UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CORINNE VARGAS, KISHA TRENT, ANNIE SMITH and R.G., on behalf of themselves and all others similarly situated,	:	Case No. 07-CV-5202 (JS)(WDW)
Plaintiffs,	:	
v.	:	
TOWN OF SMITHTOWN,	:	
Defendant.	:	

STIPULATION OF SETTLEMENT AND CONSENT DECREE

This Stipulation of Settlement and Consent Decree ("Stipulation" or "Settlement") is submitted pursuant to Federal Rule of Civil Procedure 23. Subject to approval of the Court, this Stipulation is entered into by and between Named Plaintiffs Corinne Vargas, Kisha Trent, Annie Smith, and R.G. in the above-captioned Action for themselves and on behalf of the Class they represent, as defined below (together, "Plaintiffs"), on the one hand, and the Defendant Town of Smithtown (hereinafter referred to as the "Town", "Smithtown" or "Defendant"), by and through their respective counsel, on the other hand (together, the "Parties").

WHEREAS, on December 13, 2007, Plaintiffs filed a Complaint (the "Complaint"), which alleges claims against Smithtown for discrimination on the basis of race, color, and national origin in administering the Smithtown Section 8 Housing Choice Voucher Program (hereinafter referred to as "Smithtown Section 8 Voucher Program") in violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982; the Civil Rights Act of 1871, 42 U.S.C. § 1983; the Equal Protection Clause of the Fourteenth

Amendment to the United States Constitution; and the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*

WHEREAS, Smithtown has denied, and continues to deny any and all liability for the claims alleged in the Complaint, but believes that the Stipulation is in its best interest to: (a) avoid further expense; (b) dispose of potentially burdensome and protracted litigation; (c) finally put to rest all claims the Plaintiffs may have arising from or relating to the allegations in the Complaint; and (d) support its continued effort to affirmatively further fair housing.

WHEREAS, the Parties engaged in arm's-length negotiations with the assistance of Court-approved mediator Lela Love, and have agreed to the Stipulation, the terms of which are entirely set forth herein.

WHEREAS, the Parties agree that the Stipulation furthers their mutual goal of promoting non-discriminatory distribution of Section 8 housing vouchers and ensuring that any residency preference utilized in the provision of housing benefits does not result in discrimination on the basis of race, color, or national origin in violation of the Fair Housing Act.

NOW, THEREFORE, it is hereby stipulated and agreed, by and among the Parties, through their respective attorneys, subject to approval of the Court, that all claims, as defined below, shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the terms and conditions of this Stipulation, as follows:

SECTION I
DEFINITIONS

1. As used herein the following terms shall have these meanings:

   a. "Action" shall mean *Vargas et al.* v. *Town of Smithtown*, No. 07-CV-5202 (JS)(WDW), pending in the United States District Court for the Eastern District of New York, and any and all cases now or hereafter consolidated therewith.

b. "Smithtown Section 8 Housing Choice Voucher Program" or the "Program" means the Section 8 Housing Choice Voucher program, as provided by 24 C.F.R. § 982, administered by Smithtown.

c. "Defendant" or "Smithtown" shall mean the Town of Smithtown and its directors, officers, agents, employees, former employees, attorneys, and predecessors.

d. The term "minority," as used herein, means African-Americans and Hispanics.

