

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS**

The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of Complainant)	
Assistant Secretary for Fair Housing and Equal)	
Opportunity,)	
)	
Charging Party,)	
)	
v.)	HUDOHA No.:
)	FHEO No.: 02-15-0245-8
)	
Toll Brothers, Inc.; Toll Brothers, Inc. d/b/a Toll)	
Brothers City Living; Toll Land XIII Limited)	
Partner; Lendlease (US) Construction LMB, Inc.)	
f/k/a Bovis Lend Lease LMB, Inc.; Greenberg)	
Farrow Architecture, Inc.; 51 North 8 th Street L.P.;)	
and North8 Condominium Association, Inc.,)	
)	
Respondents.)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On February 18, 2015, the Assistant Secretary for Fair Housing and Equal Opportunity (“Assistant Secretary”) for the United States Department of Housing and Urban Development (“HUD”) filed a timely complaint alleging that Respondents Toll Brothers, Inc. and Greenberg Farrow discriminated because of disability by failing to design and construct accessible multifamily housing, in violation of the Fair Housing Act (“Act”).¹ On January 13, 2017, the complaint was amended to correct the name of Greenberg Farrow Architecture, Inc., and to add Toll Land XIII Limited Partner, 51 North 8th Street, L.P., North8 Condominium Association, Inc., and Lendlease (US) Construction LMB, Inc. f/k/a Bovis Lend Lease LMB, Inc. as respondents.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. § 3610(g)(1), (2). The Secretary has delegated that authority to

¹ The term “disability” is used herein in place of, and has the same meaning as, the term “handicap” in the Act and its implementing regulations.

the General Counsel, 24 C.F.R. §§ 103.400, 103.405, who has re-delegated that authority to the Associate General Counsel for Fair Housing and the Assistant General Counsel for Fair Housing Enforcement. 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

By a Determination of Reasonable Cause issued contemporaneously with this Charge of Discrimination, the Director of the Office of Systemic Investigations, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge. *See* 42 U.S.C. § 3610(g)(2); 76 Fed. Reg. 73,990 (Nov. 29, 2011).

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on the Department's investigation of the allegations contained in the aforementioned complaint and Determination of Reasonable Cause, Respondents are charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to a person because of a disability of that buyer or renter, a person residing in or intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of facilities in connection with such a dwelling because of a disability of that person, a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
3. Unlawful discrimination under subsections 804(f)(1) and (f)(2) of the Act includes a failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in such a manner that:
 - a. the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;
 - b. all doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and
 - c. all premises within such dwellings contain the following features of adaptive design: (i) an accessible route into and through the dwelling; (ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (iii) reinforcements in bathroom walls to allow later installment of grab bars; and (iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

42 U.S.C. § 3604(f)(3)(C); 24 C.F.R. § 100.205.

4. As used in subsection 804(f)(3)(C) of the Act, “covered multifamily dwellings” includes all dwelling units in buildings consisting of four or more units if such buildings have one or more elevators. 42 U.S.C. § 3604(f)(7); 24 C.F.R. §100.201.
5. The Fair Housing Accessibility Guidelines (“Guidelines”) “provide technical assistance...to implement the requirements” of the Act’s design and construction provision. 59 Fed. Reg. 9499 – 9515 (Mar. 6, 1991); see also 59 Fed. Reg. 33362 – 33368 (June 28, 1994) (supplement to the Guidelines). The Guidelines are a safe harbor for compliance with the Act’s design and construction requirements. 24 C.F.R. § 100.205(e)(2)(i). The Guidelines incorporate by reference many of the standards set forth in the 1986 edition of the American National Standard for building and facilities providing accessibility and usability for persons with disabilities (“ANSI A117.1-1986”).

B. Parties and Subject Property

6. Complainant Assistant Secretary is authorized to file a complaint of discrimination under the Act on behalf of the Secretary of HUD. 42 U.S.C. § 3610(a); 24 C.F.R. § 103.204(a).
7. The subject property, North 8 Condominium, is located at 49 North 8th Street, Brooklyn, New York, and is a six story 40-unit condominium building. There are thirteen one-bedroom units, twenty-three two-bedroom units, and four three-bedroom units at the subject property. Six of the two-bedroom units are townhouses with direct access from the street. The subject property has a parking garage, lobby, gym, courtyard, and other public and common use areas, including mailboxes and a refuse closet. The units are covered multifamily dwellings, as defined by the Act. 42 U.S.C. § 3604(f)(7); 24 C.F.R. § 100.201.
8. Respondent Toll Brothers, Inc. (“Toll Brothers”) is incorporated in New York and constructs luxury residential housing. Respondent Toll Brothers also does business as Toll Brothers City Living, a division of and brand name for Respondent Toll Brothers that focuses on the development of housing in urban areas. Respondent Toll Brothers developed the subject property, hired the architects and contractors that designed and constructed the subject property, and made and approved decisions concerning the final design, construction, development, and sale of the subject property.
9. Respondent Toll Land XIII Limited Partner (“Toll Land XIII”) is a limited partnership formed in the state of New York. Respondent Toll Land XIII was the landowner and title holder of the subject property from 2004 through the completion of the construction in 2011.
10. Respondent Greenberg Farrow Architecture, Inc. (“Greenberg”) is incorporated in the state of Georgia and provides architecture, planning, engineering, and development services related to the development of residential housing. Respondent Greenberg

