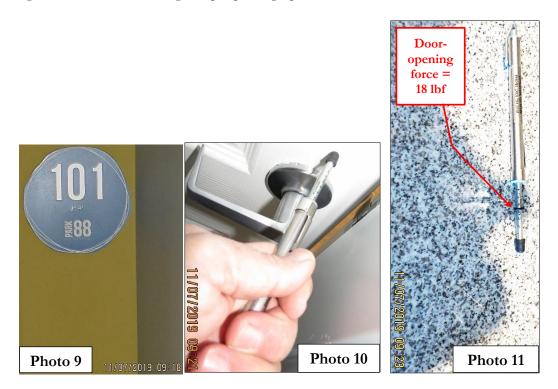
5) The following table lists the doors that were found to require more than the applicable maximum amount of force to open, and includes the location of the doorway, fire-rating classification ("Yes" or "No"), measured amount of force required to open the door, and the maximum amount of the door-opening force allowed.

¹² See Appendix A.

LOCATION	FIRE-RATED	MEASURED FORCE	MAXIMUM FORCE
Community room	No	12 lbf	5 lbf
Men's bathroom	No	10 lbf	5 lbf
Women's bathroom	No	11 lbf	5 lbf
Unit 101	Yes	18 lbf	15 lbf
Unit 128	Yes	17 lbf	15 lbf

The doors listed in the table above exceed the applicable maximum limits allowed by ANSI for both interior swinging doors that are fire rated and those that are not fire rated.

ICRC Investigators took the following sample photographs at Unit 101 to document their measurement:¹³



These doors require too much force to open, which makes them unusable for persons with disabilities who have diminished strength to push or pull.

No specific instructions were found in the plans for the maximum door-opening force.

6) Tenants have storage units available to use on each of the floors. The first storage unit on the right side after entering the storage-units area on the fourth floor is usable because it has a doorway with sufficient clear opening width. However, the height of the gate latch was measured at 50 ³/₈", which exceeds the 48"-maximum height allowed in the Manual. ICRC Investigators took a photograph (*see* Photo 12) to document their measurement:

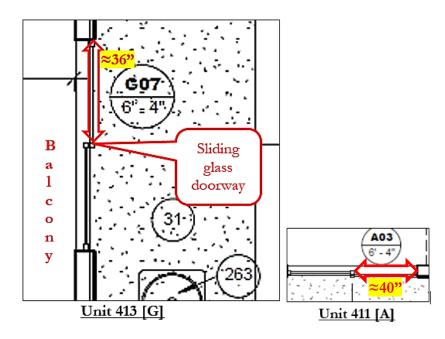
¹³ To avoid repetition of photographs of the same type of measurements, sample photographs indicating the manner in which the measurements were taken are shown instead of showing photographs of every measurement.



The height of the gate latch makes this gate inaccessible for persons who use a wheelchair for mobility. No instructions or diagrams were found in the plans about the height of the gate latches at storage units.

7) The plans submitted by Respondents include scaled drawings of the dwelling units. The following relevant portions of the construction plans for Units 413 [G], and 411 [A] indicate how wide the doorways were designed to be:¹⁴

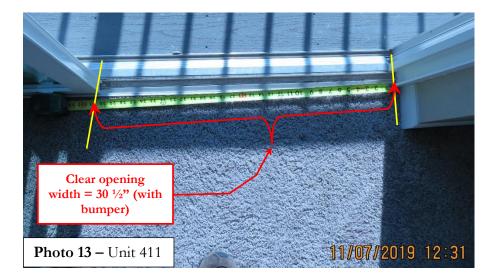
¹⁴ See Appendix A.



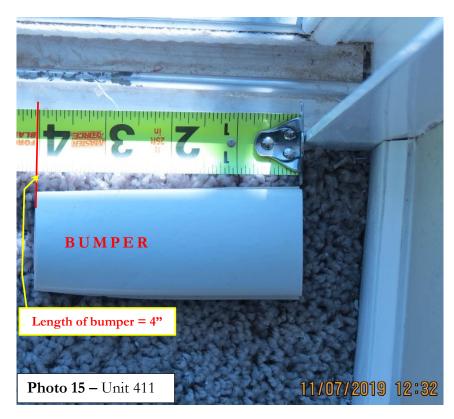
ICRC Investigators took measurements of the clear opening width at the secondary doorways within all inspected units. The clear opening width of the doorways that were narrower than the 31 ⁵/₈"-minimum required are listed in the following table, along with the corresponding clear opening widths of these doorways as based on the construction plans:

UNIT # [TYPE]	DOORWAY ROOM	MEASURED CLEAR OPENING WIDTH	DESIGNED CLEAR OPENING WIDTH
413 [G]	Balcony	30 ¹ /2" (with bumper) / 32 ¹ /4" (without bumper)	36"
411 [A]	Balcony	30 ¹ /2" (with bumper) / 32 ¹ /4" (without bumper)	40"

ICRC Investigators took the following sample photographs (see Photos 13, 14, 15, and 16) to document their measurements:







The doorways reported in the table above were designed to be sufficiently wide to be compliant with the 31 ⁵/s"-minimum width requirement. However, as built, the clear opening widths of these secondary doorways are less than the 31 ⁵/s"-minimum width requirement. Therefore, these doorways are too narrow, rendering them unusable by persons using wheelchairs.