SECTION II
STIPULATION NOT AN ADMISSION

2. This Stipulation and all negotiations, statements and proceedings in connection therewith shall not in any event be construed as, used as, or deemed to be evidence of an admission or concession by Smithtown or Plaintiffs or any member of the Class: (a) regarding the validity of the Settled Claims; or (b) of any fault, wrongdoing, omission or liability whatsoever. This Stipulation and all negotiations, statements and proceedings in connection therewith shall not be construed as, used as, or deemed to be evidence of, an admission or concession that Smithtown, Plaintiffs, or, upon entry of the Preliminary Order, any Class member, has or has not suffered any damage in connection with this Action. This Stipulation and all negotiations, statements and proceedings in connection therewith shall not be offered or received in evidence against any of the Parties, or, upon entry of the Preliminary Order, any Class member, in any civil, criminal or administrative action or proceeding in any court, administrative agency or other tribunal, other than such proceedings as may be necessary to consummate or enforce the Settlement, the releases executed pursuant thereto, and/or the Judgment Order. Notwithstanding any of the foregoing, the Stipulation and the Exhibits hereto may be filed in any subsequent action brought against Smithtown in order to support a defense or counterclaim by Smithtown of res judicata, collateral estoppel, release, good faith settlement,

judgment bar or reduction or any other theory of claim or issue preclusion or similar defense or counterclaim.

SECTION III
CONDITIONS TO FINALITY OF THE SETTLEMENT

This Settlement shall be final when each of the following conditions in this Section have been satisfied or waived by written agreement of the Parties.

3. Court Approval. The Settlement shall have been approved by the Court, as provided for in this Section. As soon as practicable following the signing of this Stipulation, the Parties shall jointly request that the Court enter an order and judgment approving this Stipulation and the Settlement contemplated hereunder. The Parties shall cooperate in good faith, which shall include taking all steps and making all efforts contemplated by this Stipulation that are reasonably necessary to secure preliminary and final approval by the Court of the Settlement, and any other steps or efforts which may become necessary by order of the Court (unless such order materially modifies the terms of this Stipulation), to carry out this Settlement Agreement, including the following:

a. Preliminary Approval of Settlement. As soon as reasonably possible upon the full execution of this Stipulation by the Parties, Plaintiffs will request that the Court enter a preliminary order of approval substantially in the form annexed hereto as Exhibit A (the "Preliminary Approval Order").

b. Class Certification. The Plaintiffs have asserted that the Action should be certified as a class action as defined in the Federal Rules of Civil Procedure for settlement purposes and to effectuate this Stipulation.

Defendants will not object to such certification on the terms set forth in this Stipulation only and for no other purpose than as set forth herein.

c. Issuance of Class Notice. On the date and in the manner set by the Court in its Preliminary Approval Order, the Plaintiffs shall cause the Class Notice to be transmitted in the form and manner approved by the Court as directed in the Preliminary Approval Order.

d. The Fairness Hearing. Upon entry of the Preliminary Approval Order, the Parties contemplate that the Court will schedule and then conduct a hearing at which the Court will determine whether the Settlement is fair, reasonable, and adequate (the "Fairness Hearing"). Specifically, the Plaintiffs will request that the Court make a final determination, on or after the date of the Fairness Hearing concerning the following: (i) whether the Notice methodology met all applicable requirements of the Federal Rules of Civil Procedure and any other applicable laws; (ii) whether to enter judgment finally approving the Settlement (which judgment is referred to herein as the "Final Order"); (iii) whether the distribution of the Settlement Fund as provided in the Plan of Allocation should be approved; and (iv) what legal fees, compensation and expenses should be awarded to Class Counsel, and to Named Plaintiffs, as contemplated by Section XVIII of this Stipulation.

4. Final Approval. The approval by the Court of the Settlement proposed in this Stipulation shall be considered final ("Final Approval") upon the occurrence of all of the

following events: (a) this Settlement is approved in all material respects by the Court and (b) the Court enters the Final Order, and the time to appeal or seek permission to appeal from any portion of the Final Order has expired, or, if appealed, the Final Order has been affirmed in its entirety by a court of last resort to which an appeal has been taken and the affirmance is no longer subject to further appeal or review.