was the architecture firm that designed the site, the public and common use areas, and the units of the subject property. Respondent Greenberg coordinated with Respondents 51 North and Lendlease LMB throughout the design and construction of the subject property.

11. Respondent Lendlease (US) Construction LMB, Inc., f/k/a Bovis Lend Lease LMB, Inc. (“Lendlease LMB”) is incorporated in New York and provides construction management services. Respondent Lendlease LMB was the construction manager for the subject property. Its responsibilities included supervising and coordinating the design and construction teams and monitoring the construction to ensure compliance with the design documents for the subject property.
12. Respondent 51 N. 8th Street, L.P. (“51 North”) is a limited partnership formed in the state of New York and is an indirect wholly owned subsidiary of Respondent Toll Brothers. Respondent 51 North developed the subject property. It is the entity that was listed on the offering plan and had ownership of the condominium units until they were sold. It also controlled the Condominium Association until July 2008.
13. Respondent Board of Managers of North8 Condominium Association, Inc. (“Condominium Association”) is the condominium association for the subject property and is a necessary party for relief because it has control over the common areas of the subject property.

C. Factual Allegations

14. Construction on the subject property began in 2006, with a final certificate of occupancy issued in 2011.
15. On or about June 7, 2017, and April 14, 2019, HUD conducted site visits at the subject property. HUD inspected a sampling of unit interiors, as well as the common areas of the subject property.
16. Pursuant to its investigation, HUD found that the subject property failed to meet the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).
17. The subject property’s public use and common use portions are not readily accessible to and usable by persons with disabilities, as required by 42 U.S.C. § 3604(f)(3)(C)(i). For example:
 - a. The subject property lacks an accessible entrance on an accessible route, as required by 42 U.S.C. § 3604(f)(3)(C)(i); 24 C.F.R. § 100.205(a). The entry door to the building is not accessible because it has a 15.3% slope, exceeding the permissible slope for an accessible entrance. *See* Guidelines Req. 1 ¶ 5; ANSI A117.1-1986 § 4.3.
 - b. The front entry is not accessible because it lacks sufficient space for a wheelchair user to maneuver between the two doors. There is only 31

inches of maneuvering clearance depth between the interior vestibule door and the sliding door, less than the required 54-inch minimum maneuvering clearance depth specified by Guidelines Req. 2 ¶ 1; ANSI A117.1-1986 § 4.3.9; ANSI A117.1-1986 § 4.13.

- c. The townhouses lack an accessible entrance on an accessible route, as required by 42 U.S.C. § 3604(f)(3)(C)(i); 24 C.F.R. § 100.205(a). Some entrances have a three to five-inch change in level greater than the allowable ½ inch change in level specified by ANSI A117.1-1986 § 4.3.8. 24 C.F.R. § 100.205(a); *See* Guidelines Req. 1 ¶ 4.
- d. The intercom at the front entrance to the building is not accessible because it lacks clear floor space necessary for a person using a wheelchair to access the intercom. In addition, the space has a cross slope of 15.3%, which is greater than the allowable 2% cross slope. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.25.2.
- e. The intercom is also inaccessible because the highest operable part of the intercom is too high at 57 inches, greater than the maximum allowable reach height of 54 inches for a parallel approach by a wheelchair user. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.25.3.
- f. The lobby desk is inaccessible to individuals using a wheelchair because it is 50 ¼ inches, exceeding the maximum allowable work surface height of 34 inches. *See* Guidelines Req. 2 ¶ 12; ANSI A117.1-1986 § 4.30.4.
- g. Some mailboxes serving covered dwelling units are not accessible because they are mounted 59 ½ inches, higher than the maximum allowable reach height of 54 inches for a parallel approach by a wheelchair user. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 §§ 4.2.5, 4.2.6.
- h. In the common use restroom, the toilet is inaccessible because it is located in a space that is too narrow. The toilet is located between the side wall and the sink in a space that is only 33 inches wide, which is narrower than the required 36 inches width. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.16.2. In addition, the flush controls on the toilet are not accessible because they are not mounted on the open side of the toilet, as required. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.16.5.
- i. The mirror in a common area restroom is not accessible because it is mounted too high, with the bottom edge of the reflecting surface at 45 ½ inches, higher than the maximum allowable height of 40 inches. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.19.6.
- j. The door to the common area gym is not accessible because it closes too quickly and poses a safety hazard. The door takes less than three seconds to close from an open position of 90 degrees to an open position of 12 degrees,

which is less than the required minimum of three seconds. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.13.10.

