

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 08-15-67825
HUD# 07-15-0588-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

DEVELOPMENT SERVICES CORPORATION

1225 Jordan Creek Parkway, Suite 200
West Des Moines, Iowa 50266-2345

SIERRA POINTE, LLC

1225 Jordan Creek Parkway, Suite 200
West Des Moines, Iowa 50266-2345

CONSTRUCTION SERVICES, INC.

1225 Jordan Creek Parkway, Suite 114
West Des Moines, Iowa 50266-2345

INVISION ARCHITECTS, LTD

303 Watson Powell Jr. Way, Suite 200
Des Moines, IA 50309-1724

COMPLAINANT

ANGELA JACKSON (formerly WILLIAMS)

Commissioner, Iowa Civil Rights Commission
400 East 14th Street
Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street
Des Moines, Iowa 50319

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216. Complainant alleged Respondents designed and constructed covered multifamily dwellings in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated "usable doors," the "light, switches, thermostats, electrical outlets in accessible locations," and the "usable kitchens and bathrooms" requirements of the ICRA and FHA.¹

Complainant specifically alleged, in Unit 428, 7171 Woodland Avenue, Sierra Pointe Apartments [henceforth referred to as "Sierra Pointe"], (1) the clear opening width of the sliding glass door was 30 inches, which is less than the 31 5/8" minimum allowed; (2) the height of the midline of the bottom electrical outlet was 14 inches, which is less than the 15 inches minimum allowed; and (3) the distance from the midline of the bathroom sink to the adjoining wall was 14 inches, which is less than the minimum 24 inches required for an accessible parallel approach due to cabinets that appeared to be non-removable.

Description of the Subject Property

Sierra Pointe consists of one three-story building with 41 units on the first floor and 43 units on each of the second and third floors. Sierra Pointe has 127 units total, all served by two elevators. Since all dwelling units are served by elevators, each and every unit is "covered"² by the design and construction provisions of the ICRA and FHA.³ The subject property was issued a Certificate of Occupancy by Rod Van Genderen, Chief Building Official for the City of West Des Moines, on November 5, 2014.

The construction of all units within the subject property building was based on six different designs or types.⁴ The table at the top of the next page lists the unit types, the number of units per type and per floor, and the unit numbers of the inspected units.

¹ Iowa Code §§216.8A(3)(c)(3)(b), (216.8A(3)(c)(3)(c)(ii), and 216.8A(3)(c)(3)(c)(iv); 24 C.F.R. §§100.205(c)(2), 100.205(c)(3)(ii), and 100.205(c)(3)(iv).

²"Covered multifamily dwellings" or "covered multifamily dwellings subject to the Fair Housing Amendments" means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units." Fair Housing Accessibility Guidelines, Federal Register, Vol. 56, No. 44, Wednesday, March 6, 1991, Rules and Regulations, page 9500.

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

⁴ See Appendix B for floor plans.

UNIT TYPE	TOTAL NUMBER OF UNITS PER TYPE	TOTAL NUMBER OF UNITS PER FLOOR	INSPECTED UNIT NUMBER
Ashworth [1BR/1BA – 850 SF]	9	First Floor – 3	232 [First Floor]
		Second Floor – 3	
		Third Floor – 3	
Bradford [1BR/1BA – 1, 010 SF]	4	First Floor – 0	347 [Second Floor]
		Second Floor – 2	
		Third Floor – 2	
Vista [1BR/1BA – 940 SF]	27	First Floor – 9	248 [First Floor]
		Second Floor – 9	
		Third Floor – 9	
Woodland [2BR/2BA – 1,230 SF]	18	First Floor – 6	450 [Third Floor]
		Second Floor – 6	
		Third Floor – 6	
Jordan [1BR/1BA – 1,000 SF]	6	First Floor – 2	237 [First Floor]
		Second Floor – 2	
		Third Floor – 2	
Westown [2BR/2BA – 1,320 SF]	63	First Floor – 21	241 [First Floor]
		Second Floor – 21	
		Third Floor – 21	

The scope of this agreement includes all 127 units and the public/common use areas at Sierra Pointe.

