

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PLAINTIFF,

NEW YORK COMMUNITIES FOR CHANGE, INC.,

INTERVENOR-PLAINTIFF,

-against-

DEFENDANTS.

This settlement agreement (“Settlement Agreement” or “Agreement”), subject to approval by the Nassau County Legislature, as set forth herein, and effective as of the date of approval by the Nassau County Legislature (the “Effective Date”), is made and entered into by and between the County of Nassau, a municipal corporation located at 1550 Franklin Avenue, Mineola, New York (the “County”); MHANY Management, Inc. (“MHANY”); New York Communities for Change, Inc. (“NYCC”), both not-for-profit corporations, located in New York City and in the case of NYCC with offices in Hempstead, New York (MHANY, NYCC and the County are each referred to as a “Party”, and collectively, the “Parties”).

WHEREAS, the goal of this Settlement Agreement is to resolve the above-captioned matter, and to promote fair and affordable housing throughout the County of Nassau (the “County”) by creating mixed-income affordable housing in “high opportunity” communities within the County, which will in turn promote sustainable integrated living patterns, increase fair and equal access to educational, economic and other opportunities, and advance the welfare of all residents of the County and the communities within it;

(“FHA”), 42 U.S.C. § 3601 *et seq.*, as well as 42 U.S.C. § 1981, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (the “Action”);

WHEREAS, on June 15, 2010, the district court granted NYCC permission to intervene in the Action as practical successor to ACORN;

WHEREAS, by Memorandum and Order dated February 15, 2012, the United States District Court for the Eastern District of New York (Spatt, J.) granted the County’s motion for summary judgment and dismissed all claims against the County in the Action;

WHEREAS, following an 11-day bench trial before the Honorable Arthur D. Spatt, in June 2013, the District Court issued a Memorandum of Decision and Order, dated December 6, 2013, finding that the Garden City Defendants acted with discriminatory intent in rezoning approximately twenty-five acres of County-owned land located in Garden City and that the Garden City Defendants were liable under (1) the FHA, based on theories of both disparate treatment and disparate impact; (2) 42 U.S.C. § 1981; (3) 42 U.S.C. § 1983; and (4) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and thereafter entered final judgment against Garden City and dismissed the claims against the County;

WHEREAS, the Garden City Defendants appealed the district court’s final judgment to the United States Court of Appeals for the Second Circuit (Docket No. 14-1634(L)), and MHANY and NYCC cross-appealed the dismissal of the County (Docket Nos. 14-1634-cv(L), 14-1729-cv(XAP));

WHEREAS, by Decision dated March 23, 2016, the United States Court of Appeals for the Second Circuit (1) affirmed the District Court’s judgment dismissing Plaintiffs’ claims against Nassau County in connection with its actions relating to the Village of Garden City’s illegal zoning decision; but (2) remanded the case to the District Court to address Plaintiffs’ claims under Section 804(a) of the FHA and under Title VI alleging that Nassau County had steered affordable housing to majority-minority areas, thus perpetuating racial segregation in the County;

WHEREAS, while the County denies each and every claim brought against it, the County recognizes that there is a growing need for mixed-income affordable housing opportunities in Nassau County and, particularly, in “high-opportunity” communities;

WHEREAS, the Parties believe that fostering and enhancing the development of mixed-income affordable housing in high-opportunity areas in the County will promote sustainable integrated living patterns, increase fair and equal access to educational, economic and other opportunities, and advance the welfare of all residents of the County and the communities within it;

WHEREAS, while this Settlement Agreement is neither an admission by the County of any liability or wrongful conduct, nor a concession by Plaintiffs that their claims are not well-founded and likely to succeed, the Parties recognize that settling the Action avoids delays and the expenses of trial and results more quickly in the development of mixed-income affordable housing in high-opportunity communities in Nassau County;

NOW, THEREFORE, for and in consideration of the following releases, promises and terms, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