- k. The exercise equipment in the common use gym is not accessible because there is not clear floor space measuring 30-inch by 48-inch adjacent to each piece of equipment, as needed for a wheelchair user to access the equipment. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.2.4.1.
- l. The gym's exit door is not accessible because it is located behind a piece of exercise equipment such that a wheelchair user cannot access the mechanism to disengage the lock. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.25.2.
- m. The garage has no accessible parking spaces. *See* Guidelines Req. 2 ¶ 4; ANSI A117.1-1986 § 4.6.
- n. The garage lacks an accessible route because a bar hangs from the ceiling at a height of 73 inches above the floor, lower than the minimum vertical clearance permitted of 80 inches. *See* Guidelines Req. 2 ¶ 2; ANSI A117.1-1986 § 4.4.2. Moreover, a fire-extinguisher and HVAC units protrude more than the allowable four inches into the circulation path, posing safety hazards for individuals who are blind or have low vision. *See* Guidelines Req. 2 ¶ 2; ANSI A117.1-1986 § 4.4.1.
- o. The door from the garage to the building is not accessible because it lacks the required 18-inch by 60-inch minimum maneuvering space on the pull side of the door necessary to allow a wheelchair user to open the door. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.13.6.
- p. The refuse room is not accessible because there is a threshold of 2 1/8 inches at the door, which is greater than the allowable half-inch beveled threshold. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.13.8. In addition, the refuse room has only a 51-inch turning radius, which is less than the 60-inch diameter required for a wheelchair user to maneuver in the space. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.2.3.
- q. The courtyard is not accessible for several reasons. The threshold at the entry door to the courtyard is 2 3/4 inches high, higher than the maximum allowable half-inch beveled threshold. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.13.8. In addition, the door is only 29 inches wide, which is narrower than the required minimum clear width of 32 inches. *See* Guidelines Req. 2 ¶ 14; ANSI A117.1-1986 § 4.13.5. There is also a gap between the door's threshold and the courtyard deck, which is greater than the maximum allowable gap of a half-inch. *See* Guidelines Req. 2 ¶ 1; ANSI A117.1-1986 § 4.3.8.

18. The subject property lacks doors that are sufficiently wide to allow passage into and within all dwellings by persons with disabilities using wheelchairs, as required by 42 U.S.C. § 3604(f)(3)(C)(ii); 24 C.F.R. § 100.205(c)(2). Public and common use doors and primary entry doors to dwelling units must have a clear width of 32 inches. *See* Guidelines Req. 3 ¶ 1, ANSI A117.1-1986 § 4.13.5. Doors within dwelling units must have at least 32 inches nominal width (or 31 5/8") when the door is open ninety degrees. *See* Guidelines Req. 3 ¶ 2. The following doors are not accessible:

- a. Hallway fire doors with a clear width opening of only 24 inches.
- b. Master bathroom doors with a clear width opening of only 29 inches.
- c. Hall bathroom doors with clear width opening of only 29 inches.
- d. Patio doors with a clear width opening of only 30 ½ inches.
- e. Walk-in closet doors with a clear width opening of less than 31 5/8 inches.
- f. Walk-in linen closet doors with a clear width opening of less than 31 5/8 inches.

19. The subject property lacks accessible routes into and through the covered dwelling units, in violation of 42 U.S.C. § 3604(f)(3)(C)(iii)(I); 24 C.F.R. § 100.205(c)(3)(i). For example:

- a. At some units, the primary entrance has a change in level between the interior and exterior floors that is greater than the maximum allowable ½ inch difference in height. *See* Guidelines Req. 4 ¶ 6.
- b. In some units, thresholds at the patio doors are two inches high, greater than the allowed beveled ¾ inch. *See* Guideline Req. 4 ¶ 4.
- c. In some units, the master bathrooms are not accessible because there are thresholds greater than ½ inch at the bathroom doors. *See* Guidelines Req. 4 ¶ 2.
- d. Some units lack accessible routes into the kitchen because the entry area, which is more than 24 inches deep, is only 30 inches wide, less than the required 36-inch width for any portion of an accessible route that is not a door. *See* Guidelines Req. 4 ¶ 1.