Respondents’ Defenses:

When asked in the questionnaire what was true or false about the allegations, Respondents Development Services Corporation, Sierra Pointe, LLC, and Construction Services, Inc. answered:

We believe the allegation that the lower electrical outlets in the living room of Unit 428 are 14 inches above the floor is false. We measured all the outlets in that room and confirmed that they met the ANSIA 117.1 design requirements, in that the operable part of the lower outlets are 15 inches above the finished floor.

The cabinet doors in both bathrooms are removable. It is not true that there is no bathroom in Unit 428 with a sink having the required clearance. The second bathroom has the minimum clearance between the center of the sink and the nearest obstruction, and is accessible to a person using a mobility assistive device such as a wheelchair.

We believe that, while it is possible that the patio door in Unit 428 did not have a minimum nominal 32 inch clearance when measured by the tester, this was due to the presence of a rear door stop and curved exterior handle, both of which can be easily and quickly removed or replaced.

Invision Architects, LTD answered:

Based on the 71.5” sliding glass door and hardware that was installed, the sliding door in Unit 428 does not comply with the 32” clear opening requirement.

It is false that the parallel approach at the secondary bathroom is required when the other bathroom complies with the Type B, Option B adaptability requirement set forth in the 2003 ANSI A117.1 code referenced above.

Report of Preliminary Findings:

ICRC Investigators inspected six units at Sierra Pointe, as well as the public and common use areas in and surrounding the complex. After conducting an onsite inspection of the units listed in the table at the top of the last page and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

- 1) Measurements were taken at the three curb ramps adjacent to the access aisles located to the south of the main entrance of Sierra Pointe – one to the southeast and two to the southwest. Only the slope measurements exceeding the maximum allowed value of 8.33% for running slopes are reported in the table below.

LOCATION	SOUTHEAST⁵ ACCESS AISLE CURB RAMP	2ND CLOSEST⁶ SOUTHWEST ACCESS AISLE CURB RAMP
ONE FOOT SOUTH OF SEAM JOINT	9.5%	9.9%
THREE FEET SOUTH OF SEAM JOINT	9.4%	10.3%

Based on the information gathered, the curb ramp closest to the southwest of the main entrance was found to be in compliance with the slope requirements. However, each of the slopes at the other two curb ramps exceeds the maximum thresholds required by ANSI 2003 and ADAAG. Additionally, both of these curb ramps lack the landing area at the sidewalk that is required by both ANSI 2003 and ADAAG.⁷ The excessive slopes and lack of landing areas render this path inaccessible to persons who utilize a wheelchair for mobility.

⁵ See Appendix A, Figures 1A, 1B, and 1C.

⁶ See Appendix A, Figures 1E, 1F, 1G, and 1H.

⁷ See Appendix A, Figures 1D and 1I.

- 2) The height of the bottom edge of the three signs designating parking spaces as reserved for persons with disabilities was no greater than 57 1/4 inches, which is less than the minimum height of 60 inches allowed by ADAAG.⁸ Less than standard height causes these signs to be less visible and more challenging for persons with disabilities to readily locate suitable parking spaces.
- 3) The animal waste station, located southeast of the southeastern corner of Sierra Pointe, was measured to be 13 feet and 2 inches away from the closest sidewalk. The surface along the path to the animal waste station consists of a grassy area that is not “stable, firm, and slip resistant,” as required by Section 302.1 of the ANSI 2003.⁹ Therefore, the animal waste station is not accessible to persons in a wheelchair who have either a pet or an assistance animal.
- 4) The wall-mounted mailboxes are adjacent to the main entrance. With two elevators serving all floors in the building, all 127 mailboxes must be usable with heights at or below the required 54-inch maximum height.¹⁰ The measured heights of the keyholes at the top four rows of mailboxes are reported in the table below.¹¹

TOP FOUR MAILBOX ROWS¹²	HEIGHT
First	64 3/4 inches
Second	61 1/3 inches
Third	58 inches
Fourth	54 1/2 inches

The top four rows of mailboxes are unusable by someone in a wheelchair because they exceed the 54-inch maximum height allowed by the reach parameters of ANSI 1986 and ANSI 2003.