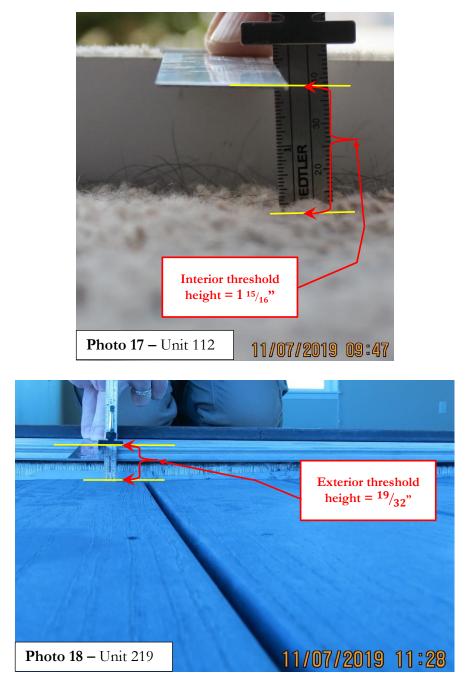
8) The table below lists the measurements obtained for the interior and exterior threshold heights at the sliding glass doorway onto the exterior surfaces of the balconies for all inspected units and the distance that the exterior surface is below the finished interior floor surface, which is calculated by subtracting the interior threshold height value from the exterior threshold height value. All interior threshold values are reported as numerical values because they exceed the ¹/₄"-maximum height. However, if the resulting difference between interior and exterior threshold meets the above-stated requirements, they are labeled as "Compliant." All values in the following table are expressed in inches.

UNITS	INTERIOR THRESHOLD HEIGHT	EXTERIOR THRESHOLD HEIGHT	DIFFERENCE BETWEEN THRESHOLDS
112 ["K"]	1 ¹⁵ / ₁₆ "	Compliant	Compliant
113 ["L"]	15/8"	Compliant	Compliant
116 [J]	1 19/32"	Compliant	Compliant
128 [C]	1 5/8"	Compliant	Compliant
219 [F]	1 ³ /8"	¹⁹ / ₃₂ "	²⁵ / ₃₂ "
306 [H]	1"	Compliant	Compliant
413 [G]	¹⁵ / ₃₂ "	1 ⁵ / ₃₂ "	²² / ₃₂ "

All of the interior threshold heights listed in the table above exceed the $\frac{1}{4}$ "-maximum allowed for thresholds without beveling.¹⁵ The exterior pervious surface adjacent to the secondary balcony entrance in Units 219 and 413 was measured to be no less than $\frac{22}{32}$ " below the interior finished floor surface, which exceeds the maximum. The exterior pervious balcony surfaces for these two unit types are below the interior finished floor surface by more than the $\frac{1}{2}$ "-maximum that is allowed by the Guidelines.

ICRC Investigators took the following sample photographs (see Photos 17 and 18) to document their measurements:

¹⁵ See Appendix A, Photos 4A and 4B.

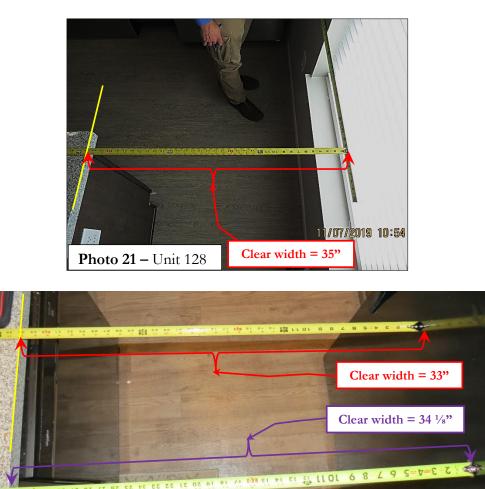


The plans submitted by Respondents did not include any instructions or diagrams about the threshold heights of doorways. The reported thresholds are too high, rendering them unusable by persons using wheelchairs.

9) ICRC Investigators measured the clear width of the path between the refrigerator and opposing fixtures; and between the countertop at the kitchen island and the opposing wall. The measurements that are out of compliance with the requirements previously cited are listed in the following table:

Unit	Opposing Fixtures	Clear Width Measurements
128 [C]	countertop to wall	35" (<36" minimum)
219 [F]	countertop to wall	34 ³ / ₈ " (<36" minimum)
306 [H]	refrigerator to countertop adjacent to sink	34 ¼" (<40" minimum)
306 [H]	refrigerator to dishwasher	33" (<40" minimum)

ICRC Investigator took the following sample photographs (see Photos 21 and 22) to document their measurements:



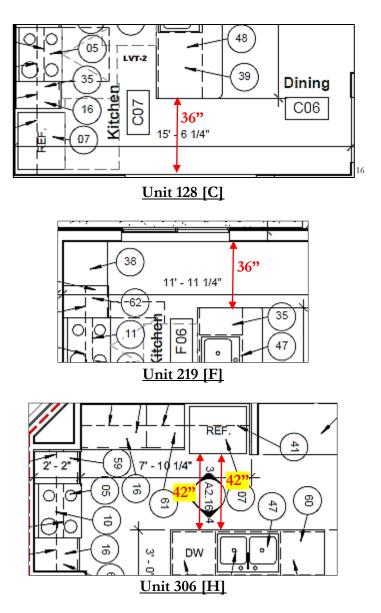
7

12:10

11/07/2019

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

Photo 22 - Unit 128



As indicated in the scale drawings above, the clear width of the paths between (i) countertop at the kitchen island and the opposing wall was designed to be 36" in Units 128 and 219; and (ii) between the refrigerator and opposing countertop/appliance was designed to be 42" in Unit 219. If the kitchens in all three units had been built as they were designed, they would have been compliant. However, as built, these paths are too narrow rendering these kitchens unusable by persons who use a wheelchair.

Although the design of the kitchen is compliant for Units 128 and 219, the fact that it was designed to only meet the 36"-minimum clear width requirement, it 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.

¹⁶ See Appendix A.

10) Measurements were taken from the midline of the sink to the closest opposing countertop in each of the inspected units to verify compliance with either the 15"-minimum required for a forward approach if the cabinets are removable and have sufficient knee space once the cabinets are removed; or with the 24"-minimum required clearance for a parallel approach when the cabinets are not removable.

Respondents claim the base cabinets under the kitchen sink are removable. The base cabinets did appear to be removable to ICRC Investigators at Unit 411 because they observed the presence of finished cabinet panels under the sink to support it in the event the base cabinets are removed and that the flooring under the sink is finished with the same style of floor tile as the rest of the kitchen floor. Additionally, ICRC Investigators verified the dimensions of the knee space area under the sink are compliant with the dimensional requirements from the Manual previously cited.

However, ICRC Investigators measured the distance from the midline of the kitchen sink to the adjacent wall at $14 \frac{1}{8}$ ", which is less than the 15"-minimum required for the forward approach that is available because the base cabinets are compliant with the requirements for removable cabinets.

ICRC Investigators took the following photograph (see Photo 23) to document their measurement:

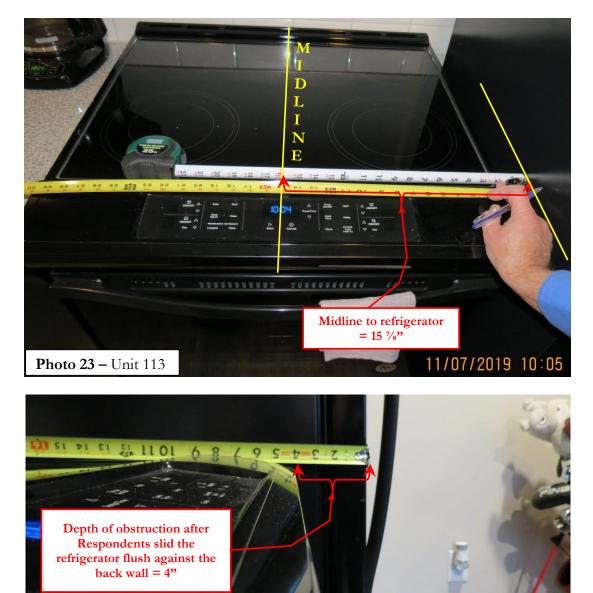


Therefore, this sink is unusable for persons who use a wheelchair for mobility because the midline of the sink is closer to the adjacent wall as allowed by the 15"-minimum clearance that is required for a forward approach.

11) ICRC Investigators measured the clearance from the midline of the range to the adjacent refrigerator in Unit 113 [L] at 15 ⁷/₈", which is less than the 24"-minimum clearance that is required for a parallel approach by someone in a wheelchair. The parallel approach is the only possible approach due to the absence of the knee space that would be required for a forward approach.

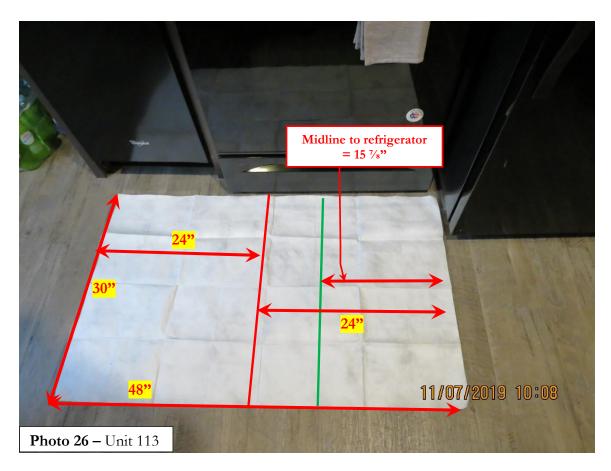
ICRC Investigators took the following photographs (see Photos 24, 25, and 26) to document their measurements, which include a photo showing the measured clearance via tape measured, and via a 30"-by-