I. SETTLEMENT PAYMENT

Within forty-five (45) days of the Effective Date, the County of Nassau shall, in full satisfaction of any and all claims that have been or could have been asserted in the within action, inclusive of any and all claims for costs and attorneys' fees arising from or related to the within Action:

- a. Deliver to MHANY MANAGEMENT INC., through electronic funds transfer, payment in the amount of **FIVE-MILLION FOUR-HUNDRED THOUSAND DOLLARS (\$5,400,000.00)** in full satisfaction of any and all claims asserted in the within action, which shall be used for the purpose of developing, rehabilitating, constructing, and otherwise furthering and promoting mixed-income affordable housing within the Counties of Nassau and Suffolk, including acquiring property to accomplish that goal.
- b. Deliver to NEW YORK COMMUNITIES FOR CHANGE, INC., through electronic funds transfer, payment in the amount of **ONE-HUNDRED TWENTY-THOUSAND DOLLARS (\$120,000.00)** to be used for activities, including but not limited to education, outreach and advocacy, related to fair and affordable housing and addressing residential segregation in Nassau and Suffolk Counties;
- c. Deliver to Plaintiffs' counsel the Lawyers' Committee for Civil Rights Under Law, the Law Offices of Frederick K. Brewington and Hogan Lovells US LLP, through electronic funds transfers to be arranged between Plaintiffs' counsel and the County, payment in the amount of **FOUR-HUNDRED THOUSAND DOLLARS (\$400,000.00)**, as and for attorneys' fees in the above-captioned action.

II. FURTHER EFFORTS TO FACILITATE FAIR AND AFFORDABLE HOUSING.

1. Housing Development and Developer Outreach Plan.

- a) Within eighteen months of the Effective Date, the County will prepare or cause to be prepared a written plan or report that includes consideration of: (1) land or locations within the County - whether owned by the County or private parties - that may be suitable and available for development of Mixed-Income Housing (as defined in Section II.3 below) and/or may be appropriate for further consideration with respect thereto; (2) non-profit and for-profit developers who may be interested in creating Mixed-Income Housing; and (3) such other matters as the County may deem appropriate (the "Development and Outreach Plan").

- b) The goal of the Development and Outreach Plan is to promote fairness and equity in housing and effectively address the issue of segregated housing in the County by promoting sustainable integrated living patterns, increasing fair and equal access to educational, economic and other opportunities, and advancing the welfare of all residents of the County and the communities within it (the “Goal”).
- c) In preparing the Development and Outreach Plan, the County will, among other things:
 - (1) Reasonably identify and assess the availability of property (County-owned and non-County-owned) suitable for development of Mixed-Income Housing, including single sites and scattered sites, and vacant land and adaptive reuse opportunities in High Opportunity Communities (as defined in section II.3.a below).
 - (2) Conduct meetings with developers (for-profit and non-profit) and property owners to determine their interest in furthering developments that will promote fair housing and integration in the County, and to explore concrete ways in which developers could secure funding for Mixed-Income Housing through federal, state and local sources.
 - (3) Conduct meetings with key local officials in High Opportunity Communities in the County to explore potential development opportunities.
 - (4) Conduct meetings with the New York State Division of Housing and Community Renewal and the New York State Housing Finance Agency to explore opportunities for targeted state financing for Mixed-Income Housing, as well as other forms of state assistance.
- d) The Development and Outreach Plan shall include, among other things:
 - (1) Descriptions of how, by whom and where Mixed-Income Housing could be developed, based on the preparatory activities set out above.
 - (2) Descriptions of the outreach activities the County will undertake, and mechanisms the County will employ, to (1) encourage municipalities to develop Mixed-Income Housing within their jurisdictions; and (2) inform developers of potential opportunities to develop Mixed-Income Housing, including through the County’s website.