- 5) All inspected units have a sliding glass door onto an exterior porch or balcony. The clear opening width of the sliding glass door in each of the living rooms of the inspected units measured 30 inches with a door bumper installed on the vertical side that measured 2 1/2 inches.¹³ The opening width of the sliding glass door is too narrow, making it unusable by persons using wheelchairs.
- 6) The change in level from the top of the threshold at the sliding glass doorway onto the interior finished floor surface in all of the inspected units was measured at no less than 1 15/32 inches, which exceeds the 1/4-inch maximum allowed for thresholds without beveling.¹⁴ The exterior threshold height onto the wood porch of the

⁸ See Appendix A, Figure 2A.

⁹ See Appendix A, Figures 4A and 4 B.

¹⁰ See Appendix A, Figures 2A and 2B.

¹¹ *Id.*

¹² See Appendix A, Figure 4A.

¹³ See Appendix A, Figures 4A and 4B.

¹⁴ See Appendix A, Figure 6A.

secondary entrance in Unit 347 [Bradford] was measured at 2 7/8 inches and in Unit 450 [Woodland] at 2 11/16 inches.¹⁵

The difference between the height of the interior change in level and the height of exterior threshold at Unit 347 is calculated to be 1 13/32 inches. In Unit 450, this difference is calculated to be 1 1/8 inches, given that the change in level from the interior floor surface to the top of the threshold is 1 9/16 inches. These calculations result in values that exceed the 1/2-inch maximum height for exterior floor surfaces below the finished interior floor surfaces, as established in ANSI 2003 and the Guidelines. Therefore, in all units the height of the threshold onto the interior floor surface is too high; and for both the Bradford and Woodland units, the exterior floor surface is too far below the interior finished floor surface. The excessive heights at these secondary entrances render the porches and balconies unusable by tenants using wheelchairs.

- 7) The height of the bottom electrical outlets in the living room, dining room, and bedroom in Unit 347, a Bradford unit, was measured at between 14 and 14 3/8 inches.¹⁶ Such heights render these electrical outlets unusable by tenants using wheelchairs.
- 8) Except for Unit 450 [Woodland] and Unit 248 [Vista], all inspected units were found to have clear floor spaces adjacent to the bathtubs that measured smaller than the 30 by 48-inch minimum required by ANSI 2003.¹⁷

In all inspected units, the toilet is located at the non-control end of the bathtub, a location that is not allowed by ANSI 2003.¹⁸ Neither one of the two bathrooms in the Westown units was found to be compliant. Only one has to be accessible so long as the requirements for an Option-B bathroom are met, as per ANSI 2003. The other units, all one-bathroom units, were found to be non-compliant.

- 9) The distance between the midline of the toilet to the grab-bar side in Units 232 [Ashworth], 241 [Westown], and 347 [Bradford] was 16 inches, which is less than the 18-inch minimum required by ANSI 2003.¹⁹ This toilet is too close to the wall to be accessible and usable by persons using wheelchairs for mobility.
- 10) The midline of the bathroom sinks are 15 inches from the adjoining walls in Unit 241 [Westown], which is less than the 24 inches required by FHADM and ANSI 2003 for the parallel approach by someone using a wheelchair that is necessary if vanity cabinets are non-removable. If the insufficient clear space adjacent to the bathtub in the non-master bathroom in the Westown units is corrected, then the master bathroom, including the sinks, will no longer be required to be accessible. However, neither bathroom is accessible at this time.

¹⁵ See Appendix A, Figure 6B.

¹⁶ See Appendix A, Figure 7A.

¹⁷ See Appendix A, Figures 8A, 8B, and 8C.

¹⁸ See Appendix A, Figure 8D.

¹⁹ See Appendix A, Figure 9A.