48" drop cloth to provide a clearer visual image of the relative location of the midline of the range and the obstruction created by the adjacent refrigerator:

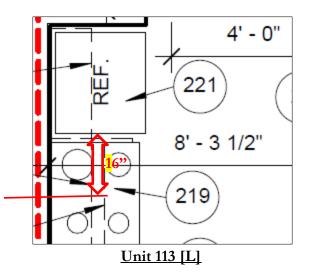


11/07/2019 10:10

Photo 24 – Unit 113



The plans submitted by Respondents include scaled drawings of the dwelling units. The relevant portions of the drawings for an ANSI Type A unit and an ANSI Type B unit are shown below:¹⁷



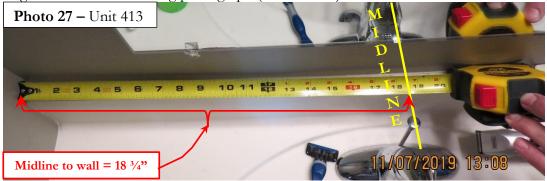
Based on the scaled drawings above, the midline of the range was designed to be about 16" away from the adjacent opposing countertop. The midline of the range was measured to be $15 \frac{7}{8}$ " away from the adjacent refrigerator in Unit 113 – as previously reported – which is less than the 24"-minimum required for a

¹⁷ See Appendix B.

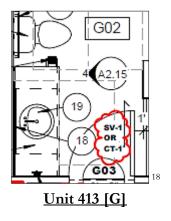
parallel approach by someone using a wheelchair. As designed and built, the kitchen in Unit 113 is unusable because the midline of the range is too close to the adjacent refrigerator to allow tenants using wheelchairs to make the required parallel approach.

12) In Unit 413 [G], the midline of the sink was measured to be $18 \frac{3}{4}$ " from the adjacent wall, which is less than both the 24"-minimum requirement when the base cabinets are not removable, which was verified by Respondents.

ICRC Investigators took the following photograph (see Photo 27) to document their measurement:



Respondents submitted scaled construction plans, which include the following portion indicating the design for the bathroom in Unit 413:



Therefore, the bathroom sink in Unit 413 would be compliant with if the sink had been installed as designed. However, as built, the midline of the bathroom sink in this unit is too close to the adjoining wall because it is less than 24" – which renders it unusable by persons using wheelchairs

Respondent Lloyd Associates' Response to Report of Preliminary Findings:

Following is a summary of Respondent Lloyd Associates' responses to the reported deficiencies:

2) Respondent Lloyd Associates will install concrete and/or stone paver sidewalks to the common areas included in the report to connect them to the existing adjacent sidewalk so these areas will be on an accessible route.

¹⁸ See Appendix A.

3) Respondent Lloyd Associates state they have taken the spray valve off the wall-mounted hook and placed it on the tub section of the dog-wash station, and removed the wall-mounted hook to make the spray reachable.

Respondent Lloyd Associates submitted photographs to document compliance for this feature.

4) Respondent Lloyd Associates state they have moved the partition wall in the men's bathroom that is adjacent to the leasing office to increase the width of the clear floor space to no less than the required 60"-minimum. Respondent Lloyd Associates submitted photographs to document compliance for this feature.

5) Respondent Lloyd Associates have adjusted the self-closers on the doors in the table on page 14 of the current agreement such that the force required to open these doors does not exceed the 5 lbf-maximum for doors that are not fire-rated and the 15 lbf-maximum for fire-rated doors. Respondent Lloyd Associates submitted photographs to document compliance for this feature.

6) Respondent Lloyd Associates state they have lowered the gate latch at the tenant-storage unit reported on page 14 of the current agreement such that the height to the midline of the latch does not exceed the 48"-maximum height allowed in the Manual. Respondent Lloyd Associates have submitted photographs to document compliance for this feature.

7) Respondent Lloyd Associates state they have replaced the current bumpers with shorter ones to increase the clear opening width – of the doorways at the balconies of the units reported on page 15 of the current agreement – to no less than the 31 $\frac{5}{8}$ "-minimum that is required for secondary doorways. Respondent Lloyd Associates have submitted photographs to document compliance for this feature.

8) Respondent Lloyd Associates will purchase and store an adequate stock of accessible ramps for both interior and exterior rises of the units in listed in the table on page 18 of the current agreement. Respondent Lloyd Associates will advise potential residents or customers who inquire about and are shown units that Park88 has ramp risers for both the interior and exterior doorway thresholds which comply with the FHA.

9) Respondent Lloyd Associates are currently exploring the manner in which they will retrofit the kitchens of Units 128 and 219 – and similar units – to increase the clear width of the path between the countertop on the kitchen island and the opposite wall to no less than the required 36"-minimum width.

Respondent Lloyd Associates will replace the current refrigerator in the kitchen of Unit 306 – and in similar units – with a counter-depth refrigerator to increase the width of the path between the refrigerator and opposing features to no less than the 40"-minimum required.