SECTION IV
RELEASE

5. Subject to the approval of the Court, any and all claims, demands, actions or causes of action, rights, liabilities, damages, losses, obligations, judgments, suits, matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, that have been or could have been asserted in this Action or in any court tribunal, or proceeding (including, but not limited to, claims of discrimination in housing in violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982; the Civil Rights Act of 1871, 42 U.S.C. § 1983; the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*), and any related charges or complaints, including all statutory, tort, contract or other claims which were or might have been asserted by Plaintiffs or on their behalf in any suit, grievance, charge of discrimination (whether federal, state or local) by or on behalf of the Named Plaintiffs or any members of the Class, and/or their heirs, executors, administrators, successors and assigns, against the Town of Smithtown and/or its directors, officers, agents, employees, former employees, attorneys, successors, and predecessors which Named Plaintiffs or any member of the Class ever had, now has or hereafter can, shall or may have by reason of, arising out of, relating to or in connection

with the allegations, facts, events, transactions, acts, occurrences embraced, involved, set forth or otherwise related, directly or indirectly, to the allegations in this Action (the "Settled Claims") shall be compromised, discharged, settled, released, and dismissed with prejudice upon and subject to the terms and conditions contained in this Stipulation. Notwithstanding any other provision hereof, the releases set forth in this Stipulation will remain in effect during the pendency of any appeal. Only if any appeal results in a reversal or vacation of the Final Order will the releases set forth in this Stipulation become void and lose their effect.

6. For avoidance of doubt, the Settled Claims include, without limitation, any unknown claims relating to or arising from the allegations in this Action that could have been brought in this Action which any Named Plaintiffs or Class member does not know or suspect to exist at the time of this Stipulation but which, if known, might have affected the decision to enter into this Stipulation. Named Plaintiffs acknowledge, and all Class members by operation of law shall be deemed to have acknowledged, that the inclusion in the Settled Claims of all unknown claims was separately bargained for and was a key element of the Settlement.

SECTION V
CLASS

7. The Parties shall use best efforts to have the Court certify a settlement class (the "Class") consisting of:

> All African-American and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were determined not eligible for the Program because they did not live or work in Smithtown.

SECTION VI
EDUCATIONAL PROGRAM

8. Defendant agrees to provide information in reasonable detail to all of its current employees and agents, including the Community Development Corporation of Long Island employees, involved with the Program regarding the requirements of non-discrimination set forth in the Fair Housing Act of 1968, as amended, and of the Defendant's policy of equal housing opportunity. The purpose of such action is to ensure that all such employees and agents of the Defendant understand and implement the policy of the Defendant's Section 8 voucher and affordable housing-related services in accordance with objective, non-discriminatory criteria.

9. Defendant agrees that within 120 days of signing of this Stipulation it will provide mandatory training (the "Training") to all of its current employees and agents involved with the Program, which shall cover the requirements of the federal Fair Housing Act, applicable local fair housing laws, Defendant's policy of equal housing opportunity, and the policies, operation, methods, and procedures governing the Program. The Training shall be provided to any new employee involved in the Program within 30 days of the start of their involvement in the Program. The Training shall be repeated every three years for all of Defendant's employees and agents involved in the Program. The first Training shall be provided by the Fair Housing Justice Center, at Smithtown's expense. Any subsequent trainings shall be provided by Smithtown.

10. At least 10 days prior to each presentation of the Training, Defendant shall provide a detailed summary of the Program to the Lawyers' Committee. Defendant agrees to make any reasonable changes to the content of the Training proposed by the Lawyers' Committee for Civil Rights Under Law (hereinafter "Lawyers' Committee"). The Lawyers'

Committee shall also be entitled to observe any provision of the Training identified in the above paragraph.

11. Within sixty (60) days of the signing of this Stipulation, the Parties shall draft a mutually agreeable "Equal Opportunity Housing Statement," which shall then be attached to this Stipulation as Exhibit B. Defendant shall provide to all employees and agents who attend the Training a copy of the statement. Each employee who receives a copy of the statement shall sign an acknowledgment that he or she has read it and agrees to act in accordance with it. The acknowledgment shall state that the breach or failure to observe the guidelines in Defendant's "Equal Opportunity Housing Statement" will subject the employee or agent to disciplinary action, as would the breach of any duty or responsibility of his or her employment.

