

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

May 2, 2024

Westchester County Board of Legislators
County of Westchester
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Re: Request for Authorization to Settle the Proceeding entitled
The County of Westchester v. Migi Asset Acquisition, LLC, pending
in the Supreme Court of the State of New York, Westchester
County Index No. 60705/2022

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if enacted by your Board, would authorize the settlement of the litigation between the County of Westchester and Migi Asset Acquisition, LLC, over the property located at 98 Washington Avenue, in the Village of Pleasantville (“the Premises”), as set forth below.

As you are aware, by Act 41 of 2022, your Honorable Board authorized the commencement of litigation related to an affordable housing development that was to be constructed at the Premises. The dispute arose due to a failure by Migi Asset Acquisition, LLC (“the Developer”) to complete construction of 14 units of affordable housing, as required by two contracts between the County and Developer. Under those contracts, the County had provided approximately \$2.6 million in subsidy funds--\$1.8 million by purchasing the property and reselling to the Developer for \$1, and \$788,533.12 through reimbursement of construction costs. The contracts, as extended by the County, required completion of the units by June 30, 2020; the units remain incomplete as of today.

Following the adoption of Act 41 of 2022, this Office commenced litigation against the Developer. In February 2023, the Developer filed for bankruptcy protection, which stayed further action in the County’s lawsuit. In October 2023, the bankruptcy petition was dismissed, and the County’s lawsuit recommenced. The parties have since completed most discovery, and engaged in settlement negotiations mediated by the Court.

Additionally, the Developer has recently accepted an offer from Lifting Up Westchester to purchase the property, in the amount of \$2.1 million. This purchase would allow the property to be transferred to an entity that can complete the building and appropriately manage an affordable housing development. This offer—for which the Developer and Lifting Up Westchester have not yet entered into a contract on—is contingent on the Developer working out a deal with its mortgage company, Pride Lending, LLC, which holds a mortgage of at least \$2.9 million on the Premises, and has personal guarantees by principals of the Developer.

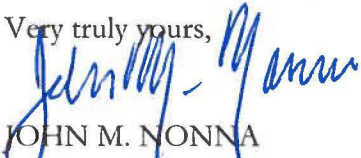
Given the financial situation of the Developer, the value of the property (which appraised in 2023 at \$2.1 million), and the offer from Lifting Up Westchester, the parties have negotiated a settlement as follows:

- 1) Developer is required to sell the property to Lifting Up Westchester no later than July 1, 2024. The County has the unilateral right to extend that date, in case Lifting Up Westchester needs additional time to close;
- 2) Developer is required to pay all outstanding property taxes at the closing of the sale; and
- 3) Developer is required to pay the County \$26,000 at the closing of the sale.

If the Developer is unable to close on the sale of the Premises for any reason, including a failure to work out a deal with its lender, the settlement would be voided and the litigation would recommence.

I recommend adoption of the enclosed Act.

Very truly yours,



JOHN M. NONNA
Westchester County Attorney

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BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the settlement of the litigation between the County of Westchester and Migi Asset Acquisition, LLC, over the property located at 98 Washington Avenue, in the Village of Pleasantville (“the Premises”), as set forth below.

Your Committee is aware that, by Act 41 of 2022, your Honorable Board authorized the commencement of litigation related to an affordable housing development that was to be constructed at the Premises. The dispute arose due to a failure by Migi Asset Acquisition, LLC (“the Developer”) to complete construction of 14 units of affordable housing, as required by two contracts between the County and Developer. Under those contracts, the County had provided approximately \$2.6 million in subsidy funds--\$1.8 million by purchasing the property and reselling to the Developer for \$1, and \$788,533.12 through reimbursement of construction costs. The contracts, as extended by the County, required completion of the units by June 30, 2020; the units remain incomplete as of today.

Your Committee is informed that, following the adoption of Act 41 of 2022, the County Attorney commenced litigation against the Developer. In February 2023, the Developer filed for bankruptcy protection, which stayed further action in the County’s lawsuit. In October 2023, the bankruptcy petition was dismissed, and the County’s lawsuit recommenced. The parties have since completed most discovery, and engaged in settlement negotiations mediated by the Court.

Your Committee is also informed that the Developer has recently accepted an offer from Lifting Up Westchester to purchase the property, in the amount of \$2.1 million. This purchase would allow the property to be transferred to an entity that can complete the building and appropriately manage an affordable housing development. This offer—for which the Developer and Lifting Up Westchester have not yet entered into a contract on—is contingent on the Developer working out a deal with its mortgage company, Pride Lending, LLC, which holds a mortgage of at least \$2.9 million on the Premises, and has personal guarantees by principals of the Developer.

The County Attorney has told the Committee that, given the financial situation of the Developer, the value of the property (which appraised in 2023 at \$2.1 million), and the offer from Lifting Up Westchester, the parties have negotiated a settlement as follows:

- 1) Developer is required to sell the property to Lifting Up Westchester no later than July 1, 2024. The County has the unilateral right to extend that date;
- 2) Developer is required to pay all outstanding property taxes at the closing of the sale;
and
- 3) Developer is required to pay the County \$26,000 at the closing of the sale.

If the Developer is unable to close on the sale of the property for any reason, including an inability to work out a deal with its lender regarding the outstanding mortgage, the settlement would be void and the litigation would recommence.

The County Attorney has recommended approval of the settlement. Your Committee concurs with this recommendation and recommends that this Honorable Board adopt the proposed Act.

Dated: White Plains, New York
, 2024

COMMITTEE ON

AN ACT authorizing the County Attorney to Settle the Proceeding entitled *The County of Westchester v. Migi Asset Acquisition, LLC*, pending in the Supreme Court of the State of New York, Westchester County Index No. 60705/2022

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is hereby authorized to settle the Proceeding entitled *The County of Westchester v. Migi Asset Acquisition, LLC*, pending in the Supreme Court of the State of New York, Westchester County Index No. 60705/2022, for the following principal terms:

- A) Defendant Migi Asset Acquisition, LLC is to sell the property located at 98 Washington Avenue in the Village of Pleasantville (“the Premises”) to Lifting Up Westchester by July 1, 2024, or such later date as the County Attorney may agree to;
- B) Defendant Migi Asset Acquisition, LLC is to pay all outstanding property taxes on the Premises at the closing; and
- C) Defendant Migi Asset Acquisition, LLC is to pay the County of Westchester the sum of \$26,000 at the closing.

Section 2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purposes hereof.

Section 3. This Act shall take effect immediately.