10) Respondent Lloyd Associates will allow Unit 411 and seven additional units – which have similarlydesigned kitchens where the midline of the sink is less than the 15"-minimum required clearance from the adjacent wall – to remain as they are without further modification for the following reasons: (1) these sinks are only less than 1" less than the 15"-minimum required clearance; and (2) the countertops by the kitchen sinks are made of granite, which is extremely expensive to modify, especially given the very slight variation with the accessibility requirements.

11) Respondent Lloyd Associates state they pulled the range forward away from the wall in Unit 113 so that refrigerator no longer protrudes into the required 30"-by-48" clear floor space centered on the range to allow for the required parallel approach to the range by a tenant using a wheelchair. Respondent Lloyd Associates have submitted photographs to document compliance for this feature.

12) Respondent Lloyd Associates will replace the current bathroom sink countertops with offset countertops in Unit 413 such that the midline of the sink will be no less than the 24"-minimum required because the base cabinets are not removable.

Assessment of Deficiencies:

Respondents stated all units were built in accordance with the scoping requirements of the International Building Code 2012 [IBC 2012], which incorporates the standards of the American National Standards 2009 [ANSI 2009] for guidance on the technical requirements [i.e., the dimension requirements].¹⁹ Neither the IBC 2012 nor the ANSI 2009 is one of the safe harbors accepted by HUD.²⁰ Therefore, the Manual and the Guidelines, which incorporate ANSI 1986 for some of the technical requirements, must be used to assess and determine compliance with the ICRA and FHA, not IBC 2012 or ANSI 2009.

The public areas must meet the requirements of the ADA in addition to those of the FHA, as people other than residents or residents' visitors will visit or frequent those areas. The common use areas, however, including the fitness center; clubhouse; lobby; conference center; trash enclosures; exterior parking spaces; and two separate clusters of mailbox kiosks are governed by the FHA since they are only for use by the residents of Park 88 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. 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 Respondent Lloyd Associates' proposed retrofits and determination, based on the scoping and technical requirements of the 2010 ADAAG and the Manual:

2) ICRC agrees with Respondent Lloyd Associates' proposal to install concrete and/or stone paver sidewalks to the common areas included in the report to connect them to the existing adjacent sidewalk so these areas will be on an accessible route.

3) ICRC has reviewed the photographs submitted by Respondent Lloyd Associates and agrees with their claim that these photographs show they have taken the spray valve off the wall-mounted hook and placed it on the tub section of the dog-wash station, and removed the wall-mounted hook to make the spray compliant with the reachability requirements. ICRC does not require further action from Respondent Lloyd Associates or any other Respondents to correct this deficiency.

4) ICRC has reviewed the photographs submitted by Respondent Lloyd Associates and agrees with their claim that these photographs show they moved the partition wall in the men's bathroom that is adjacent to the leasing office to increase the width of the clear floor space to no less than the 60"-minimum in Title III of the ADA, and is therefore compliant with the accessibility requirements. ICRC does not require further action from Respondent Lloyd Associates or any other Respondents to correct this deficiency.

5) ICRC has reviewed the photographs submitted by Respondent Lloyd Associates and agrees with their claim that these photographs show they adjusted the self-closers on the doors in the table on page 14

¹⁹ https://codes.iccsafe.org/content/IBC2012/chapter-35-referenced-standards (Last visited on Jan. 16, 2020).

²⁰ <u>http://www.fairhousingfirst.org/faq/safeharbors.html</u> (Last visited on Jan. 17, 2020).

of the current agreement such that the force required to open these doors does not exceed the 5 lbfmaximum for doors that are not fire-rated and the 15 lbf-maximum for fire-rated doors. ICRC does not require further action from Respondent Lloyd Associates or any other Respondents to correct this deficiency.

6) ICRC has reviewed the photographs submitted by Respondent Lloyd Associates and agrees with their claim that these photographs show they lowered the gate latch at the tenant-storage unit reported on page 14 of the current agreement such that the height to the midline of the latch does not exceed the 48"-maximum height allowed in the Manual. ICRC does not require further action from Respondent Lloyd Associates or any other Respondents to correct this deficiency.

7) ICRC has reviewed the photographs submitted by Respondent Lloyd Associates and agrees with their claim that these photographs show they replaced the current bumpers with shorter ones to increase the clear opening width – of the doorways at the balconies of the units reported on page 15 of the current agreement – to no less than the 31 $\frac{5}{8}$ "-minimum that is required for secondary doorways. ICRC does not require further action from Respondent Lloyd Associates or any other Respondents to correct this deficiency.

8) ICRC agrees with Respondent Lloyd Associates' proposal to install accessible ramps at the interior and exterior sides of the thresholds of the doorways at the balconies in units listed in the table on page 18 of the current agreement. However, ICRC will require the ramps be installed at all units with non-compliant interior thresholds without first requiring tenants to request the ramps. ICRC will allow tenants to refuse the installation of the ramps for the duration of their tenancy. However, ICRC will require that the ramps be reinstalled at units where they were refused by the previous tenant, and before the unit is shown to the next tenant. ICRC will allow Respondent Lloyd Associates to offer tenants the option to refuse the installation of the ramps, but only for three years from the date of the Closing Letter from ICRC. ICRC will require Respondent Lloyd Associates to cease from offering tenants the option to refuse this retrofit after the aforementioned three-year period.