SECTION VII
AFFIRMATIVE MARKETING

12. Defendant shall affirmatively market the Section 8 Program to minority persons during the term of this Stipulation. Compliance with this term of the Stipulation shall be deemed fulfilled by faxing a copy of every advertisement placed by the Defendant or notice sent by the Defendant, five (5) days prior to the date of its publication, to the Lawyers' Committee.

SECTION VIII
ADVERTISING

13. Defendant shall inform the public of its non-discriminatory policies and its desire to serve all persons in a considerate and professional manner with respect to the Section 8 Program by displaying the local and federal fair housing posters at all offices where it conducts business, pursuant to 24 C.F.R. Part 110.

14. Within one hundred twenty (120) days of the signing of this Stipulation, the Defendant shall add to stationery, applications, and forms used in the Program a notice that the defendant is committed to "equal housing opportunity."

15. Defendant shall include an equal housing opportunity slogan or logo in all future newspaper or other printed advertising according to the following HUD standards:

Size of Advertising	Size of Logo or Slogan
1/2 page or larger	2 inches x 2 inches
1/8 page to 1/2 page	1 inch x 1 inch
4 column inches to 1/8 page	½ inch x ½ inch
Non-newspaper ad	proportionate to above standard

a. Alternatively, should the Defendant choose to use the equal housing opportunity slogan in 24 C.F.R. Part 109, such slogan shall be printed in typeface comparable in size to the other print in the advertisement.

b. For newspaper advertisements of less than four (4) column inches, the Defendant may include the phrase "equal housing opportunity" in place of the logo or slogan. All such slogans or logos shall be included in newspaper and other printed advertisements within sixty (60) days of the effective date of the Stipulation.

16. Defendant shall comply in all of its advertising with the federal fair housing advertising regulations issued by HUD. *See* 24 C.F.R. Part 109.

17. Other than the requirements agreed to above, Defendant shall place or retain a statement of non-discrimination and equal opportunity policies on all Section 8 Program materials.

18. Defendant shall provide individuals who receive or apply for Section 8 vouchers with materials regarding fair housing laws and their rights.

19. Defendant shall continue its Section 8 affirmative advertising plan and shall broaden its advertisement of Section 8 waitlist openings, including, at a minimum, in periodicals and newspapers with general readership, such as *Newsday*, and minority publications and news

sources that are likely to reach potential minority applicants in Nassau and Suffolk Counties. In addition, Smithtown shall provide notification of waitlist openings to organizations agreed upon by the Parties, including, but not limited to, those identified in Exhibit C. Prior to any reopening of the waitlist, Smithtown will notify the Lawyers' Committee, which will provide updates to the list in Exhibit C. The Parties shall act in good faith and use reasonable efforts to agree upon specific provisions in the Town's affirmative advertising plan as part of the Stipulation. The Town shall submit this plan to HUD for review as required.

SECTION IX
PROCEDURES FOR THE OPERATION OF THE SECTION 8 PROGRAM

20. Defendant, on its own behalf and on behalf of those persons and entities over whom it has authority or control, agrees to the following:

a. It shall administer the Section 8 voucher program in a manner that makes vouchers available on an equal basis without regard to race, color, or national origin, in compliance with the Fair Housing Act of 1968, as amended 42 U.S.C. § 3601 *et seq.* as provided by the terms of this Stipulation and its administrative plan.

b. It shall communicate with all prospective applicants or applicants concerning the availability and the requirements for obtaining a Section 8 voucher in Smithtown concisely and on an equal basis without regard to such person's race, color, or national origin.

c. It shall not enter into any agreement or contract that will require it to undertake obligations inconsistent with the terms of this Stipulation.

21. Defendant shall not retaliate against any person who has asserted rights under the Fair Housing Act of 1968, as amended, or under the Civil Rights Act of 1866, 42 U.S.C. § 1981 *et seq.*

22. Within sixty (60) days of the signing of this Stipulation, Defendant shall provide the Lawyers' Committee with a written description of the operating policies with respect to the

Program, which shall then be attached to this Stipulation as Exhibit D. That description shall be consistent with the components set forth in the following paragraphs of this Section.