20. The dwelling units in the subject property lack accessible light switches, electrical outlets, thermostats, and other environmental controls, in violation of 42 U.S.C. § 3604(f)(3)(C)(iii)(II); 24 C.F.R. § 100.205(c)(3)(ii). *See* Guidelines Req. 5. For example:

- a. The operable portions of electrical outlets are located at 13 ½ inches above the floor, below the minimum 15 inches allowed.
- b. The operable portions of some electrical outlets in the bathrooms that are located over an obstruction are located at 52 ½ inches, higher than the 46-inch reach allowed for a side approach.
- c. The operable portions of some electrical outlets in the kitchen are located over an obstruction and in a corner, out of reach for a person using a wheelchair.

21. Kitchens in the dwelling units at the subject property are not accessible, in violation of 42 U.S.C. § 3604(f)(3)(C)(iii)(IV); 24 C.F.R. § 100.205(c)(3)(iv); *See* Guidelines Req. 7 ¶ 1. For example:
- a. Some units have “U-shaped” kitchens that have only a 58 ¼ inch turning radius, less than the 60-inch turning radius necessary to allow a parallel approach to the appliance at the base of the “U.” *See* Guidelines Req. 7 ¶ 1(c).
 - b. Some units have galley kitchens with only a 38-inch clearance between the face of an appliance and the opposing countertop, less than the required 40-inch clearance necessary to maneuver in the space. *See* Guidelines Req. 7 ¶ 1(b).
 - c. Some units have kitchens that lack the required 30-inch by 48-inch clear floor space for a forward or parallel approach at the refrigerator. *See* Guidelines Req. 7 ¶ 1(a).
22. Bathrooms in the dwelling units at the subject property are not accessible, in violation of 42 U.S.C. § 3604(f)(3)(C)(iii)(IV); 24 C.F.R. § 100.205(c)(3)(iv); *See* Guidelines Req. 7 ¶ 2. For example:
- a. Some units have bathrooms that have less than the required 30-inch by 48-inch clear floor space for a parallel approach to the sink, and the sinks lack removable cabinets to allow for a forward approach. *See* Guidelines Req. 7 ¶ 2(a)(ii).
 - b. In some unit bathrooms, the toilet is located in a space between a wall and the sink that is only 32 ¼ inches wide, narrower than the minimum 33-inch width necessary to access the toilet. *See* Guidelines Req. 7 ¶ 2(a)(ii).
 - c. In some unit bathrooms, the centerline of the toilet is 16 ½ inches from the side wall, less than the minimum permissible 18 inches from the side wall. *See* Guidelines Req. 7 ¶ 2(a)(ii).
 - d. Some unit bathrooms do not have clear floor space at the shower. *See* Guidelines Req. 7 ¶ 2(a)(ii).
23. In designing and constructing the subject property, Respondents failed to comply with the Act, the Guidelines or any other safe harbor specified at 24 C.F.R. § 100.205(e).
24. Respondents’ discriminatory conduct caused actual damages to residents or potential residents of the subject property who were denied accessible housing.

D. Legal Allegations

25. As described above, Respondents discriminated in the sale or rental of, or otherwise made unavailable or denied, dwellings to persons with disabilities and others by failing to design and construct the subject property in accordance with subsection 804(f)(3) of the Act, in violation of subsection 804(f)(1) of the Act. 42 U.S.C. § 3604(f)(1) and (f)(3); 24 C.F.R. § 100.202(a).

26. As described above, Respondents discriminated in the terms, conditions, or privileges of sale or rental of dwellings, or in the provision of services or facilities in connection with such dwellings because of disability by failing to design and construct the subject property in accordance with subsection 804(f)(3) of the Act, in violation of subsection 804(f)(2) of the Act. 42 U.S.C. § 3604(f)(2) and (f)(3); 24 C.F.R. § 100.202(b).

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to section 810(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of subsections 804(f)(1), (f)(2) and (f)(3)(C) and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate subsections 804(f)(1), (f)(2) and (f)(3)(C) of the Act, 42 U.S.C. §§ 3604(f)(1)-(3);
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of disability against any person in the sale or rental of a dwelling;
3. Directs Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, to bring the covered dwelling units and public use and common use areas of the subject property into compliance with 42 U.S.C. § 3604(f)(3)(C), including providing reasonable compensation to the owners and tenants of the subject property for inconvenience caused by, and other expenses related to, such retrofitting;
4. Awards such actual damages as will fully compensate any individuals who resided or sought to reside at the subject property for any and all injuries caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);
5. Assesses the maximum civil penalty against each Respondent for each discriminatory housing practice, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1); and
6. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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