

SETTLEMENT AGREEMENT

Dated ~~March~~^{April 1} _____, 2007

in

United States of America v. Yonkers Board of Education,

Docket No.: 80 CIV 6761 (LBS)(SDNY)

[Housing Portion]

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Settlement Agreement ("Agreement"), dated March _____, 2007, among the United States of America, the Yonkers Branch of the National Association for the Advancement of Colored People, the City of Yonkers, together comprising all of the remaining parties to the housing portion of the action in *United States v. Yonkers Board of Education*, 80 CIV 6761 (LBS) (S.D.N.Y.), by their duly authorized representatives, to provide for the full, complete, and final resolution and present termination of all claims in this housing desegregation action concerning the City of Yonkers:

I, RECITALS

A. Definitions

1. All references to "Agreement" include Attachment A and B to this Agreement, which are hereby specifically incorporated by this reference as an enforceable part of the Agreement.
2. As used in this Agreement:
 - a. "Action" means *United States v. Yonkers*, 80 CIV 6761 (LBS) (S.D.N.Y.), which by order of the Court was severed into two distinct and separate parts, a housing portion and an education portion.
 - b. "Education action" means the education portion of the action which was severed from the rest of the action and which was resolved by Order dated March 27, 2002.
 - c. "Housing action" means the housing portion of the original action which was treated as severed from the education portion.

d. "Plaintiffs" means the United States of America and the plaintiffs intervenors.

e. "Plaintiffs-intervenors" means the Yonkers Branch of the National Association for the Advancement of Colored People ("NAACP") and the plaintiff class represented by Charlotte Ryer, et al.

f. "Defendants" means (a) the City of Yonkers ("City"), and (b) the Yonkers Community Development Agency.

g. "Parties," "all parties," and "any party" refer to all plaintiffs and defendants as defined for this Agreement.

h. "Court" and "District Court," unless otherwise required by the context, refer to the United States District Court for the Southern District of New York.

i. "Effective Date" and "Effective Date of this Agreement" shall have the meaning assigned by paragraph II.A.1.

j. "Claims" means (1) all claims which have been raised by any party against any other party in the housing action, (2) all claims which could have been raised by any party against any other party in the housing action arising from the prior segregation or any acts or omissions previously alleged or found in the housing action, and (3) any claims by any party against any other party for relief asserted in the housing action, including all claims for funding and for declaratory or injunctive relief, and all claims and potential claims for attorneys' fees arising out of the housing action.

k. "*Kokkonen*" refers to *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994), and "*Kokkonen* principles" refers to the principles of law enunciated in the decision in *Kokkonen* relating to the power of a federal court to retain jurisdiction, upon dismissal of an action, to enforce a settlement agreement.

l. "Long Term Plan Order" or "LTPO" refers to the Long Term Plan Order entered by the Court on June 13, 1988, as subsequently amended by the SLTPO, SSLTPO, Third SLTPO and Fourth SLTPO.

m. "Paragraph" refers to a paragraph or subparagraph of this Agreement.

B. History¹

1. The United States commenced this action against the City of Yonkers and others in 1980. The NAACP, et al. intervened as plaintiffs in 1981. The Court issued a decision finding liability on November 20, 1985. The Court entered the Housing Remedy Order ("HRO") on May 28, 1986. The HRO provided injunctive and other relief against the defendants.

2. The Court entered the First Remedial Consent Decree in Equity on January 28, 1988, providing more detailed requirements for implementing the HRO.

3. On June 13, 1988, the Court entered the Long Term Plan Order ("LTPO"), establishing more detailed requirements for implementing the HRO and the First Remedial Consent Decree in Equity.

4. On September 9, 1988, the Affordable Housing Ordinance ("AHO") was

¹ A more complete history of the action and its housing portion can be found in the many judicial decisions which have been rendered.

adopted by the City. The City has maintained the AHO since its adoption and, on several occasions with Court authorization, adopted amendments and granted waivers with respect to specific applications.

5. The Court entered the Supplemental Long Term Plan Order ("SLTPO") on October 5, 1993, establishing more detailed requirements for implementing the HRO, the First Remedial Consent Decree in Equity and the LTPO.

6. On November 6, 1996, the Court entered the Second Supplemental Long Term Plan Order ("SSLTPO"). That order stated in part: "The City of Yonkers has committed itself to undertake implementation of the SLTPO and LTPO, as amended herein, in good faith and has asked in return that primary responsibility for the creation of affordable housing pursuant to these plans, as modified, be vested in the City" The SSLTPO gave the City responsibility for implementation of the Court's remedial orders subject to monitoring by the Court and the plaintiffs, reserving jurisdiction of the Court to intervene and further modify the order if its goals were not achieved within the designated time periods. Paragraph 2 of the SSLTPO stated that "for each of the six calendar years commencing January 1, 1997, the City of Yonkers agrees that it shall provide at least 100 units of affordable housing to LTPO-qualified individuals. In providing said units, the City shall rely upon existing housing and/or new construction." Under the terms of the SSLTPO, the City would be deemed to have achieved all of the requirements of the 1988 consent decree, LTPO, SLTPO and Part VI of the HRO by providing the 600 affordable housing units as defined in paragraph 2 of

the order and the Cross Street, Hoover Road, and Yonkers Avenue new construction units described in paragraph 1 of the SSLTPO. Pursuant to paragraph 4 of the SSLTPO, the Grassy Sprain site was designated for the development of 34 units of housing. The Court noted that these provisions had been negotiated and agreed to by the parties to implement remaining aspects of the HRO and the LTPO.