23. The Program shall be implemented, made available, and marketed to all persons in the geographic areas in which it is offered without regard to race, color, national origin, or residency status.

24. Defendant shall use uniform methods to inform all prospective applicants and applicants, without regard to race, color, national origin, or residency status, about the availability of the Program, the application procedures, the methods and procedures for distributing vouchers, and about the defendant's equal housing opportunity policy.

25. Defendant shall revise its Section 8 Administrative Plan (the "Plan") with respect to the operation of the Section 8 waitlist to ensure that it complies with civil rights and the fair housing law, and accurately reflects the terms of this Stipulation. In revising the Plan, Smithtown shall remove any language regarding a residency preference in the Section 8 application form, in any correspondence it has with applicants on the waiting list, and in any advertising or any other public documents describing the selection process for vouchers. Each reopening of the waitlist shall be for at least a one-month period. The Plan shall be revised to reflect that no applicant shall be removed from the waitlist unless (1) the applicant requests that his or her name be removed; (2) the applicant fails to respond to two written requests for information that indicate that a failure to respond may result in removal from the waiting list; (3) the applicant misses three scheduled appointments; or (4) the applicant does not meet Section 8 federal program eligibility criteria. Further, the Plan shall be revised to reflect that a voucher-holder who does not have a domicile within the Town (and is therefore not statutorily guaranteed portability rights) shall make a diligent search for housing in Smithtown during the initial 60-day

term of the voucher, and shall document said search. If the voucher-holder is not able to locate suitable housing within Smithtown during that initial term, the voucher-holder shall be granted full portability rights. The Town shall resubmit this Plan to HUD for review as required.

26. Defendant may revise the methods and procedures of its Program at any time, provided they remain consistent with the terms and conditions of this Stipulation. The Defendant shall notify the Lawyers' Committee of any modification of the terms and conditions of the Program which are effective at any point during which this Stipulation is in effect.

27. After completion of the remediation provided for in Section XII, the Defendant, in administering the remainder of the 2006 waitlist, may use a residency preference whereby vouchers are awarded to eligible applicants in the order they appear on the Section 8 waitlist on a "one resident" to "one non-resident" basis, *i.e.*, alternating between the next eligible resident who receives a voucher followed by the next eligible non-resident who receives a voucher.

28. At the implementation of the residency preference and at each reopening of the Section 8 waitlist, the Town will examine its residency preference to ensure that:

a. The operation of the preference will not result in a selection rate for minority applicants that is less than four-fifths of what the selection rate would be expected to be for African-American and Hispanic applicants without consideration of a residency preference.

b. In the event that the makeup of any new waitlist is such that the current procedures will not result in that agreed selection rate, the process will be adjusted to require the selection of sufficient non-residents to achieve this result.

SECTION X
MONETARY SETTLEMENT

29. Defendant and/or its insurers shall pay Nine Hundred Twenty-Five Thousand Dollars ($925,000) ("Settlement Fund") in consideration for settlement of the Settled Claims. The Settlement Fund shall be paid into an escrow account (the "Escrow Account") established and maintained by Berdon Claims Administration LLC (the "Escrow Agent"). Thirty Thousand Dollars ($30,000) shall be paid into the Escrow Account within ten (10) business days following the date on which Plaintiffs' counsel provides the Defendant with written details of the Escrow Account number and routing information. Thereafter, within five (5) business days following entry of the Final Order and Judgment by the Court, the remaining Eight Hundred Ninety-Five Thousand Dollars ($895,000) shall be paid into the Escrow Account. The following shall be paid from the Settlement Fund: (a) any fees and expenses awarded to Plaintiffs' counsel by the Court, (b) any taxes, fees, and expenses associated with the Escrow Account, (c) costs and expenses incurred by the Claims Administrator in providing notice of the Settlement to Class members and administering the distribution of funds, and (d) as set forth herein, distributions to the members of the Class.