9) ICRC concurs with Respondent Lloyd Associates' proposal to retrofit the kitchens of Units 128 and 219 – and similar units – to increase the clear width of the path between the countertop on the kitchen island and the opposite wall to no less than the required 36"-minimum width. ICRC will require Respondent Lloyd Associates to submit their proposed retrofit to correct this deficiency within 14 days from the date of the Closing Letter from ICRC to verify whether the selected type of retrofit is approved. ICRC will respond to the proposed retrofit within three days from the date it is submitted via email.

ICRC agrees with Respondent Lloyd Associates proposal to replace the current refrigerator in the kitchen of Unit 306 – and in similar units – with a counter-depth refrigerator to increase the width of the path between the refrigerator and opposing features to no less than the 40"-minimum required.

10) ICRC disagrees with Respondent Lloyd Associates' proposal to allow Unit 411 and seven additional units – which have similarly-designed kitchens where the midline of the sink is less than the 15"-minimum required clearance from the adjacent wall – to remain as they are without further modification. Taking no action to correct this deficiency would allow this feature to remain inaccessible in violation of the accessibility requirements from the ICRA and the FHA.

However, ICRC acknowledges (1) the non-compliant kitchen sinks are less than 1" away from complying with the 15"-minimum required clearance, which is expected to have a limited impact on the accessibility of these kitchen sinks for tenants who use a wheelchair for mobility; and (2) the significant expense of modifying the granite countertops adjacent to these kitchen sinks.

Therefore, ICRC will require Respondent Lloyd Associates to (1) provide written notice to tenants, prior to entering into a lease agreement, that prominently advises the tenant of their option to have management - at no cost to tenant - relocate the sink faucet further away from the wall such that the midline of the sink faucet is no less than the required 15" minimum from the adjacent wall to increase the clear floor space if they need it to be able to use the sink; and (2) adhere a permanent placard, which is readily visible and at a prominent location, on the inside of the cabinet door under the sink which re-states the same message regarding their rights to have the sink retrofitted as described above at no cost. ICRC will require Respondent Lloyd Associates to complete this retrofit within 14 days from the date of the written request submitted by a tenant.

11) ICRC has reviewed the photographs submitted by Respondent Lloyd Associates and agrees with their claim that these photographs show they pulled the range forward away from the wall in Unit 113 so that refrigerator no longer protrudes into the required 30"-by-48" clear floor space centered on the range to allow for the required parallel approach to the range by a tenant using a wheelchair. ICRC does not require further action from Respondent Lloyd Associates or any other Respondents to correct this deficiency.

12) ICRC agrees with Respondent Lloyd Associates' proposal to replace the current bathroom sink countertops with offset countertops in Unit 413 such that the midline of the sink will be no less than the 24"-minimum required.

Additionally, ICRC will require Respondent Lloyd Associates to – within 14 days from the date of the Closing Letter from ICRC – notify tenants occupying the units requiring retrofits to contact Management if they need to have any of these retrofits completed sooner because of a mobility impairment. ICRC will require Respondent Lloyd Associates to complete retrofits within 60 days from the date of a written request by these tenants.

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, architects, designers, civil engineers, 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:

<u>Requirement 1</u> – Accessible building entrance on an accessible route.

<u>Requirement 2</u> – Accessible and usable public and common areas.

<u>Requirement 3</u> – Usable doors.

<u>Requirement 4</u> – Accessible route into and through the covered dwelling unit.

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

<u>Requirement 6</u> – Reinforced walls for grab bars.

<u>Requirement 7</u> – 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, their predecessors, successors, parents, subsidiaries, affiliates, related companies and assigns with respect to any matters which were alleged, might have been alleged, or could have been alleged, arising out of or related to violations of the FHA and/or ICRA. 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. By way of further description, but without limiting the aforementioned, if Respondents comply with the promises and representations contained herein, this release is meant to be a general release, releasing any and all claims arising out of the FHA and ICRA regarding the property.

Fair Housing / Accessible Design and Construction Training

14) Respondents agree that:

(a) Laura Lynch 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 <u>BuilItRightIowa@iowa.gov</u>; or by attending one of the training events offered by Fair Housing Accessibility First – information about which is available online at <u>http://www.fairhousingfirst.org/training/calendar.html</u>.

(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, <u>Fair Housing Act Design Manual</u>, 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) Respondent Lloyd Associates agrees to make the following retrofits to the subject property:

Accessible and Usable Public and Common Use - Pergola, Grill, Pickle-Ball Court, Playground, and Dog Park

(a) The parties agree that the surface along the paths to the pergola, grill, pickle-ball court, playground, and dog park consist of grassy areas that are not "stable, firm, and slip resistant," as required by Section
4.5.1 of the ANSI 1986, and is therefore not accessible to persons in a wheelchair.