Respondents' Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

- 1) Respondents will decrease the slope of the curb ramps to no more than 8.33% by redoing the non-compliant ramps and adding sidewalk surfaces with slopes in all directions at no greater than 2% to create the missing 60 by 60-inch landing areas.
- 2) Respondents will reinstall the three signs indicating parking spaces are reserved for persons with disabilities at a greater height, such that the bottom edge of the signs will be no less than the minimum height of 60 inches.
- 3) Respondents will relocate the animal waste station to a location immediately adjacent to the sidewalk path.
- 4) Respondents will lower the existing wall-mounted mailbox units and install two additional mailbox units at the same height as the existing mailboxes, which means 121 of the 127 mailboxes will be reachable by tenants using wheelchairs. Respondents are not able to make the remaining six mailboxes reachable due to conflicting United States Postal Services (USPS) regulations and physical lack of space. Respondents will install removable mailbox-number labels so that Respondents can swap mailbox numbers to accommodate the needs of tenants who use wheelchairs.²⁰
- 5) Respondents will replace the curved door handle of the sliding glass door in all of the units with a slimmer door handle. Respondents will also replace the 2 1/2-inch door bumper with 1-inch bumper. These replacements will result in an opening width at these doorways at no less than 31 4/8 inches, which is only 1/8-inch less than the minimum-“nominal” 32 [31 5/8] inches required.
- 6) Respondents have submitted product information for the surface material used at the balconies, which indicates the surface material is not wood and is, instead, a “synthetic wood” product that is impervious. Therefore, Respondents stated the exterior balcony surface is at a height under the interior finished floor that is less than the 4-inch maximum allowed by the FHADM.

Respondents will notify tenants of their option to have a ramp – similar to the sample ramp product submitted to ICRC – installed at the interior threshold of the sliding glass doorway, provided they require the ramp due to their disability.²¹
- 7) Respondents submitted additional information about the measured height of electrical outlets in support of their claim that the height to the midline of the bottom electrical outlet is actually 15 inches, and therefore compliant with the minimum height

²⁰ See Appendix C, page 1.

²¹ See Appendix C, page 2.

requirement for reachability. Respondents provided a copy of an email from Chief Building Official Van Genderen. A relevant excerpt from this email reads:

I would also suspect that the measurement was taken from on top of the carpet tack strip along the wall, which in itself would make a difference of almost ½” in the measurement. I’m quite certain, that if the measurement [would have been] taken approximately 6” from the wall, and from the bottom of the wheel on the wheel chair that is settled into the carpet from the weight of the occupant, the needed [15-inch] measurement would be attained.²²

- 8) Respondents will move the wall opposite to the bathtub into the adjoining walk-in closet, and rotate the toilet by 90 degrees – such that the rear of the toilet water tank is flush with the moved wall – so as to create a 30 by 60-inch clear floor space between the toilet and the bathtub in the single bathroom in the Ashworth, Bradford, Jordan, and Vista units, and the “Guest” bathroom in the Westown units – which will result in eliminating the maneuverability requirements for the Master bathroom in the Westown units.²³

Assessment of Deficiencies:

Respondents stated all units were built in accordance with the requirements of ANSI 2003. ANSI 2003 is a safe harbor accepted by HUD. However, ANSI 2003 is only a safe harbor if it is used in conjunction with the FHA, HUD’s regulations, and the Guidelines. If Respondents followed ANSI 2003 as a safe harbor in its entirety, then this code will be used to assess compliance with the design and construction accessibility requirements in the FHA and ICRA. But if Respondents did not follow the ANSI 2003 in its entirety, then the FHADM and ANSI 1986 will be used to determine any deficiencies.

Following is the assessment of the reported deficiencies, based on the scoping and technical requirements of FHADM and the technical requirements of ANSI 2003:

- 1) ICRC concurs with Respondents’ proposal to decrease the running slope of the curb ramps to no more than the 8.33% by redoing the non-compliant ramps and adding sidewalk surfaces to create the missing 60 by 60-inch landing areas with no more than a 2% slope in all directions.
- 2) ICRC concurs with Respondents’ proposal to reinstall the three signs indicating parking spaces are reserved for persons with disabilities at a height of no less than 60 inches from the bottom edge of the signs.

²² Email from Rod Van Genderen, Chief Building Official for the City of West Des Moines, to Wendy Oden, Associate General Counsel for R&R Realty Group, Subject: *FW: Sierra Pointe Apartments CP# 08-15-67825*, May 11, 2016.

²³ See Appendix C, pages 3, 4, 5, and 6.