- (3) Descriptions of other activities, practices and policies the County will adopt in order to foster fair and integrated housing through the County.
- (4) A model inclusionary zoning ordinance (“Model Ordinance”):
 - (a) To facilitate the development of Mixed-Income Housing with affordable units, the County will promote the Model Ordinance to all communities in Nassau County.
 - (b) The Model Ordinance will, at a minimum, contain the characteristics identified in **Exhibit 1**.
- e) The Development and Outreach Plan shall be presented to MHANY and NYCC (as well as any other non-profit or other entities the County deems appropriate) for comment prior to being made public.

2. Request For Proposals for Sale of County Owned Land.

- a) The County will in good faith encourage, where reasonable and appropriate, Mixed Income Housing development in connection with the future sale of County-owned land.
- b) Within three years of the Effective Date, the County will issue one or more Requests for Proposals seeking developers who will, with the County’s support and assistance, purchase or lease land from the County, including single sites and scattered sites, on which to develop Mixed-Income Housing.

3. Efforts to Promote Affordable Housing. The County will encourage the construction or development of mixed income multi-family rental housing by third parties that includes affordable housing units (“Mixed-Income Housing”) in “High Opportunity Communities” in the County.

- a) “High Opportunity Communities” refers to communities in Nassau County, including but not limited to communities in the Nassau County Urban Consortium, with the following characteristics (1) very low poverty rates; (2) very low unemployment rates; (3) high levels of completed college among adults; (4) low African American and Latino population; (5) high performing public schools; (6) low crime rates; and (7) access to public transportation and employment.
- b) Mixed-Income Housing that the County will encourage as set forth herein will ideally include, but not be limited to, the following

characteristics (“Ideal Characteristics”): (1) rental housing; (2) a substantive and meaningful distribution of affordability levels/income bands with a minimum of at least three income bands per multi-family development, between up to 20% of AMI and 100% of AMI; (3) is available for occupancy by households with children and does not include age restrictions; (4) includes a significant number of two or three bedroom units; (5) does not utilize community residency requirements or preferences; (6) is rented by use of a lottery system, and not offered on a first-come, first-served basis; (7) is marketed by an affirmative marketing plan which complies with 24 CFR Section 92.351; (8) is fully available to households possessing a Section 8 Rental Assistance Voucher or other rental subsidies; and (9) for scatter-site housing or single family projects, be affordable for households earning sixty (60%) percent or less of AMI.

- c) The Ideal Characteristics as set forth above are a goal of the County but shall in no way limit or impede the County’s ability and discretion to encourage or promote affordable housing that deviates from or does not conform to said Ideal Characteristics, or other housing projects.

III. ACTIONS WITH RESPECT TO HOME AND CDBG FUNDS.

1. For a period of at least three (3) years, the County, via the Office of Housing and Community Development or such other similar agency as the County shall determine, shall set aside, under the terms and conditions set forth herein, no less than 1/4 of its annual allocation of Home Investment Partnership Program (“HOME”) funds (the “HOME Set-Aside”) for the purpose of assisting in the construction or development of family occupancy affordable, Mixed-Income rental Housing in High Opportunity Communities as defined above and/or those high-opportunity areas identified in the County’s most recent Analysis of Impediments to Fair Housing Choices (“AI”) as well as census tracts in villages within the County that are not members of the Nassau County Urban Consortium (the “Consortium”) but that would qualify as High-Opportunity Communities if included in the AI. The HOME Set-Aside shall be reserved for use consistent with that purpose and not used for any other purpose for a period of at least eighteen (18) months from each annual allocation. After said eighteen (18) month period there shall be no additional restrictions on the use of such funds and they may be used for any purpose consistent with the HOME Investment Partnership Program or as otherwise permissible.
2. The County will encourage developers to make use of the HOME Set-Aside by issuing a Request for Proposals, or comparable public notice, seeking HOME funding applications for Mixed-Income Housing in High Opportunity Communities.

3. To the extent permissible by law, Consortium members who enact an inclusionary zoning ordinance according to the specifications of the Model Ordinance shall receive first preference for CDBG funds, except that Consortium member jurisdictions that have enacted a conforming inclusionary zoning ordinance shall not receive such preference where the jurisdiction's application is not related to affordable housing and is competing against an application from another Consortium member-jurisdiction that is seeking affordable housing-related funding.