(b) Respondent Lloyd Associates agrees they will install concrete and/or stone paver sidewalk paths from the existing sidewalk sections nearest to connect them to the common areas listed in "(a)" paragraph above, such that these sidewalk paths, once completed, will be "stable, firm, and slip resistant."

(c) Respondent Lloyd Associates agrees the new sidewalk paths will have a maximum cross-slope value of 2%, and a maximum running-slope value of 5% as required by ANSI 1986.

(d) Respondent Lloyd Associates agrees the new sidewalk path to the dog park will connect the nearest portion of the adjacent sidewalk path and the seating bench located inside this common area.

(e) Respondent Lloyd Associates agrees to complete the retrofits described in paragraphs "(b)," "(c)," and "(d)" of the current subsection within six months from the date of the Closing Letter from ICRC.

Accessible Route Into and Through the Covered Unit – Doorway Thresholds

(a) The parties agree (i) the interior threshold heights onto the finished floor surface at the doorways to the balconies at the units reported on page 18 of the current agreement exceed the ¹/₄"-maximum allowed for thresholds without beveling, as required by the Manual; and (ii) that at Units 219, and 413, the exterior pervious balcony surface is below the interior finished floor surface by more than the ¹/₂"-maximum allowed by the Manual for exterior balcony surfaces that are pervious.

(b) Respondent Lloyd Associates agrees to install accessible ramps with a running slope of no greater than 8.33% in the units described in "(a)" paragraph above at the threshold of the doorway providing access between the living room to the balcony, as required by the Manual.

(c) Respondent Lloyd Associates agrees to measure the interior and exterior threshold heights at the doorway providing access between the living room and the balcony of the other units that were not inspected by ICRC Investigators, and are in the same floor-plan groups as the units reported on page 18 of the current agreement – which are defined in the table on page 4 of the current agreement – to verify compliance with (i) the ¹/₄"-maximum threshold height for thresholds if no 1:2 beveling is present; and (ii) the ¹/₂"-maximum value that the exterior balcony surface may be below the interior finished floor surface. Respondent Lloyd Associates agrees to retrofit the non-compliant units in same manner as required in "(b)" paragraph above.

(d) Respondent Lloyd Associates agrees to allow current tenants who do not desire to have the interior and/or exterior thresholds at the doorway providing access between the living room and the balcony in their units retrofitted as required in "(b)" paragraph above to have management not perform the retrofit.

(e) However, Respondent Lloyd Associates agrees to complete the retrofits, as described in "(b)" paragraph above, if necessary to accommodate the onset of mobility-impairment health condition for those tenants.

(f) At units where the retrofit required in "(b)" paragraph above were not completed because of tenants' requests, Respondent Lloyd Associates agrees to complete the aforementioned retrofit before the unit is rented again.

(g) Respondent Lloyd Associates agrees to complete the retrofit described in paragraph "(b)" of the current subsection at units where tenants did not reject the retrofit within 60 days from the date of the Closing Letter from ICRC or sooner if requested by a tenant with a mobility impairment.

(h) Respondent Lloyd Associates agrees to cease offering the option to new tenants to reject the ramp required in "(b)"

paragraph above after three years from the date of the Closing Letter from ICRC.

Usable Kitchens – Clear Width

(a) The parties agree the width of the path between the countertop at the kitchen island and the opposing wall adjacent to the nearby window in Units 128 and 219 is less than the 36"-minimum width required by the Manual.

(b) The parties agree the width of the path between the front face of the refrigerator and the opposing countertop at Units 306 is less than the 40"-minimum width required by the Manual.

(c) Respondent Lloyd Associates agrees to submit a retrofit proposal to ICRC via email at <u>emigdio.lopez-sanders@iowa.gov</u> to increase the width clearance between the countertop at the kitchen island and the opposing wall adjacent to the nearby window in Units 128 and 219 to no less than the 36"-minimum – required in the Manual – no more than 14 days from the date of the closing letter from ICRC, and allow ICRC three business days from the submittal date of Respondents' retrofit-proposal email to determine whether the proposed retrofit is approved.

(d) Respondent Lloyd Associates agrees they will measure the clear width of the path between the countertop of the kitchen island and opposing wall adjacent to the nearby window in the other similarly-situated units within the same groups as Units 128 and 219 – listed on page 4 of the current agreement.

(e) If the clear width of the path between the countertop of the kitchen island and the opposing wall adjacent to the nearby window at the units described in "(d)" paragraph above is less than the 36"-minimum required by the Manual, Respondent Lloyd Associates agrees to retrofit the noncompliant kitchens in the same manner as in the accepted-retrofit proposal email from ICRC – which is described in "(c)" paragraph above – to bring them into compliance with the ICRA and FHA.

(f) Respondent Lloyd Associates agrees to replace the existing refrigerator with a counter-depth refrigerator in Unit 306 ["Type H"] and the other "Type H" units to increase the clear width of the path between the refrigerator and the opposing countertop to no less than the 40"-minimum as required in the Manual.