- 3) ICRC concurs with Respondents' proposal to relocate the animal waste station to a location immediately adjacent to the sidewalk path.
- 4) ICRC concurs with Respondents' proposal to shift the wall-mounted mailbox units down and install two additional units, but ICRC will still require Respondents to submit evidence via photographs to substantiate their claim that the height of the midline of the keyholes at 121 of the 127 mailboxes meets the 54-inch maximum height requirement.

Respondents cited USPS regulation as one of the reasons for not being able to bring all of the mailboxes into compliance with the reachability requirements. However, in a letter, Lynn Grosso, Director of the Office of Enforcement for HUD, informed Maria Infanger, USPS Attorney, that the FHA preempts USPS regulations as they relate to the accessibility of mailboxes. The letter reads:

The Department of Justice has entered into a number of consent decrees which have required the developer to change the height of mailboxes serving covered multifamily dwellings. We have received reports from developers that their efforts to provide mailboxes that comply with the Act have been met with resistance from the U.S. Postal Service because compliance with the prescribed reach ranges [either the 48 or 54-inch height] may result in a greater number of postal units that have to be opened by the mail carrier.

It is our longstanding policy that when there are two sets of requirements which both address accessibility, the developer of the housing subject to both requirements must comply with both, which usually means meeting the stricter standard. In this case, that would mean that **any builder or developer of covered multifamily housing would have to comply with the [Fair Housing] Act's requirements even if the Postal Service requirements are more liberal** [bold added for emphasis].²⁴

As indicated in the above quote, other builders who have installed mailbox kiosks with mailboxes too high have been directed by the DOJ to modify the kiosks to make the required mailboxes reachable, regardless of USPS regulations. Additionally, Don Irwin, Mechanical Engineer for USPS, stated in an email, sent May 14, 2014, to Cheryl Kent from HUD, that there is nothing in USPS regulations that would prevent a builder from installing mailbox kiosks that meet ANSI's reachability requirements.²⁵ Finally, Cheryl Cavanaugh, Paralegal Specialist for the USPS Law Department – Western Area, stated in an email to ICRC Investigators, that the builder

²⁴ Letter from Lynn Grosso, Director for Office of Enforcement, United States Department of Housing and Urban Development, to Maria Infanger, Postal Service Attorney, United States Postal Service, May 20, 2008.

²⁵ Email from Donald Irwin, Mechanical Engineer for USPS, to Cheryl Kent, Special Advisor for Disability Policy for HUD, Subject: *RE: USPS-STD-4C*, May 14, 2014.

needs only to obtain authorization for variance from the postmaster to modify or decrease the height to 54 inches or less for the keyholes at mailboxes.²⁶

Although the FHA preempts the USPS regulations and six of the 127 mailboxes will remain out of compliance with the reachability requirements of the FHA, ICRC still concurs with Respondents' retrofit proposal because the number of unreachable mailboxes has been reduced from 55 to six and Respondents have agreed to ensure reachable mailboxes are available to any tenant who needs one.

- 5) ICRC concurs with Respondents' proposal to replace the curved door handle with a slimmer door handle and the current door bumper with a shorter one on all of the sliding glass doors, so that the clear opening doorway width is no less than 31 5/8 inches for most and no less than 31 4/8 inches for the remaining few doorways. Albeit a few of these doorways will not have a totally compliant clear opening width, the impact on their usability because of this relatively small deficiency is not, as determined by ICRC, to be discernible.
- 6) ICRC acknowledges and concurs with Respondents' claim that the exterior balcony surface is made of a synthetic-wood material that is impermeable, which means the exterior surface may be up to four inches below the level of the interior finished floor surface. Therefore, based on the surface product information and additional information submitted by Respondents, ICRC has determined the change in level between the exterior balcony surface and the interior finished floor surface is in compliance with the 4-inch maximum height for impervious surfaces allowed by the FHADM and ANSI 2003.

ICRC also agrees with Respondents' proposal to install rubber ramps with a running slope of no greater than 8.33% at the interior sliding door threshold of each vacant unit in the Project and at each currently occupied unit at the time such unit is vacated. A sample threshold ramp acceptable to ICRC is attached hereto.