7. On December 1, 1998, the New York Urban Development Corporation ("UDC"), doing business as the Empire State Development Corporation ("ESDC") entered a settlement agreement that resolved all housing claims involving the State defendants.

8. On December 9, 1999, the Court entered the Third Supplemental Long Term Plan Order ("Third SLTPO"). Among other things, the 600 unit goal of the SSLTPO was converted to a 600 credit goal.

9. On July 7, 2003, the Court entered the Fourth Supplemental Long Term Plan Order ("Fourth SLTPO").

10. Pursuant to the provisions of the foregoing orders, the defendants have completed their court-ordered obligations to enact the AHO, provide sites for 200 units of scattered site public housing in east Yonkers, to provide the required new construction of mixed-income housing and to facilitate an assisted existing housing program that has provided 600 credits of LTPO assisted housing in Yonkers by making initial placements of eligible persons into affordable desegregative housing units. As required by the LTPO and AHO, that newly

constructed housing and pool of assisted existing housing opportunities requires ongoing oversight, management and support by the Yonkers Affordable Housing Department ("YAHD") for various lengths of time to ensure that affordability and other program standards are maintained.

C. Recitals as to the Settlement Itself

1. Now, noting the litigation history in this case recited above, and with due and careful consideration, the parties have decided to enter into this Agreement to ensure that the benefits of the housing remedy are maintained following the termination of the litigation, to serve the interests of the class in receiving equal housing opportunities, and to serve the public policy interests in restoring local control of assisted housing in Yonkers.

2. The parties believe that this Agreement carefully balances dismissal, on the Effective Date, of the housing claims and return to local control with continued maintenance of the assisted housing created by the City and provides a fair exchange of valuable consideration by and to all the parties. The parties recognize the City's good faith intent not to engage in unlawful residential housing segregation. The parties also acknowledge to each other that the City's implementation of the housing programs described in Attachment A further demonstrates the City's good faith.

3. The parties believe that this Agreement is a fair, lawful, and appropriate final resolution of all outstanding housing issues in this litigation and shall work together to seek prompt Court approval of the Agreement.

4. The parties have concluded that this Agreement provides an adequate and proper basis for dismissal of the housing action with prejudice on the Effective Date, the return of housing to local control, and the termination of the housing action with prejudice, provided the Court retains limited ancillary jurisdiction under *Kokkonen* to ensure that the City abides by its obligations under this Agreement.

II. OPERATIVE PROVISIONS OF AGREEMENT

A. Effective Date and Duration of Obligations

1. Effective Date -- The terms "Effective Date" and "Effective Date of the Agreement" shall mean the date upon which the last to occur of the following listed events shall take place:

- a. The Court enters an order or judgment approving the Agreement;
- b. The Court enters an order or judgment vacating all presently effective remedial or executory provisions of all previous decisions or orders in the housing action.
- c. The Court enters an order or judgment dismissing the housing action with prejudice in light of this Agreement, subject only to the Court's retention of ancillary jurisdiction over the Agreement to enforce its terms under *Kokkonen* principles.

2. Duration of Parties' Obligations under the Agreement

Whenever the duration of a party's obligation is limited by the terms of this Agreement, the duration shall not be extended unless, in a proceeding alleging a

breach of this agreement, the Court both finds that such party has failed to fulfill such obligation and orders the party to specifically perform its obligation, in which case, as set forth in paragraph II.F.1, the Court shall have the power to extend only that party's duty to perform such obligation beyond the original term and shall retain such jurisdiction only to require such performance by such party until such time that such party fulfills the outstanding obligation.

B. Program

1. Once the Agreement becomes effective as above provided, the City shall be required to maintain the pool of affordable desegregative housing created pursuant to the LTPO by implementing the program identified in Attachment A in accordance with the provisions and schedules described therein. For the rental assistance program, the City shall continue to implement this program until each of the monitoring requirements for the units expires, insuring that the current reservoir of rental credits are maintained and utilized by eligible households. For the new construction rental developments, the owner is responsible for annual reports certifying to rent levels and occupancy; the City has and will continue to review and monitor these reports to ensure that the owners are maintaining the required affordable rental units.
2. Nothing in this Agreement relieves the City of its obligations to comply with state and federal housing law and procedures.

C. Affordable Housing Ordinance

1. During the period from the Effective Date until January 1, 2009, the City shall make no changes to its Affordable Housing Ordinance ("AHO") except those permitted in Attachment B, hereto.
2. After January 1, 2009, the City shall have the right to make whatever changes in the AHO that it believes appropriate consistent with its rights as a local municipality of the State of New York.

D. Reporting, Recordkeeping and Communications

1. Reporting

a. To assure continued implementation of program requirements and to provide plaintiffs the opportunity to timely invoke the conferral and enforcement provisions set forth herein, by no later than January 15, April 15, July 15 and October 15 of each year, the City shall provide to all parties a report reflecting the status of the program. These reports shall show any changes in home ownership and identify the race and income level of each and every new program participant as well as the income level and race of each and every new participant in the rental assistance program, along with the address of the rental unit s/he is renting under the program. Said reports shall not identify program participants by name. Following termination of the rental program, the reports shall be submitted on January 15 and July 15 of each year. Following termination of ancillary court jurisdiction as to plaintiff United States pursuant to paragraph II.F.2, those reports shall be provided only to the plaintiffs-intervenors.

b. By no later than December 15 of each year for a period of ten years, the City shall provide to all other parties written certification of its compliance with its obligations set forth in Attachment A and this Agreement.

c. The City shall give notice to all parties of any change in the director or management of the YAHD within 30 days of such action.