IV. FAIR HOUSING EDUCATION PLAN.

1. Within 120 days of the Effective Date, the County will begin a campaign of advertising designed to (1) inform the general public and real estate professionals that the County is an open and inclusive community that supports the goals of fair housing; and (2) educate the general public and real estate professionals about fair housing laws.
2. These advertisements shall include, at a minimum: (1) a quarter-page non-legal notice advertisement in Newsday to run on at least six occasions, three of which must be in a weekend edition; and (2) one or more public service announcements on Long Island Railroad cars and/or stations.

V. GENERAL NON-DISCRIMINATION

1. In accordance with the laws of the United States, the County agrees that it will not:
 - a) deny or otherwise make unavailable a dwelling because of race or color;
 - b) discriminate in the terms, conditions or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race or color;
 - c) coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right protected by the Fair Housing Act;
 - d) interfere with the funding, development or construction of any affordable housing because of race or color; or
 - e) discriminate on the basis of race or color with respect to any zoning matters relating to residential property within the County's control.

VI. TERMS OF DISCONTINUANCE AND JURISDICTION OVER ENFORCEMENT

1. The parties agree to execute a stipulation discontinuing the action with prejudice, except without prejudice to the Court's retention of jurisdiction for the purpose of interpreting and enforcing the terms of the Settlement Agreement and adjudicating any alleged breaches.
2. Contemporaneous with the execution of this Agreement, the Parties shall execute a Stipulation of Discontinuance reflecting the above terms, in the form set out in Exhibit 2. This Settlement Agreement will be attached as an exhibit to the Stipulation of Discontinuance.
3. The parties will submit the Stipulation of Discontinuance to the Court within fourteen (14) days of the Effective Date, and will jointly request that the Court so-order the Stipulation of Discontinuance and agree to retain jurisdiction for the limited purpose set out above.
4. No Party shall commence any proceeding against the other to enforce this Agreement without first providing at least thirty (30) days written notice of the alleged breach, which shall set forth a summary of the alleged breach and a proposed remedy.
5. The parties agree to work cooperatively with one another and in good faith and agree to use their best efforts, within reason, to effectuate the purposes of the Settlement Agreement and to resolve informally any differences regarding interpretation of and compliance with the Settlement Agreement prior to bringing such matters to the Court for resolution.

VII. RELEASES AND NO ADMISSIONS

1. For good and valuable consideration, the receipt of which is hereby acknowledged, MHANY and NYCC, with the full understanding of the contents and legal effect of this release and having the right and opportunity to consult with their own counsel, hereby irrevocably and unconditionally waive, release and discharge the County, and its directors, officers, officials, attorneys, agents, and employees, from any and all claims, causes of action, grievances, suits, charges, or complaints or liabilities of any kind or nature whatsoever, that each of them ever had or now has, whether fixed or contingent, liquidated or unliquidated, known or unknown, and whether arising in tort, contract, statute, equity, or otherwise, before any federal, state, local, or private court, agency, arbitrator, mediator, or other entity, regardless of the relief or remedy, arising out of or in connection with the underlying facts and circumstances that were asserted or could have been asserted in the Action. Notwithstanding the above, this release does not include any of the obligations of the County under the terms of this Settlement Agreement.
2. This Settlement Agreement is made for the purpose of avoiding litigation, and nothing contained herein shall be deemed to be an admission of liability, or any violation of any applicable rule, law, statute, regulation, order, understanding,

agreement, or contract of any kind. Neither this Settlement Agreement, nor any of its terms, nor any of the negotiations or proceedings connected with it shall be offered as evidence or received in evidence in any pending or future action or proceeding of any type whatsoever.