- 7) Based on the additional information submitted by Respondents from Chief Building Official Van Genderen, ICRC acknowledges and concurs with Respondents' claim that the electrical outlets found to be non-compliant in Unit 347 are actually compliant because the height measurements taken during the inspection were taken adjacent to wall and included the height of the carpet tack strips, which, in addition to not considering the full compression of the carpet by a person using a wheelchair, skewed the measured heights to be less than the 15-inch minimum height required by FHADM and ANSI 2003. Therefore, the outlets are no longer determined to be non-compliant. No corrective action is required.
- 8) ICRC concurs with Respondents' proposal to move the wall opposite to the bathtub into the adjoining walk-in closet, and rotate the toilet by 90 degrees – such that the

²⁶ Email from Cheryl Cavanaugh, Paralegal Specialist for the United States Postal Service Law Department – Western Area, to Emigdio López-Sanders, Civil Rights Specialist for ICRC, Subject: *RE: Mailbox Kiosk Questions – Johnston Post Office*, August 25, 2014.

rear of the toilet water tank is flush with the moved wall – so as to create a 30 by 60-inch clear floor space between the toilet and the bathtub in the single bathroom in the Ashworth, Bradford, Jordan, and Vista²⁷ units, and the “Guest” bathroom in the Westown²⁸ units – which will result in eliminating the maneuverability requirements for the Master bathroom in the Westown units. No corrective action is required in the Woodland units.

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,

²⁷ The inspected Vista unit, Unit 246, was built according to the “ADA” Vista floorplan, and had sufficient clear floor space adjacent to the bathtub. However, all other Vista units are expected to have the clear floor space deficiency at the bathtub because they are not “ADA” units, and have the same bathroom configuration as the other units with the clear floor space deficiency. – See Appendix A, Figures 11A, 11B, and 11C, and Appendix B, page 7.

²⁸ Westown’s “ADA” units – Units 241, 243, 244, 245, and 247 – are expected to have sufficient clear floor space at the bathtub, and therefore, should not require the bathrooms to be retrofitted – See Appendix A, Figures 11A, 11B, and 11C and Appendix B, page 7..

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:

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common areas.
3. Usable doors.
4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Reinforced walls for grab bars.
7. Usable kitchens and bathrooms.

Voluntary and Full Settlement

8. The parties acknowledge this Predetermination Settlement Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
9. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any

wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.

10. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.
11. Respondents agree the Commission may review compliance with this Agreement. And as part of such review, Respondents agree the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.

Disclosure

12. Because, pursuant to Iowa Code §216.15A(2)(d), the Commission has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Release

13. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Fair Housing / Accessible Design and Construction Training

14. Respondents agree their appropriate key personnel will:
 - (a) Review and become familiar with the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual [FHADM], 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) Within seven calendar days from the date on the Closing Letter from ICRC, Respondents agree to submit a list to ICRC of the key personnel – to include complete name and job title – who have become familiar since the current

complaint was filed or who will become familiar with the FHADM, as required in “(a)” paragraph above.²⁹

Required Modifications or Retrofits

15. Respondents agree to make the following modifications or retrofits to the subject property:

Accessible and Usable Public and Common Use Areas – Curb Ramps and Landings

- (a) The parties agree each of the running slopes at the two inspected curb-ramp sections of the sidewalks adjacent to the access aisles – as reported on page 4 of the current agreement – exceeds the maximum running slope value of 8.33% allowed by ANSI 2003 and ADAAG. Additionally, the parties agree that both of these curb ramps lack the 60 by 60-inch landing that is required adjacent to the curb ramp by both ANSI 2003 and ADAAG.
- (b) Respondents agree they will reinstall the non-compliant curb ramps and install 60 by 60-inch landing areas adjacent to the north of the ramps, such that the curb ramps will have a running slope of no more than 8.33%, and the landings have slopes in all directions of no greater than 2%, as required by ADAAG and ANSI 2003.

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

- (a) The parties agree the height to the bottom edge of the three signs designating six parking spaces as reserved for persons with disabilities is no greater than 57 1/4 inches, which is less than the minimum height of 60 inches allowed by ADAAG.
- (b) Respondents have reinstalled the three signs designating parking spaces as reserved for persons with disabilities at a greater height, such that the height to the bottom edge of these signs is increased to no less than 60-inches above the ground, as required by ADAAG.
- (c) Respondents agree they will submit to ICRC photographs of the measured height of each of the three signs as evidence of compliance with the ADAAG requirement.

