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November 29, 2012

Honorable Maurice Jones  
Deputy Secretary  
United States Department of  
Housing and Urban Development  
451 7<sup>th</sup> Street, S.W.  
Washington, DC 20410

Honorable Robert Astorino  
County Executive  
Westchester County  
148 Martine Avenue  
White Plains, NY 10601

Dear Secretary Jones and County Executive Astorino:

I write in response to Westchester County's Quarterly Report for 3Q 2012 ("3Q Report"). I note the reported achievements and seek clarification from the parties on areas of concern. I am also requesting a meeting with representatives of both Westchester County (the "County"), and the Department of Housing and Urban Development ("HUD") for the purpose of addressing those concerns.

**I. Development and Concentration of AFFH Homes**

The County reports that it is working at a pace that has enabled it to surpass benchmarks of permits and financing for homes by the end of calendar year 2012 as those benchmarks are set forth in the Stipulation and Order of Settlement and Dismissal (the "Stipulation") dated August 10, 2009. Specifically, the County reports that 272 affordable Affirmatively Furthering Fair Housing ("AFFH") units have all financing in place and 130 units have building permits. *See* County's 3Q Report at 1. Notably, the County reports that there are 87 completed and occupied units. *Id.* As Monitor, I request the opportunity, pursuant to paragraphs 15 and 16 of the Stipulation, to inspect and review the files corresponding to the 272 units described above.

Honorable Maurice Jones  
Honorable Robert Astorino

- 2-

November 29, 2012

The County's 3Q Report notes that sites have been reviewed in each of the 31 eligible communities. *Id.* The Site Progress list, however, indicates that approximately 70% of the proposed sites are to be found in just four communities. *See* Appendix I-1 of County's 3Q Report. In addition, 12 eligible municipalities apparently have no units in the pipeline. *See id.* As Monitor, I request that each of the parties indicate its position on the question of whether this calculation of the level of potential concentration is accurate and, if so, whether the level of concentration is consistent with the stated aims and provisions of the Stipulation. Both parties are asked to respond in writing by **December 10, 2012**.

## **II. Adoption and Promotion of Model Ordinance**

The County also reports that 10 of the 31 eligible municipalities have adopted a version of the Model Ordinance. *See* County's 3Q Report at 16. The rate of adoption, however, has slowed considerably with only one municipality, the Town of North Salem, incorporating provisions from the Model Ordinance in the third quarter of 2012. *Id.* More importantly, in the eight quarterly reports filed since the Model Ordinance was approved by the Monitor on October 25, 2010 and adopted by the Westchester County Planning Board on November 9, 2010, the County has reported no formal progress in five municipalities: the Town of Cortlandt, the Village of Larchmont, the City of Rye, the Town of Somers, and the Village of Tuckahoe. *See* County Reports from 4Q 2010 through 3Q 2012. Taken together, the last four quarterly reports support the conclusion that these five municipalities have made no progress toward adopting the Model Ordinance in the last year. *See* County Reports from 4Q 2011 through 3Q 2012.

The County's Discretionary Allocation Funding Policy ("Policy"), finalized and approved by the Monitor on January 10, 2012, is an agreed upon tool to promote the Model Ordinance. As a precondition to receiving discretionary funds, the Policy requires a municipality eligible under the Stipulation to certify, among other things, that it "has adopted municipal zoning code provisions and/or policies which reflect the guidance provided in the Model Ordinance Provisions approved pursuant to the Settlement Agreement and demonstrate a commitment by the Recipient Eligible Municipality to affirmatively further fair housing." Westchester County Fair and Affordable Housing Implementation Plan, Appendix D-2(ii): Discretionary Allocation Funding Policy as approved Jan. 10, 2012. Although several municipalities have reported their commitment to affirmatively further fair housing, for example, by "creating affordable units" and complying with

Honorable Maurice Jones  
Honorable Robert Astorino

- 3 -

November 29, 2012

“the intent and spirit of the Model Ordinance Provisions,” this falls short of the requirement under the Policy to adopt zoning code provisions and policies that reflect the Model Ordinance Provisions. *See* County’s 3Q Report at 17.

Therefore, pursuant to paragraph 13 of the Stipulation, the Monitor requests that the County provide a written submission by **December 10, 2012**, describing the specific actions, citing dates and attaching correspondences and other exhibits where applicable, the County has taken to promote the Model Ordinance to each of the five municipalities listed above. In its response, the County should describe in detail how it has implemented the County’s Discretionary Funding Allocation Policy as part of its effort to promote the Model Ordinance to eligible municipalities.

### **III. Financing**

The County reports that 272 AFFH units have all financing in place, exceeding the Stipulation’s benchmark requirement of 200 units for the year ending December 31, 2012. County’s 3Q Report at 1. The County also reports, however, that it has “approved the use of \$26,675,500 of the \$51.6 million it is required to spend on the 750 units,” reaching a per unit cost of approximately \$98,072. *See id.* at 2. At its current rate of spending, the County would need to spend approximately \$73.6 million to reach the minimum requirement under the Stipulation of 750 AFFH units.

On March 27, 2012, the County submitted a revised financing strategy as part of its Fair and Affordable Housing Implementation Plan. *See* Attachment to Letter of March 27, 2012 from Kevin J. Plunkett to James E. Johnson. As of March 23, 2012, the County reported a per unit cost of units approved to date of \$87,835, but estimated per unit cost could be reduced to \$68,812 by counting inclusionary units and other units built at no cost to the County, and units built with no land acquisition costs. *Id.* at 15. There is no evidence in the County’s 3Q Report that this strategy has come to fruition; rather, per unit costs have increased roughly 12% from a rate that already exceeded the County’s budget.

Therefore, pursuant to paragraph 13 of the Stipulation, the Monitor requests that the County provide a written submission by **December 10, 2012**, explaining with specificity how it intends to reach the Stipulation’s minimum requirement of 750 AFFH units given its current rate of spending.

I would like to meet with representatives of HUD and the County shortly after receiving the submissions and ask that the parties coordinate with

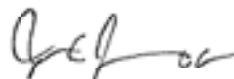
Honorable Maurice Jones  
Honorable Robert Astorino

- 4 -

November 29, 2012

Jan Mensz of my team. He will be reaching out to your staff to find mutually convenient times to meet. The County should come to the meeting prepared to discuss its written submissions as well as the process for compliance with the request to inspect and review the files corresponding to the 272 AFFH units that currently have all financing in place. HUD should come prepared to discuss its position on the concentration of AFFH homes and any other comments it may have on the issues detailed above.

Very truly yours,



James E. Johnson

cc: Kevin J. Plunkett, Deputy County Executive  
Mary J. Mahon, Special Assistant to the County Executive  
Kenneth W. Jenkins, Chairman of the Westchester County Board of  
Legislators  
Glenda Fussá, Deputy Regional Counsel, New York Office, HUD  
Benjamin H. Torrance, Assistant U.S. Attorney (S.D.N.Y.)  
Lara K. Eshkenazi, Assistant U.S. Attorney (S.D.N.Y.)