2. Recordkeeping

The City shall keep all records of its activities to implement, maintain, and administer its Affordable Housing Program as described in Attachment A. The City shall keep all records relating to amendments to the Affordable Housing Ordinance. The City shall provide access to inspect and copy such records by representatives of the United States and the NAACP upon reasonable notice.

3. The Parties' Duty to Confer To Resolve Any Disputes

a. The parties shall confer and consult as they deem appropriate to address any concerns regarding implementation of the Agreement, and the parties shall make a good faith effort to resolve such concerns amicably if at all possible.

b. If a party believes another party has failed to comply with or has breached the Agreement, the complaining party shall give written notice to the allegedly breaching party within one hundred and twenty (120) days of the date when such complaining party (i.e., United States Department of Justice, Civil Rights Division, and/or the plaintiffs-intervenors) had notice of any such breach, and such parties shall have sixty (60) days from the date of notification to resolve the dispute consensually. An action for specific performance may be filed with

the Court only within ninety (90) days of the end of the foregoing notice and confer period and only if the foregoing procedure has been complied with. In the event of a breach which constitutes an emergency situation that will cause irreparable harm, an action may be filed with the Court without first seeking resolution through a notice and confer period. Such an emergency action must be filed within twenty (20) days of the date that a party had notice of the breach that caused the emergency circumstances.

E. Status of the Action

1. Local Control -- From and after the Effective Date, the City shall be free from direction by or supervision on the part of the Court and/or Court appointees, except for the Court's exercise of its retained ancillary jurisdiction solely to enforce the terms of this Agreement in accordance with *Kokkonen*. The policies and programs of the City concerning housing issues shall thenceforth be locally determined in accordance with applicable law, except to the extent specifically provided for in this Agreement and Attachments A and B of this Agreement. The concept of local control as used in this Agreement shall not preclude the consideration of any recommendations for changes to any housing program or policy if originating from, or the result of ongoing review and discussion among, local entities, the City, the NAACP, or other organizations.

2. Approval by the Court -- Each of the parties by signing the Agreement assumes the following obligations or makes the following representations (knowing that all other parties hereto and the Court are relying on any such

representations):

a. The formality with which such party has caused the Agreement to be executed is in accordance with such party's governing rules and procedures and comports with applicable law. The execution of the Agreement by such party is accordingly complete, lawful, and binding upon such party.

b. Promptly after all parties have executed the Agreement in accordance with the provisions of the prior paragraph, and no event later than 15 business days following the point at which all of them have executed the Agreement, by joint motion the parties shall submit the Agreement to the Court for preliminary approval and request that, in compliance with all requirements of Rule 23, Fed.R.Civ.P., the Court:

- (1) Direct the giving of notice by general publication in the local media to the Class, which shall be paid by the City of Yonkers,
- (2) Schedule and hold a fairness hearing,
- (3) After the fairness hearing, approve the Agreement as a fair, reasonable, and adequate resolution of this case, and
- (4) Enter final judgment dismissing the housing action with prejudice and retaining ancillary jurisdiction over the Agreement under *Kokkonen* solely to enforce the terms of the Agreement.

c. All parties shall represent to the Court in their affidavits supporting such motion that the Agreement is fair, reasonable, and adequate, and is the result of arms-length negotiations, and shall recommend approval of the settlement as set

forth in the Agreement as being in the best interest of their respective clients and the Class members under the circumstances, including as appropriate, the Class members.

d. At the fairness hearing, the parties shall cooperate in good faith to achieve the expeditious approval of the settlement, and shall ask the Court to approve the Agreement and to enter final judgment thereon ("Judgment").

e. To satisfy the requirements of the Agreement, the Judgment (and/or the decision or order upon which it rests) shall include, by specific statement or reference to the Agreement to the extent permitted by law and the rules of court, provisions that:

- (1) Affirm certification of the proceeding as a class action pursuant to Rule 23, Fed.R.Civ.P., consistent with the Class previously defined and accepted by the Court;
- (2) Find that the notice to Class Members of the fairness hearing satisfied the requirements of Rule 23, Fed.R.Civ.P., and due process, and that the Court has jurisdiction over the Class;
- (3) Find that the Agreement is fair, reasonable, and adequate, and the result of arms-length negotiations in all respects;
- (4) Find that the defendants have formed a fixed intent that the condition of *de jure* segregation of assisted housing which was formerly found by the Court shall not again be implemented in the City of Yonkers;
- (5) Direct the Clerk of the Court to enter an order vacating all

remaining orders issued in the action;

(6) Dismiss as to all parties the housing action with prejudice, including all claims whatsoever in the housing action, and direct the entry of the Judgment; and

(7) Expressly state in the order of dismissal and/or Judgment that the Court is retaining ancillary jurisdiction over the Agreement under *Kokkonen* principles only for the purpose of enforcing the terms of the Agreement.

f. Neither the parties nor their counsel shall solicit, request, or encourage anyone to object to the Agreement.

g. All parties shall defend the Agreement and any order or judgment unqualifiedly approving the same in any action or proceeding, direct or collateral, attacking the legality or effectiveness of the Agreement.

h. Any party that becomes aware of any collateral action or proceeding attacking the legality or effectiveness of the Agreement shall promptly notify all other parties. Thereafter, all parties shall take all necessary steps to effectuate the removal or transfer of said collateral action or proceeding to the District Court for the Southern District of New York for adjudication of the challenge to the Agreement or provisions thereof.

i. All parties waive any right to appeal the decision of the District Court approving the Agreement without qualification and dismissing the case with prejudice provided that the order of approval and dismissal is consistent with this

Agreement.