Accessible and Usable Public and Common Use Areas – Animal Waste Station

- (a) The parties agree (i) the animal waste station is 13 feet and 2 inches away from the closest sidewalk; (ii) the surface along the path to the animal waste station consists of a grassy area that is not “stable, firm, and slip resistant,” as required by

²⁹ The “Closing Letter” provides notice to the parties that the case has been closed. Once this agreement is fully executed, the Commission will issue its Closing Letter. It will be mailed to all parties and their representatives. A fully executed copy of the agreement will accompany the Closing Letter.

ANSI 2003; and (iii) therefore, the animal waste station is not accessible to persons in a wheelchair who have either a pet or assistance animal, as required by FHADM and ANSI 2003.

- (b) Respondents have relocated the animal waste station, such that it is located adjacent to one of the existing accessible sidewalk sections, as required by FHADM and ANSI 2003.
- (c) Respondents agree they will submit to ICRC photograph(s) indicating the new location of the animal waste station as evidence of compliance with the FHADM requirements.

Accessible and Usable Public and Common Use Areas – Mailboxes

- (a) At the time of the inspection of Sierra Pointe, the parties agree the top four rows of mailboxes exceed the 54-inch maximum height allowed by the reach parameters of FHADM and ANSI.
- b) The parties agree that Respondents will relocate the mailboxes as set forth herein to make 121 out of 127 mailboxes meet the maximum reach-range of 54 inches for a person who requires the use of a wheelchair to make a parallel approach, as required by FHADM and ANSI.
- (b) Respondents agree to submit to ICRC at least one photograph of the top mailbox in each of the mailbox vertical units to document compliance with the reachable maximum height requirement of 54 inches for 121 out of the 127 individual mailboxes.
- (c) Respondent agree they will notify current and future tenants occupying the six units with unreachable mailboxes, verbally and in writing, about their option to swap mailboxes for units occupied by tenants without mobility impairments, such that their new mailbox location will have a keyhole with a midline at a maximum height of 54 inches.
- (d) Respondents agree the written notification referred to in “(c)” paragraph above is to be worded in the same manner as the sample note previously submitted to ICRC by Respondents, and which reads:

NOTICE TO RESIDENTS

Please notify the leasing office if you are unable to access your mailbox and a new mailbox will be assigned for your use during your residency at Sierra Pointe.³⁰

³⁰ See Appendix C, page 7.

- (e) Respondents agree to send the written notification referred to in “(c)” paragraph above to the tenants occupying the six units with mailboxes higher than 54 inches within 14 days from the date of the Closing Letter from ICRC.
- (f) Respondents also agree to send a statement to ICRC within 14 days from the date of the Closing Letter from ICRC verifying that the note referred to in “(c)” paragraph above was, in fact, distributed to each of the tenants in the six units, including the unit numbers of the six units where the note was sent.
- (g) Respondents agree to distribute the note referred to in “(c)” paragraph above to each new tenant at the time a lease or sub-lease agreement is signed for the six units with mailboxes higher than 54 inches.
- (h) Respondents agree they will install removable unit labels on all mailboxes to facilitate the modification described in “(c)” paragraph above.

Usable Doors – Clear Opening Width for Secondary Doorway

- (a) The parties agree the clear opening width of the sliding glass doorway in the living room of every inspected unit measures approximately 30 inches with a 2 1/2-inch bumper installed on the vertical side of the doorway and a curved door handle, which is narrower than the minimum allowed width of 31 5/8 inches, as required by the FHADM.
- (b) Respondents agree they will replace (i) the curved door handle of every sliding glass door with a slimmer one measuring 1 7/8 inches; and (ii) the 2 1/2-inch sliding glass door bumper, with one that measures 1 inch for every unit at Sierra Pointe to increase the door-opening width to no less than 31 5/8 inches in most of the units, and no less than 31 4/8 inches in the other units – a deficiency that is not determined by the ICRC to have a discernible impact on the usability of these doorways.