30. The Settlement Fund and all funds held by the Escrow Agent in connection with the Settlement shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed. The Parties hereto agree that the Settlement Amount and all funds held by the Escrow Agent in connection with the Settlement (the "Escrow Property") is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and will cooperate fully to have such Qualified Settlement Fund treatment apply to the Escrow Property as of the earliest possible date.

SECTION XI
CLAIMS ADMINISTRATION

31. Plaintiffs designate Berdon Claims Administration LLC as Claims Administrator who, as provided by this Section, shall be responsible for (i) identifying potential Class members, (ii) providing notice of the settlement to potential Class members, (iii) making determinations as to the eligibility of potential Class members for distributions from the Settlement Fund in accordance with the Plan of Allocation attached hereto as Exhibit E, and (iv) instructing the Escrow Agent to make distributions to Class members as provided by the Plan of Allocation.

32. The Parties shall work in good faith to provide the Claims Administrator a copy of any information necessary for administration of this settlement, promptly following execution of this Stipulation and as requested by the Claims Administrator thereafter.

33. As soon as reasonably practical, the Claims Administrator shall take reasonable steps to identify the current addresses or other contact information for potential Class members, which shall include all individuals on the Program waitlists from 2002 and 2006 through the present or who applied in this period. The Claims Administrator shall use the information described in the above paragraph, as well as public or proprietary databases, to conduct a reasonable search for the current address or other contact information of potential Class members.

34. Within forty-five (45) days following Preliminary Approval of the settlement, the Claims Administrator shall notify Class members of the settlement in a form substantially the same as that attached as Exhibit F. That notice will provide (i) an indication that Class members may be entitled to monetary compensation, (ii) a description of the class, (iii) the procedures by

which Class members should apply to receive their monetary relief. Class members shall have one hundred fifty days (150) to send their application for relief following the date of the Fairness Hearing. For avoidance of doubt, applications for relief postmarked on the one hundred fiftieth day following the date of the Fairness Hearing shall be accepted as timely. The Claims Administrator shall review applications to determine whether each applicant is a member of the Class entitled to a distribution pursuant to the plan of distribution in accordance with the Plan of Allocation. The Claims Administrator shall complete the review of claims applications within six (6) months after the close of the application period.

35. The Claims Administrator, in its discretion, shall determine whether or not a person or group of people qualify as Class members entitled to monetary relief pursuant to the Plan of Allocation. It shall distribute the Escrow Property pursuant to the Plan of Allocation attached as Exhibit E.

SECTION XII
PROVISION OF HOUSING VOUCHERS

36. Defendant shall give immediate priority for Corinne Vargas, Kisha Trent, Annie Smith and R.G. to receive the next available Section 8 housing vouchers, provided that at the time this Stipulation is executed they are eligible to receive a voucher. These vouchers shall be provided to them at no cost. Compliance with this term of the Stipulation shall be fulfilled by Defendant executing a mutually agreed upon voucher agreement between Smithtown and each Named Plaintiff.

37. The Town shall place the non-resident applicants for Section 8 vouchers, who were on the waitlists created in 2002 and 2006 and whose numbers have already been passed over, at the top of the current waitlist in the order they would have been assigned based on their

original waitlist numbers. The Town shall also make reasonable attempts to identify and contact the non-resident applicants who were on the 2002 and/or 2006 waitlists who are not currently on the waitlist and restore those non-resident applicants to the current waitlist in the manner indicated by this paragraph.

38. The individuals added to the existing waitlist as described in this Section shall be served prior to the Town serving any other applicant on the waitlist and without regard to any residency preference.

SECTION XIII
RECORDKEEPING AND REPORTING REQUIREMENTS

39. Defendant shall maintain and preserve records, including but not limited to the records relating to the Program and all complaints of discrimination, beginning with the date hereof and continuing for the duration of this Stipulation, and shall make this information available for inspection by the Lawyers' Committee upon written request and at a mutually convenient time and place, but not more frequently than once every six months.