F. Future Role of the Court

1. Following the Effective Date, the Court's jurisdiction over the housing portion of the action and all parties in and as to the housing portion of the action shall cease, except that the Court shall retain ancillary jurisdiction solely to enforce the terms of the Agreement and to order specific performance thereof, as contemplated under the *Kokkonen* principles.
2. With respect to plaintiff-intervenors, the Court's retention of such ancillary jurisdiction shall not extend beyond the duration of the Attachment A programs unless, prior to the expiration of the program time periods and the associated notice, confer, and filing time periods set forth in paragraph II.D.3., above: (i) a party is alleged to have failed to fulfill one or more of its obligations under the Agreement, and (ii) another party brings an application for specific performance of that obligation pursuant to the terms of this Agreement. If the Court finds that such party has indeed failed to fulfill such obligation, the Court shall have the power to direct specific performance of such party's obligations until such time that such party fulfills the outstanding obligation. With respect to plaintiff United States, the Court's retention of such ancillary jurisdiction shall not extend beyond ten years unless, prior to the expiration of the notice, confer, and filing time periods set forth in paragraph II.D.3., above, for any actions or inactions that occur during the ten year period: (i) the United States alleges that a party failed to fulfill one or more of its obligations under the Agreement, and (ii) the United States

brings an application for specific performance of that obligation pursuant to the terms of this Agreement. If the Court finds that such party has indeed failed to fulfill such obligation, the Court shall have the power to direct specific performance of such party's obligations until such time that such party fulfills the outstanding obligation.

3. After the Effective Date, no party to this Agreement shall make application to any tribunal for specific performance of this Agreement other than to the Court. All parties irrevocably and unequivocally submit themselves to the jurisdiction of the Court for the adjudication of any application for specific performance arising from an alleged breach of this Agreement. Any such application must be made within the time limits set forth in paragraph II.D.3.b, above.

4. The Court shall have the power to approve and enforce any amendment to the Agreement to which all parties have agreed in writing and submitted to the Court for approval.

5. The Court, in its sole discretion, may award reasonable attorneys' fees and costs to a nongovernmental party who prevails in making an application for specific performance. The Court may assess fees and costs against any nongovernmental party that pursues an application that is frivolous, vexacious, or without reasonable foundation in fact or law. An award may not be based on rates which exceed those which would have been awardable by the Court in the Action on the Effective Date. The Court may also assess fees and costs against a federal party under the provisions of the EAJA. 28 U.S.C. §§ 2412 (a) and (b).

6. Without limiting the scope of the preceding subparagraphs 1 through 5, after the Effective Date, the Court shall be without jurisdiction to entertain an application in the housing action for, or to issue a judgment, injunction, order or declaration in the housing action ordering, creating, continuing, modifying, or ending any housing program, policy or facility in the City, except as may result from the Court's granting or denying the application of any party to this Agreement for specific performance of this Agreement in accordance with *Kokkonen* principles.

G. Waivers and Releases

1. Upon the Effective Date of this Agreement:

a. Except for obligations undertaken in this Agreement, each party permanently waives and releases all other parties from all claims that were asserted in or arose from the housing action, or that could have been raised by any party against any other party in the housing action, or that could have been raised in any forum based on the implementation of any order in the housing action, or on acts or omissions previously alleged or found in the housing action. Each party further waives any right to make an appeal, to pursue an appeal previously made, or to revive an appeal from any order in the housing action.

b. Each party releases all other parties from any claim for expenses and attorneys' fees in or relating to the housing action, except as set out in paragraph II.F.5.

2. No party shall initiate, join as a party or *amicus curiae* in, fund, advertise, or otherwise support any action or proceeding in any court or administrative forum which seeks as relief an order, declaration, judgment, award or determination to the effect that any alleged condition, act, omission, conduct, practice, or course of behavior prior to the Effective Date of the Agreement engaged in by any party, person, agency, institution, or group in or with respect to the City constitutes, contributes to, or comprises evidence of the former housing segregation previously found by the Court to have existed in the City.

H. Declaration Regarding Segregation

In addition to all other obligations, each and all defendants affirmatively declare their belief that Yonkers public and assisted housing is presently free of *de jure* segregation and their good faith intent not to engage in any unlawful segregative action.

III. EXECUTION OF AGREEMENT

Subject to the provisions of Rule 23, Fed.R.Civ.P., regarding representation of a settlement by a class, each person executing this Agreement as representing, or executing on behalf of, one or more parties, represents and warrants to all concerned (understanding that all other parties are relying on such representations) that, to the best of his or her knowledge and belief:

A. He or she has been duly authorized to execute this Agreement on behalf of the party or parties indicated; and

B. Said party or parties have been informed of the Agreement and all of its substantive provisions and have done all things required by statute and/or necessitated by the parties' governing rules, procedure, and practices to enter into the Agreement unequivocally and to authorize the person executing on its or their behalf to do so.