Usable Doors – Threshold for Sliding Glass Doorways

- (a) The parties agree the interior threshold height onto the finished floor surface at the sliding glass doorways of all units exceeds 1/4 inch, which is the maximum height allowed for interior thresholds by the FHADM and ANSI 2003.
- (b) Respondents agree they will install a “1 1/4” EZ Edge Wheelchair Shower Ramp³¹ with a running slope of no greater than 8.33% at the interior side of the threshold to the sliding glass doorway from the living room to the porch in all units at Sierra Pointe, as required by FHADM and ANSI 2003.

³¹ See Appendix C, pages 8-11.

- (c) Respondents agree to allow tenants who do not desire to keep the ramp installed in their unit as required in “(b)” paragraph above, to have management remove the ramp from the unit.

However, Respondents agree to reinstall the ramp upon a tenant’s request, as described in “(b)” paragraph above, if necessary to accommodate the onset of mobility-impairment health condition for that tenant.

- (d) At units where the ramp has been removed because of a tenant’s request, Respondents agree to reinstall the ramp as required in “(b)” paragraph above before the unit is rented again.

Usable bathrooms – Clear Floor Space at Bathtubs and Toilets

- (a) The parties agree the distance from the midline of the toilet to the grab-bar sidewall in Units 232 [Ashworth], 241 [Westown], and 347 [Bradford] measures 16 inches, which is less than the required minimum of 18 inches, as established in the FHADM and ANSI 2003.

Except for Unit 450 [Woodland] and Unit 248 [Vista “ADA” Unit], the parties agree all inspected units have less than the required 30 by 48-inch clear floor space adjacent to the bathtub, as required by FHADM and ANSI 2003.

- (b) Respondents agree they will correct the deficiencies noted in paragraph “(a)” above by performing the following retrofits in the single bathrooms for Ashworth, Bradford, Jordan, and the non-“ADA” Vista units, as well as the Guest bathroom for the non-“ADA” Westown Units:
 - i. Move the wall opposite to the bathtub into the adjoining walk-in closet, and
 - ii. Rotate the toilet by 90 degrees, such that the rear of the water tank of the toilet is flush with the moved wall.

Respondents agree these retrofits will (i) be completed in a manner consistent with pages 3, 4, 5, and 6 of Appendix C that is part of the current agreement; and (ii) create a 30 by 60-inch clear floor space between the toilet and the bathtub in the retrofitted bathrooms, which exceeds the minimum 30 by 48-inch clear floor space required by the FHADM and ANSI 2003.

- (c) No corrective action is required in the Woodland units.

Required Timelines for Completion of Modifications or Retrofits

- 16. Respondents agree that the above-required modifications or retrofits to the public and common use areas of the subject property – curb ramps and landings, accessible parking signage, animal waste station, and mailboxes – within 90 days from the date of the Closing Letter from ICRC.

17. Respondents agree to make the above-required modifications or retrofits to each of the units as each of the units becomes vacant. Respondents agree to make the required modifications or retrofits before each of the units is occupied again.

Mandatory Reporting Requirements

18. Respondents agree to notify ICRC when they have completed the required modifications or retrofits for all of the units and the public and common use areas. Such notification shall be made within 90 days of completion. These required notifications to ICRC will continue until all required modifications or retrofits have been completed in all 127 units.
19. Respondents agree, as the required modifications or retrofits are made to a particular unit, ICRC may then inspect such unit, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within five days of the inspection, to Respondents. In lieu of such repeated inspections, Respondents may send photographs to the ICRC of each required modification or retrofit.

If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by ICRC, and shall pay a reasonable fee for another inspection by ICRC staff or pay for an inspection by a third party inspector, approved by ICRC.

20. The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless 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 modifications or retrofits as specified in this Agreement.
21. Within 90 days from the date of the Closing Letter from ICRC, Respondents agree to provide a written statement to ICRC, to the attention of Don Grove, Supervisor of Housing Investigations, which specifies how each of the above-required modifications or retrofits will be corrected.

[Please go to next page for the signature page]

Development Services Corporation
RESPONDENT

Date

Sierra Pointe, LLC
RESPONDENT

Date

Construction Services, Inc.
RESPONDENT

Date

Invision Architecture, Ltd.
RESPONDENT

Date

Angela Jackson
COMPLAINANT

Date

Kristin H. Johnson, Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date