VIII. MISCELLANEOUS PROVISIONS

1. This Settlement Agreement sets forth the entire agreement and understanding among the Parties, and fully supersedes any and all prior agreements or understandings among the Parties pertaining to the subject matter hereof, which shall be null and void.
2. This Settlement Agreement may not be supplemented, modified, canceled, or waived or otherwise altered in any way, in whole or in part, except in a written agreement signed by all Parties.
3. Each Party and signatory to this Settlement Agreement represents that it freely and voluntarily enters in to this Settlement Agreement without any degree of duress or compulsion.
4. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same instrument. Copied or scanned signatures shall constitute acceptable, binding signatures.
5. The titles or captions of the paragraphs or sections contained in this Settlement Agreement are inserted only as a matter of convenience and for reference, and in no way define, extend, or describe the scope of this Settlement Agreement or the intent or meaning of any provision hereof.
6. Any and all notices under this Settlement Agreement shall be in writing and sent to the attorneys for Plaintiffs: (i) Hogan Lovells US LLP; (ii) the Lawyers' Committee for Civil Rights Under Law; and (iii) the Law Offices of Fredrick K. Brewington; and the attorneys for Defendant: (i) the Office of the Nassau County Attorney; and (ii) Quatela Chimeri, PLLC.

IX. AUTHORITY OF PARTIES AND NECESSARY APPROVALS

1. The parties expressly agree and understand that this settlement shall not be binding upon the County and shall not take effect unless and until it is approved by the Nassau County Legislature.
2. The undersigned representatives of the Parties certify that they are authorized by the parties to enter into and consent to the terms and conditions of the Settlement Agreement, and, except as specifically set forth herein, to execute and bind the parties to it. Specifically, the individuals signing this Settlement Agreement on behalf of the County represent and warrant that they are authorized by the County

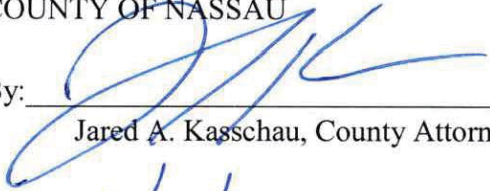
Executive to execute this Settlement Agreement, subject to the final required approvals set out above.

3. The County and its counsel represent that they have already made and will continue to make diligent efforts to timely and diligently take all steps and submit all documents and information necessary for the approvals set out above in Section IX.1.
4. If the County has not obtained approval of this Settlement Agreement by the County Legislature within forty-five (45) days of the execution of this Agreement (the "Approval Period"), and the Effective Date has therefore not occurred, the Agreement shall be null and avoid, and the Parties shall immediately report to the Court that settlement has not been finalized, and shall resume the litigation.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto, having read and understood the terms of this Settlement Agreement, and intending to be legally bound hereby, execute this Settlement Agreement.

COUNTY OF NASSAU

By: 
Jared A. Kasschau, County Attorney

Date: 2/21/19

MHANY Management Inc.

By: _____
Ismene Speliotis, Executive Director

Date: _____

New York Communities for Change, Inc.

By: _____
Jonathan Westin, Executive Director

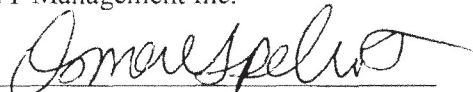
Date: _____

IN WITNESS WHEREOF, the parties hereto, having read and understood the terms of this Settlement Agreement, and intending to be legally bound hereby, execute this Settlement Agreement.

COUNTY OF NASSAU

MHANY Management Inc.

By: _____
Jared A. Kasschau, County Attorney

By:  _____
Ismene Speliotis, Executive Director

Date: _____

Date: 2/21/2019

New York Communities for Change, Inc.

By: _____
Jonathan Westin, Executive Director

Date: _____

IN WITNESS WHEREOF, the parties hereto, having read and understood the terms of this Settlement Agreement, and intending to be legally bound hereby, execute this Settlement Agreement.

COUNTY OF NASSAU

MHANY Management Inc.