IV. NOTICES

Notices under this agreement shall be in writing and sent by certified mail, return receipt requested, to the Parties as follows:

To the United States:

Chief, Housing and Civil Enforcement Section
U.S. Department of Justice, CRD
950 Pennsylvania Avenue, N.W.
Washington, D. C. 20530

Att: DJ no. 169-51-22
A copy of any notice shall also be sent
to the United States by fax:
202-514-1116

To the Plaintiff-Intervenors:

Michael H. Sussman, Esq.
40 Park Place
Goshen, New York 10924

To the City of Yonkers:

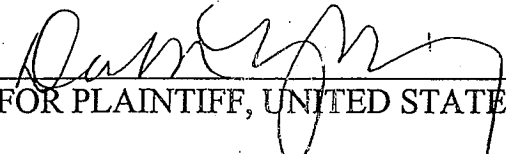
Frank J. Rubino, Corporation Counsel
City of Yonkers
City Hall, Room 300
Yonkers, New York 10701

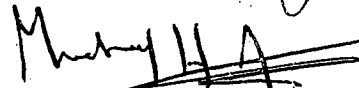
With a copy to:

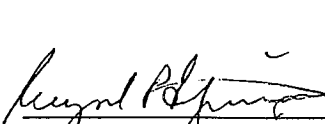
Raymond P. Fitzpatrick, Jr., Esq.
Fitzpatrick, Cooper & Brown, LLP
1929 Third Avenue North, Suite 600
Birmingham, Alabama 35203

The forgoing designated persons' addresses may be changed by written notice to the other parties.

AGREED, as of the date first written above:


FOR PLAINTIFF, UNITED STATES


FOR PLAINTIFF-INTERVENORS,
YONKERS BRANCH NAACP AND THE PLAINTIFF CLASS

 
FOR DEFENDANTS, CITY OF YONKERS, et al.

Approved:


LEONARD B. SAND
UNITED STATES DISTRICT JUDGE

5/1/07

ATTACHMENT A

Existing Housing Maintenance

Through the implementation of the Housing Remedy Order, the City of Yonkers has fostered affordable housing opportunities with certain long term obligations. They are the following:

1. **Purchase Assistance Program:** Through its downpayment and closing cost assistance program, the City has assisted approximately 300 households to purchase homes (single family, two family, condos, and coops) in East and Northwest Yonkers since 1997. As required by the Order, the City has restricted the resale price and occupancy of these homes for 30 years through deed restrictions, UCC-1s, and/or second mortgages or loan security agreements. (Section 4(b) of the LTPO provides that "All assisted housing units subject to purchase shall have resale-price limitations (enforced by covenants running with the land, restrictions on registration of title, or any other appropriate legal mechanism approved by the City) which will ensure that for a period of thirty years from the time of their first sale such housing units are sold or resold only to, and at a price affordable to, a household which is, at the time of purchase, in the same income group, as was the seller at the time such previous owner first occupied the unit.) The owner must occupy the premises as his primary residence and also obtain approval of refinancings, home equity loans and home equity lines of credits. Depending on the date of transfer of title, these restrictions will be in effect through 2027 to 2036.

The resale restrictions have and will continue to be monitored in the following ways:

- a. Promissory Note and Second Mortgage (UCC-1, Promissory Note, and Loan Security Agreement in the case of coops) for initial purchases between 1997 and 2002. The documents contained the following provisions:

"...this Mortgage and the Note it secures shall be fully assumable by any subsequent qualified purchaser of the Premises provided that said subsequent purchaser has been properly qualified to purchase the premises under the provisions of the Long Term Plan Order ("LTPO"). Said Order provides, in part, that the Premises is subject to resale restrictions requiring that the Premises be sold at a price that is affordable to a person in the same income bracket as the Borrower at the time of Borrower's purchase. Written notice of such approval must be obtained from the Lender or the current administrator of the LTPO..."

"THE BORROWER COVENANTS AND AGREES THAT, FOR A PERIOD OF THIRTY (30) YEARS FROM THE DATE FIRST STATED ABOVE, THE PREMISES SHOULD ONLY BE SOLD TO AND OCCUPIED BY A FAMILY QUALIFIED BY THE CITY OF YONKERS (OR ITS SUCCESSOR IN INTEREST) WITH AN INCOME IN THE RANGE OF _____% OF THE WESTCHESTER COUNTY MEDIAN INCOME AS DETERMINED BY RULES AND GUIDELINES OF THE CITY OF YONKERS AFFORDABLE HOUSING DEPARTMENT. THE PREMISES MAY ONLY BE SOLD AT A PRICE WHICH IS AFFORDABLE TO SAID PROPERLY QUALIFIED PURCHASERS. THIS COVENANT SHALL RUN WITH THE LAND AND SHALL BE ENFORCEABLE BY THE CITY OF YONKERS, THE UNITED STATES OR THE FEDERAL COURT IN THE CASE OF *United States v. Yonkers*, 80 CIV 6761 (LBS) (S.D.N.Y.)"

To comply with this re-sale requirement, the maximum resale price is determined by evaluating the profile of the initial purchaser, i.e., the size of his/her household, amount of his/her downpayment, and the percentage of median household income adjusted to achieve a reasonable band of affordability. From this profile, the YAHD determines the price of a home that this household could afford at the time of the sale and then applies an interest rate for affordable fixed rate mortgage products slightly higher than the current rate for a safety margin. The YAHD also considers the amount that the subsequent purchaser would pay for today's real estate taxes, homeowner's insurance, private mortgage insurance, if applicable, and condo or coop fees, if applicable. YAHD then adds the mortgage amount to the downpayment amount and to the City of Yonkers mortgage that the subsequent purchaser will assume to determine the maximum sale price. YAHD will continue to utilize this process.