40. The Town shall provide reports annually to the Lawyers' Committee detailing the data collected pursuant to its record keeping responsibilities.

41. The Town shall also notify the Lawyers' Committee each time the waitlist is reopened during the life of the Stipulation.

SECTION XIV
TERM OF STIPULATION AND COMPLIANCE REPORT

42. This Stipulation shall continue in force from the date on which it is approved by the Court until ten (10) years thereafter. Within ninety (90) days after approval of this Stipulation, Smithtown shall file a compliance report with the Court which enumerates the steps

they have taken to implement the provisions of the Stipulation. Such report shall also be served on Plaintiffs' counsel. Thereafter during the term of the Stipulation, such reports shall be filed with the Court and served on Plaintiffs' counsel annually on January 1st. The Court shall retain jurisdiction of this action for the duration of this Stipulation.

SECTION XV
FINAL ORDER

43. If, following distribution of the Notice pursuant to the terms of this Stipulation or the Court's Order and a Settlement Hearing as provided for in the Notice, the Court certifies the Class and approves the Settlement (including any modification thereto made with the consent of the Parties as provided herein) as fair, reasonable, and adequate and in the best interests of the Class, the Parties shall jointly request that the Court enter an Order and Final Judgment substantially in the form attached hereto as Exhibit G.

SECTION XVI
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

44. If approval of the United States Department of Housing and Urban Development ("HUD") is required for implementation of any term of this Stipulation, the Town will institute all terms for which HUD approval is not required within a reasonable period of time, but not longer than ninety (90) days after the date of Final Approval, and will submit all other terms for HUD approval within a reasonable period of time, but not longer than ninety (90) days after the date of Final Approval.

45. In the event HUD indicates to either Party its disapproval or opposition to material items in this Settlement, Plaintiff agrees to cooperate and work with Defendant to

overcome such disapproval or opposition. In the event such disapproval or opposition is not overcome, Plaintiffs or Defendant shall have the right to terminate the Settlement.

SECTION XVII
TERMINATION

46. Each Party shall have the right to terminate this Stipulation by providing written notice to the other Party of its election to do so within thirty days of any of the following: (a) the Court declining to approve the Settlement in any material respect; (b) disapproval by HUD as indicated in paragraphs 44 and 45; or (c) any other event that would preclude Final Approval. If this Stipulation is terminated or fails to become effective for any reason, each Party shall be restored to its respective position as if this Stipulation had never existed, and neither the existence of this Stipulation nor its contents shall be admissible in evidence or referred to for any purpose in this Action or any other litigation or proceeding.

SECTION XVIII
ATTORNEYS' FEES

47. If the Settlement provided herein is approved by the Court, Plaintiffs intend to make an application to the Court for an allowance of attorneys' fees and expenses incurred in prosecution of this Action in the amount of $200,000, to be paid out of, not in addition to, the Settlement Amount. Smithtown will not oppose the fee and expense application of Plaintiffs as described in this paragraph. Ten days after entry of the Judgment Order, the Escrow Agent identified in paragraph 29 of this Stipulation shall pay the attorneys' fees and expenses as ordered by the Court into an account (the "Fee Account") established and controlled by counsel for Plaintiffs.

48. The payment to Plaintiffs' counsel of attorneys' fees into the Fee Account is subject to the obligation of Plaintiffs' counsel to refund to the Escrow Account the entire amount of the fees paid into the Fee Account plus accrued interest at the rate paid on the Fee Account by the financial institution holding it within five business days of any of the following occurrences: (a) Final Approval as defined herein is not achieved or reasonably achievable for whatever reason; or (b) the Stipulation is voided by any of the Parties or otherwise terminated as provided herein.