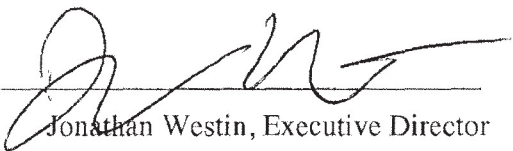
By: _____
Jared A. Kasschau, County Attorney

By: _____
Ismene Speliotis, Executive Director

Date: _____

Date: _____

New York Communities for Change, Inc.

By:  _____
Jonathan Westin, Executive Director

Date: 2/21/19

EXHIBIT 1
REQUIRED CHARACTERISTICS OF
MODEL INCLUSIONARY ZONING ORDINANCE

- (1) requires residential developments with five or more units to include at least 20% affordable (meaning a household is paying no more than 30% of its income for gross housing costs, including utilities) housing units;
- (2) requires developers to engage in affirmative marketing to ensure outreach to racially and ethnically diverse households, including those who are least likely to apply;
- (3) provides density bonuses, parking requirement reductions, and expedited review of proposals for affordable housing including procedures for streamlining the approval process for the design, permitting, and development of these units;
- (4) requires the good faith consideration and encouragement of the grant of zoning or other variances or exceptions where necessary to allow for development of housing that will qualify as affordable housing;
- (5) provides for deed restrictions or similar legal mechanisms to ensure continued future affordability of affordable housing units;
- (6) does not provide for current or prior residency or employment preferences; and
- (7) does not include an "opt out" provision.

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MHANY MANAGEMENT INC.,

PLAINTIFF,

-and-

NEW YORK COMMUNITIES FOR CHANGE, INC.,

INTERVENOR-PLAINTIFF,

-against-

COUNTY OF NASSAU, INCORPORATED VILLAGE:
OF GARDEN CITY, AND GARDEN CITY BOARD
OF TRUSTEES,

DEFENDANTS.
-----X

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X

05-CV-2301 (ADS) (ARL)

**SO-ORDERED
STIPULATION OF
DISCONTINUANCE**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-captioned action is hereby discontinued with prejudice, except without prejudice to this Court's retention of jurisdiction as set out in paragraph 2 below, and without costs or expenses to any party except as specifically provided for in the Settlement Agreement attached hereto.

2. The Court shall retain jurisdiction in this matter for the purpose of interpretation or enforcement of the Settlement Agreement. This Stipulation may be So Ordered for the purpose of the Court retaining said jurisdiction; however, the attached Settlement Agreement is not incorporated or merged in this stipulation, and said Settlement Agreement shall not become or be considered an Order of the Court in the event this stipulation is So Ordered.

3. This stipulation of discontinuance may be executed in counterparts, and facsimile or .pdf signatures shall be deemed original.

Dated: _____, 2019

Dated: _____, 2019

Jared Kasschau
Errol Williams
OFFICE OF THE NASSAU
COUNTY ATTORNEY
1 West Street
Mineola, NY 11501
Telephone: (516) 571-3056

Stanley J. Brown
Chava Brandriss
HOGAN LOVELLS US LLP
875 Third Avenue
New York, New York 10022
Telephone: (212) 918-3000

Dated: _____, 2019

Dated: _____, 2019

Scott J. Kreppin
QUATELA CHIMERIA PLLC
888 Veterans Memorial Highway, Suite 530
Hauppauge, NY 11788
Telephone: (631) 482-9700

Attorneys for Defendant County of Nassau

Thomas Silverstein
LAWYERS COMMITTEE FOR CIVIL
RIGHTS UNDER THE LAW
1500 K Street, N.W.
Suite 900
Washington, DC 20005
Telephone: (202) 662-8600

Dated: _____, 2019

Frederick K. Brewington
LAW OFFICES OF FREDERICK K.
BREWINGTON
556 Peninsula Blvd
Hempstead, NY 11550
Telephone: (516) 489-6959

Attorneys for All Plaintiffs

SO ORDERED:

Hon. Arthur D. Spatt