- b. Restrictive Covenant, Promissory Note & Mortgage (UCC1, Promissory Note and Loan Security Agreement in the case of coops). In 2003, the City of Yonkers mortgage was revised and a restrictive covenant added.

The Borrower covenants and agrees that, for a period of thirty (30) years from the date first stated above, the premises shall only be sold to and occupied by a family qualified by the City of Yonkers (or its successor in interest) with an income in the range of _____% of the Westchester County median income as determined by rules and guidelines of the City of Yonkers Affordable Housing Department. The premises may only be sold at a price as determined and approved by the City of Yonkers (or its successor in interest). In order to keep the premises affordable, the premises may not be sold, within 30 years for a price higher than the "Maximum Resale Price". The Maximum Resale Price will equal the sum of the following:

- (i) The Net Purchase Price (i.e. Gross Sale Price minus Subsidies) paid for the premises by the selling homeowner, increased by the percentage increase, if any, in the Consumer Price Index for urban wage earners and clerical workers in the New York – Northern New Jersey Area, as published by the United States Bureau of Labor Statistics (the “Index”), between (a) the month that was two months earlier than the date on which the seller acquired the premises; and (b) the month that is two months earlier than the month in which the seller contracts to sell the premises. If the Bureau stops publishing this index, and fails to designate a successor index, the City of Yonkers will designate a substitute index; and
- (ii) The cost of major capital improvements made by the borrower when he owned the home as evidenced by paid receipts depreciated on a straight line basis over a 15 year period from the date of completion.

In order to assure that these properties remain affordable, **refinancings, home equity loans and other secured financings** are limited. The City of Yonkers will agree to subordinate its mortgage loan position in limited circumstances:

- a. for lower interest rates and shorter loan terms;
- b. for approved property improvements; and
- c. for hardship situations.

Each request is and will continue to be reviewed on a case by case basis. The review is focused on assuring that the home will remain in the affordable housing stock resulting from the LTPO. Factors considered are combined loan to value ratios, maintenance of housing ratios at 33/38, owner's credit history, the need for and whether the proposed property improvements will extend the useful life of the building, and whether increased debt on the property will affect its affordability to subsequent purchasers.

In order to assure that these properties are the **primary residence** of the qualified purchasers, a certified letter with a “Return Address Correction Requested” will be sent annually requiring the owners to certify that they are residing at the address for which the City provided the assistance. The letter will also include the procedures for resale of homes. They will be required to notify YAHD of their intent to sell. YAHD will advise them of the maximum resale price of their homes and refer income eligible households from its waiting list by priority. YAHD will assist the prospective purchasers through the sale and mortgage processes.

2. **Purchase Assistance Pre-1997.** In addition to the 300± units described above, the City will continue to monitor the resale and occupancy restrictions of the 10 units purchased during 1995 and 1996 under the Fair Housing Implementation Office's maintenance of the list of eligible LTPO households. These have mortgage restrictions similar to the homes secured by the City between 1997 and 2002.

3. **New Construction Homeownership Developments.** The City will continue to be responsible for monitoring the resale, refinancing, and occupancy restrictions of the following three LTPO projects totaling 33 units:

- Cross Street Condominiums – 11 affordable units
- Hoover Road Townhomes – 5 affordable units
- Sprain Lake Estates – 17 affordable units

The initial closings for the Cross Street Condominiums took place in 2001 and are controlled through a deed restriction and the pre-2003 mortgage and note. The Hoover Road Townhomes closed in 2005 with deed restrictions and post 2002 mortgages and notes. We anticipate closings on the Sprain Lake Estates in the spring of 2007 with deed restrictions and post 2002 mortgages and notes.

4. **Other Homeownership Developments.** Additional LTPO homeownership opportunities will continue to be provided through:

- a. Small Sites Program – A total of 4 units – 2 on Shelbourne and 2 on Westminster with deed restrictions and post 2002 mortgages and notes.
- b. Affordable Housing Ordinance – AHO projects are developed through private sector initiatives. The City expects the following two projects are to be completed in the near future:

River Club – 35 affordable units

Ridge Hill – 50 affordable units

AHO units will be restricted for 30 years with deed restrictions and mortgages and notes.

5. **Rental Assistance Program:** The City effectively launched its Rental Assistance Program in 2002. The City provides financial assistance to eligible LTPO households who lease units in Yonkers located north of Glenwood Avenue or east of the Saw Mill River Parkway in census blocks with a Black and Hispanic concentration of less than 45% or elsewhere in Westchester County in census blocks with a Black and Hispanic concentration of less than 45%. The financial assistance provided includes subsidizing the difference

between 30% of the household's income and the market rent, one-half the security deposit, and a broker or landlord incentive fee if applicable. Approximately 200 households currently receive rental assistance. The City maintains its credit so long as the household continues to receive assistance for a 10 year period. If a household no longer participates in the program or is no longer eligible to participate, the City is obligated to assist another household for the balance of the 10 year term. The monitoring requirement will end between 2012 and 2016.