SECTION XIX
EFFECT OF RELEASE

49. The release contemplated by this Stipulation extends to claims that Named Plaintiffs, for themselves or on behalf of the Class, do not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into this release. Upon entry of the Judgment Order, Plaintiffs and each member of the Class shall be deemed to: (a) waive any and all provisions, rights, and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, which governs or limits a person's release of unknown claims; and (b) relinquish, to the full extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

50. In addition, upon entry of the Judgment Order, Plaintiffs, for themselves and on behalf of the Class, also shall be deemed to waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542. Plaintiffs

acknowledge that they or members of the Class may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, as Plaintiffs and on behalf of the Class, to settle and release—fully, finally, and forever—any and all claims released hereby, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, without regard to the subsequent discovery of such additional or different facts.

SECTION XX
FURTHER PROCEEDINGS

51. Pending the Court's consideration of the Settlement, the Parties agree that they will not engage in any further proceedings in this Action other than those incident to the Settlement. The Parties further agree to use their best efforts to prevent the entry of any interim or final relief in favor of any member of the Class in any other litigation against any of the Parties to the Stipulation that challenges the Settlement or otherwise involved a Settled Claim.

52. The Parties will request the Court order that, pending Final Approval of the Settlement, Named Plaintiffs and all members of the Class shall be barred and enjoined from commencing, prosecuting, instigating, continuing, or in any way participating in the commencement or prosecution of any action asserting any Settled Claims, either directly, representatively, or in any other capacity against Smithtown or challenging the Settlement (other than in this Action in accordance with the procedures established by the Court).

SECTION XXI
MISCELLANEOUS

53. For avoidance of doubt, the Parties agree that the terms of this Stipulation shall apply to Smithtown, its employees, directors, officers, agents, related municipalities, successors,

assigns and administrators, including the Community Development Corporation of Long Island employees to the extent they are acting as agents of or at the direction of Defendant.

54. As soon as practicable after signing of this Stipulation, the Parties shall prepare a joint statement for public release that will disclose in reasonable detail the terms of this Stipulation and shall otherwise keep the terms and conditions of this agreement confidential, subject to (a) disclosures and approvals that must be made to and obtained from HUD and/or the Court, and (b) those terms that will be made a part of the Smithtown Section 8 Program Administrative Plan.

55. The titles used in this Stipulation are non-substantive descriptions included solely for the Parties' ease of reference and shall not be construed to alter the substantive provisions of this Stipulation.

56. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation, except that any extensions of the time that relate to providing Notice to the Class shall be so ordered by the Court.

57. This Stipulation constitutes the entire agreement of the Parties with respect to the subject matter hereof, and may only be amended or any of its provisions waived by a writing executed by all Parties hereto.

58. This Stipulation, and all rights and powers granted hereby, will bind and inure to the benefit of the Parties hereto and their respective agents, executors, heirs, successors and assigns.

59. Any failure by any of the Parties to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to

insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party.

60. This Stipulation may be executed in two or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when such counterparts have been signed by each of the Parties and delivered to the other Parties. Signed signature pages of this Stipulation may be delivered by electronic or facsimile transmission, which will constitute complete delivery without any necessity for delivery of original, signed signature pages in order for this Stipulation to constitute a binding agreement.

61. This Stipulation shall be construed and enforced in accordance with the laws of the State of New York, without regard to the conflict of law provisions thereof. Any action to enforce or challenge the provisions of this Stipulation shall be filed exclusively in the District Court for the Eastern District of New York.

62. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and the Settlement, and to use their best efforts to effect, as promptly as practicable, the consummation of this Stipulation and the Settlement provided for hereunder and the dismissal of the Action, including any and all complaints filed in the Action, with prejudice and without costs to any Party.

63. The Parties recognize that questions may arise as to whether Defendant is fulfilling its obligations as set forth herein. In the spirit of common purpose and cooperation which occasioned this Stipulation, the Parties agree to try to resolve such disputes informally before applying to the Court for resolution of any issue.

AGREED:

Dated: March 4, 2009
New York, New York

/s/ David H. Arntsen
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