(g) Respondent Lloyd Associates agrees to complete the retrofits described in the current subsection at Units 128, 219, 306, and any other non-compliant units within 1 year from the date of the ICRC-approved retrofit proposal email or sooner if requested by a tenant with a disability.

Usable Kitchens – Sinks

(a) The parties agree the distance from the midline of the sink to the adjacent wall in the kitchen of Units 401, 407, 411, 420, 421, 423, 424, and 425 is less than the 15"-minimum for kitchen sinks with removable cabinets, as required by the Manual.

(b) Respondent Lloyd Associates agrees to provide written notice to tenants, prior to entering into a lease agreement for the eight units described in "(a)" paragraph above, that prominently advises the tenant of their option to have management - at no cost to tenant - relocate the sink faucet further away from the wall such that the midline of the sink faucet is no less than the required 15" minimum from the adjacent wall.

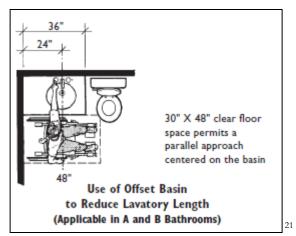
(c) Respondent Lloyd Associates agrees to adhere a permanent placard, which is readily visible and at a prominent location, on the inside of the cabinet door under the sink for the eight units described in "(a)" paragraph above, advising tenants of their option to have management - at no cost to tenant - relocate the sink faucet further away from the wall such that the midline of the sink faucet is no less than the required 15" minimum from the adjacent wall.

(d) Upon request, Respondent Lloyd Associates agrees to remediate the kitchen sink further away from the adjacent wall –such that the midline of the sink faucet will be no less than 15" from the adjacent wall – within 30 days of the initial written request by the tenant.

Usable bathrooms – Sinks

(e) The parties agree the distance from the midline of the sink to the adjacent wall in the bathroom of Unit 413, is less than the 24"-minimum for bathroom sinks without removable cabinets, as required by the Manual.

(f) Respondent Lloyd Associates agrees they will replace the bathroom sink in Unit 413 – and in similarly-designed units in the same group as Unit 413, as defined in the table on page 4 for the current agreement – by replacing the current sink with an off-centered sink so as to move the sink further away from the adjacent wall, such that the midline of the sink will be no less than 24" from the nearest obstruction as required in the Manual, and as shown in the figure below from the Manual:



(d) Respondent Lloyd Associates agrees they will complete the retrofits described in the current subsection within two years from the date of the Closing Letter from ICRC.

Retrofit Requests

17) Within 14 days from the date of the Closing Letter from ICRC, Respondent Lloyd Associates agrees to notify all current tenants – who need any of the required retrofits to be completed in their units because of a mobility impairment – via a letter, about the option to have management complete these retrofits in their units within 60 days at no charge to the tenants.

18) Respondent Lloyd Associates agrees to submit to ICRC a scanned copy of the letter sent to each tenant within 30 days from the date of the Closing Letter from ICRC.

²¹ See Manual at 7.47

19) Respondent Lloyd Associates agrees to complete all retrofits requested by a tenant due to a mobility impairment within 30 days from the date of the written the request submitted by the tenant, except as otherwise provided herein.

20) Respondent Lloyd Associates agrees that those tenants who request the retrofits to be performed in their units because of a mobility impairment 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, Respondent Lloyd Associates agrees 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. Respondent Lloyd Associates agrees to pay all costs generated by such accommodations.

Mandatory Reports

20) Respondent Lloyd Associates agrees 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, and include brief verbal descriptions and photographs. 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 113 units, and the public and common use areas.

21) Respondent Lloyd Associates agrees 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) Respondent Lloyd Associates agrees, 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 Respondent Lloyd Associates. If the inspection indicates outstanding deficiencies, Respondent Lloyd Associates shall correct all such deficiencies within a reasonable period of time as determined by ICRC.

23) Respondent Lloyd Associates agrees 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 <u>emigdio.lopez-sanders@iowa.gov</u>).

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 Respondent Lloyd Associates has 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.

25) The parties are dedicated and focused on protecting the safety of the public and their employees by following safe practices to slow the spread of the coronavirus (COVID-19) pandemic event. If Respondent Lloyd Associates are unable to meet any deadlines for the agreed retrofits described in this Agreement as a result of the pandemic event related conditions, Respondent Lloyd Associates shall provide written notice to the ICRC at the address in Paragraph 23 describing the subject retrofits that cannot be completed timely, and the conditions which prevent the subject retrofits from being completed timely. The ICRC and Respondent shall thereafter meet and confer, and the ICRC shall agree to a reasonable extension for the subject retrofits to be completed, taking into account the safety of the public and their employees.

Park 88, L.L.C. RESPONDENT

C.R. Lloyd Associates, Inc. RESPONDENT

Lloyd Construction Company RESPONDENT

Van De Walle Architects, L.L.C. RESPONDENT

Civil Design Advantage, L.L.C. RESPONDENT

Angela Jackson, Commissioner COMPLAINANT

Elizabeth Johnson, Executive Director IOWA CIVIL RIGHTS COMMISSION

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