6. **New Construction Rental Development:** St. James Gardens includes 32 affordable rental units. By deed restriction and regulatory agreement, the owner is responsible for maintaining these one, two and three bedroom units at rents affordable to different income categories and occupancy by eligible households for 30 years from the date of initial occupancy. Units were initially leased between August, 2002 and May, 2003. The owner is responsible for annual reports certifying to rent levels and occupancy. When LTPO units become available, the Yonkers Affordable Housing Office will continue to refer qualified renters.
7. **Hudson View Terrace:** By restrictive covenant dated April 20, 1998, the owner is required to rent 10 units at affordable rents and occupy those units with LTPO qualified households. The rents vary depending on income category served. Pursuant to an agreement reached with the owner dated January 31, 2005, the 30 year affordability requirement will commence on 9 of the 10 units upon a determination by the Yonkers Affordable Housing Office that the rent level and occupancy comply with the LTPO. The 10th unit has been in compliance since 1998. The City's monitoring responsibility will run through 2035 or 2036.
8. **Purchase Assistance Program involving Two Family Homes:** As stated above, the Purchase Assistance Program enabled some LTPO qualified households to purchase two family homes. In some cases (depending on the amount of assistance provided), the rental units in these two family homes were restricted for a 30 year period – to be rented at a certain rent with annual increases based on the Annual Adjustment Factor to LTPO qualified households within a certain income category. The City's monitoring responsibility will run through 2036 and includes qualifying renters upon turnover, reviewing leases, and obtaining an annual certification from the owner that an eligible tenant is residing in the unit. This applies to approximately 12 units.
9. **Affordable Housing Ordinance:** The two approved AHO (in addition to Hudson View Terrace described above) projects are the Millenium on Warburton Avenue with 10 affordable units (construction has been delayed for several years) and 1465 Midland Avenue with two units (construction is underway and is expected to be completed in Spring, 2007). A site plan for the Ridge Hill development has been approved. Assuming developer completion of the projects

as previously approved, AHO units will be deed restricted for 30 years and will be monitored in the same fashion as Hudson View Terrace.

In summary, the City will be responsible for monitoring the LTPO affordability and requirements for 425 $\pm$ ownership units for a 30 year period. The 30 year period runs from the date of transfer of title. Given the different approaches to facilitating homeownership, this 30 year period will terminate between 2025 and 2037. In addition, the City will be responsible for 315 $\pm$ rental units until 2012 to 2037. This totals approximately 740 units.

Administration

The City through the Yonkers Affordable Housing Department has been carrying out its monitoring responsibilities as there have been resales, requests for subordination of City of Yonkers mortgages, and households who have opted out of the rental program. This monitoring will continue. The City's continuing activities will be as follows:

Homeownership

- Identifying and qualifying subsequent purchasers
- Responding to requests for subordination of City of Yonkers mortgages for refinancings, home equity loans, etc.
- Securing primary residency affidavits from owners annually
- Running credit reports of owners annually to preserve program assets, e.g., if there are latenesses in mortgage payment and/or excessive debt and/or mismanagement of debt, the City will contact the owner to assist in resolving financial issues
- Handling notices of default or foreclosures from primary lenders or cooperatives through Coop Recognition Agreements
- Handle violations of Restrictive Covenants and City of Yonkers mortgages and notes, e.g., failure to occupy the property as primary residence or failure to rent second unit to LTPO qualified renter
- Refer qualified purchasers to River Club and Ridge Hill developments assuming completion of projects and participate in closings to assure proper recordation of restrictive covenants and City of Yonkers mortgages
- Manage Homeownership database and files

Rental Assistance Program

- Manage monthly disbursements of City of Yonkers payments to owners
- Annual certification of household incomes
- Handle lease renewals and renewals of the Rental Assistance Contract (between owner and the City of Yonkers), including rent increases, on an annual or a bi-annual basis as appropriate
- Inspect rental units upon lease renewal to assure continued compliance with property standards

- Respond to and mediate landlord/tenant issues to the extent possible
- Should landlord decide not to renew lease, assist tenant to locate alternative unit
- Should tenant decide to relocate, inspect new unit for locational and property standard compliance, advise new landlords about the program, and handle preparation and execution of leases and Rental Assistance Contracts
- Should tenants decide not to participate in the program or no longer qualify to participate, qualify additional LTPO applicants
- Manage Rental Assistance Program database and files

Other Rental Assistance Programs

- Secure affidavits from owners and tenants under the Purchase Assistance Program that they are in compliance with LTPO requirements
- Refer qualified LTPO applicants to owners upon tenant turnover, interact with property management, and secure leases
- Evaluate annual reports and certifications on LTPO compliance from the owners of St. James Gardens, Hudson View, and AHO projects and take action as required
- Refer qualified LTPO applicants to Ridge Hill development assuming completion, interact with management and secure leases
- Maintain Other Rental Assistance Program database and files

Maintenance of LTPO Database: Following the Effective Date of the Agreement, the City will send a notice to each applicant who has not been assisted under the program to determine their interest in remaining on a waiting list. To remain on the list, they will be required to provide updated income data and rental history information within a certain time frame. A credit report will also be run. If they fail to meet the screening and selection criteria, they will be guided on what is needed to qualify, e.g., reduction of debt, a minimum of one year of satisfactory rent payments, etc. Applications will continue to be accepted. Financial literacy and homebuying clubs will be offered twice a year to help existing and new applicants achieve program standards. The City will also conduct outreach at least annually to solicit new applications.

As homeownership or rental units become available, the City will refer households from this list using the LTPO priorities, i.e., households who have lived in assisted or public housing in Yonkers at any time since 1971; followed by households who are residents of Yonkers; followed by households who are employed in Yonkers. The income criteria of the LTPO will also be followed.

The City will use the services of the Housing Action Council to manage the program and monitor on-going compliance with the LTPO for a minimum three year period. At that time, the City will opt to renew its contract with HAC, use another service provider or handle monitoring in-house. Should the City decide on the latter, it will arrange for a transition so that City staff are properly trained in monitoring responsibilities and databases are transferred.

ATTACHMENT B

City of Yonkers Affordable Housing Ordinance

Background

The Affordable Housing Ordinance ("AHO" or "Ordinance") provides for an overlay district to the M, MG, B, A and BA Zones and such other zones in which multifamily housing is or may be permitted in East and Northwest Yonkers, including those zones that permit multifamily housing as a special use. It also permits developers to apply for zoning changes to build multifamily inclusionary zoning in any district in East and Northwest Yonkers not zoned M, MG, B, A and BA. Under the AHO, the City may exempt any multifamily housing development of fewer than 10 units from inclusionary zoning. Multifamily development is defined as "one or more residential buildings, each containing three or more attached dwelling units".

Under the AHO as enacted in 1988 and currently in effect, the affordable set-aside requirement is 20% unless the proposed development is in an A or BA Zone and in other zones which permit a density of 60 units per acre or more, in which case it may be dropped to 10%.

The current Ordinance contains the following income and bedroom distribution and architectural integration requirements.

Income Distribution Requirements

- 30% of the units must be affordable to families earning less than 50% of the median income of Westchester County adjusted by family size
- 45% of the units must be affordable to families earning between 51% and 80% of the median income
- 25% of the units must be affordable to families earning between 81% and 100% of the median income

Bedroom Distribution Requirements

- At least 60% of the units must be two bedroom units
- At least 30% of the units must be three bedroom units
- No more than 10% of the units can be one bedroom units

Architectural Integration Requirements

- There can be no locational distinctions between assisted and other units provided that for any building eight or more stories, the top two floors may be reserved for market rate housing.

The Ordinance as currently in effect provides for incentives to establish the financial feasibility of inclusionary developments, including height, bulk and density bonuses, tax abatement, waiver of application and/or processing fees, use of Affordable Housing Trust

funds, or financial assistance from the Yonkers Industrial Development Agency. The type, extent and combination of incentives are left to the discretion of the City taking into account the degree to which assisted financing may be available and market conditions. The current Ordinance also provides for an expedited site plan approval process.

As of the Effective Date of the Agreement, five projects have been approved under the AHO – Hudson View Terrace in the Northwest quadrant with 10 units; the Millenium project in the Northwest quadrant with 10 units; River Club in the Northwest quadrant with 35 ownership units, and the Midland Avenue development in the Southeast quadrant with 2 rental units for a total of 47 units. The Ridge Hill project has also received approval. Hudson View Terrace is completed; the Millenium project is on hold; River Club with 35 affordable units and Ridge Hill with 135 affordable units are in development.

Recommendations

The Affordable Housing Ordinance can generate inclusionary housing across a range of income groups. There are several features of the Ordinance that facilitate this:

- a requirement (as compared to an incentive) that affordable housing units be included in multifamily developments
- income and bedroom distribution requirements
- oversight by an office specifically charged with facilitating affordable housing opportunities, including reviewing project concepts, negotiating affordable sale prices and rent levels, and qualifying prospective renters and owners

In addition, the availability of funds and financing for affordable housing, such as tax exempt financing through the NYS Housing Finance Agency and the Yonkers Industrial Development Authority and downpayment funds from the NYS Affordable Housing Corp. help create affordable housing.

To continue to encourage the development of inclusionary housing after the Effective Date, the City may make the following changes to the AHO:

1. Incorporate inclusionary zoning provisions into the zoning ordinance without reference to Long Term Plan Order. (Section 43-192 has a sunset provision.)
2. Expand the mandate to all multifamily developments regardless of location.
3. Reduce the set-aside requirement to 15% but allow for up to 20% for all multi-family developments except those zoned for densities of 60+ per acre (10%).

4. Modify Section 43-198 Affordability Criteria as follows:
 - a. The Yonkers Affordable Housing Office or Housing Action Council may work with the developer during the site plan approval process to set sale prices and rentals. The current provision uses the income of the actual occupant to set sale price and rent levels. Instead, sale prices and rent levels may be projected based on income categories to be assisted. These levels should be below the maximum so that there is a market for the units, e.g., price units at a level affordable to households with incomes at 40% (rather than 50%) of the median.
 - b. Change assumptions: 10% downpayment to 3% downpayment; use a maximum of 33% of income rather than 30% to determine affordability in ownership developments; eliminate reference to "...or such higher percentage as permitted by the applicable housing finance program."
 - c. Use the resale and rental increase formulas currently followed by the Yonkers Affordable Housing Program. (See memo on Maintenance of Affordable Units.)
 - d. Maintain preferences for prior residents of public or subsidized housing in Yonkers, City residents and employees. Require one year of residency or employment to qualify.
 - e. Maintain the pre-screening procedure by an agency like the Yonkers Affordable Housing Office or Housing Action Council.
5. Modify Section 43-199 to use the standards of NYS Housing Finance Agency for square footage in 80-20 projects rather than HLTD minimum property standards.
6. Provide discretion to the Planning Board to modify bedroom distribution requirements on a case by case basis.
7. Allow the appropriate City agencies to waive bulk, height and density provisions and/or to abate real estate taxes or waive application and/or processing fees to establish financial feasibility of inclusionary developments. (The current AHO provides for this.) The Yonkers Affordable Housing Office or Housing Action Council may make recommendations to the appropriate City agencies for any such modification.