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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CITY OF JOLIET, an Illinois Municipal Corporation, )

Plaintiff )

v. )

MID-CITY NATIONAL BANK OF CHICAGO, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, et al., )

Defendants )

UNITED STATES OF AMERICA, )

Plaintiff )

v. )

CITY OF JOLIET, )

Defendant )

05 cv 6746

No. 05 C 6746

No. 11 C 5305

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE CITY OF JOLIET

This Settlement Agreement ("Agreement" or "Settlement Agreement") is made and entered into by and between the United States of America (the "United States"), the United States Department of Housing and Urban Development ("HUD") (the United States and HUD are referred to collectively herein as the "Government"), and the City of Joliet (the "City") (collectively, the "Parties"), conditional upon approval by the Court as set forth below.

The Parties hereby AGREE as follows:

## I. INTRODUCTION

1. The Parties are parties to the above-captioned actions, No. 05 C 6746 (the "Condemnation Action") and 11 C 5305 (the "Civil Rights Action"). In addition, the City is a party in administrative proceedings before HUD (the "Administrative Proceedings").

Collectively, these judicial and administrative matters are the "Disputes."

2. The Disputes are substantially related and primarily arise out of the City's efforts to exercise its power of eminent domain to acquire two adjacent properties in Joliet, Illinois, Evergreen Terrace I and Evergreen Terrace II. The Administrative Proceeding also involves the accuracy of certain certifications made by the City to HUD, as described below. Collectively, Evergreen Terrace I and II are known as Evergreen Terrace (also, the "Property").<sup>1</sup> Together, they consist of a 356-unit apartment complex that provides rental housing for low-income families. HUD asserts various liens and interests in Evergreen Terrace including certain Project Based Section 8 Housing Assistance Payments contracts entered into pursuant to the Section 8 of the United States Housing Act, 42 U.S.C. § 1437f ("HAP Contracts"), certain Mark-to-Market Restructuring Program mortgage loans (the "HUD Loans"), certain Mark-to-Market deeds of trust (the "HUD Mortgages"), and certain use agreements (the "Existing Use Agreements"). Collectively, the HUD Mortgages and Existing Use Agreements are the "HUD Encumbrances."

3. The Parties now wish to settle and to resolve the claims and defenses they have asserted or may assert against each other related to the Disputes. Section II of this Agreement concerns the resolution of those claims and defenses. Section III resolves, or provides for the resolution of, all issues among the Parties relating to the City's ownership of Evergreen Terrace

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1. For purposes of this Agreement, unless otherwise specified, the term "Evergreen Terrace" or "the Property" shall include the land, improvements and fixtures comprising Evergreen Terrace I and II.

in the event the City obtains title to and possession of the Property. Section IV addresses the future uses of the Evergreen Terrace site. Section V addresses certain general matters, including the term and enforceability provisions of the Agreement. The provisions of the Agreement are effective immediately upon the execution and approval by the Court in the manner described herein, notwithstanding the outcome of the Condemnation Action or whether the City acquires Evergreen Terrace.

4. Subject to Court approval, acknowledging that there are additional parties to one of the Disputes, and as more fully set forth in the balance of the Agreement, the purpose and intent of the Parties is as follows:

- a. The Agreement sets forth certain stipulations of fact and provisions for the full and final resolution of Administrative Proceeding involving the City and HUD through which HUD will restore Community Development Block Grant ("CDBG") and HOME Investment Partnership ("HOME") funds withheld from the City for program years 2011, 2012 and 2013.
- b. In the event the City acquires title to Evergreen Terrace by order of the Court, settlement or otherwise, and subject to any necessary approval of the Court, the proceeds of any condemnation award or compensation shall be applied to payment of the HUD Loans, and the City shall, in the event of any balance remaining after such payment, provide for payment of the deficiency, subject also to the limits set forth in the Agreement.
- c. In the event the City takes ownership or control of Evergreen Terrace by any means, the Settlement Agreement sets forth procedures for an orderly transfer of the Property to the City of the HAP Contracts and certain personal

property, to the extent ordered by the Court, and for the subsequent transfer of Evergreen Terrace to a single asset business organization controlled by and designated by the City with the capacity to operate the Property consistent with HUD regulatory requirements and the requirements of the HAP Contracts;

- d. The Agreement permits certain redevelopment activities with respect to Evergreen Terrace in the event the City acquires title to the Property. As more fully provided below, the City or its designee shall, through the term of this Agreement, maintain and provide no less than 115 dwelling units with rental assistance provided through HAP Contracts for occupancy by low-income families in the City of Joliet.
- e. In the event the City acquires title to the Property, and subject to the terms of this Agreement, certain tenants may be relocated. Any tenants who may be relocated from Evergreen Terrace shall be treated fairly, shall receive adequate notice (including all notice required by law), and shall receive the assistance to which this Agreement entitles them. Except as expressly provided below, the City shall provide to all relocating tenants the opportunity to continue to live in the City of Joliet or Will County, as they choose.
- f. In the event the City acquires title to or control of Evergreen Terrace, a Community Center shall be constructed and operated on a portion of the Property.

g. In the event the City acquires title to or control of Evergreen Terrace, the Evergreen Terrace site shall be used for the provision of affordable housing and/or other public purposes.

5. This Agreement binds all Parties to the full and final resolution that is described herein of all actual and potential interests, allegations, defenses, claims, counterclaims and relating to the subject matter of the Disputes that have been raised or could have been raised in the Civil Rights Action, including claims under the Fair Housing Act and the Housing and Community Development Act, in the Condemnation Action, and in the Administrative Proceedings.

## II. RESOLUTION OF THE DISPUTES

### A. Condemnation Action.

6. On October 7, 2005, the City filed the above captioned Condemnation Action in the Circuit Court of Will County seeking to acquire fee simple ownership of Evergreen Terrace by eminent domain. City of Joliet v. Mid-City National Bank of Chicago et al. (05-C-6746), Docket No. 1 (the "Condemnation Action"). The Condemnation Action was removed to federal court and on March 9, 2006, HUD was joined as a Defendant. See City of Joliet v. Mid-City National Bank of Chicago et al. (05-C-6746), Docket Nos. 1, 47.

7. On October 28, 2009, HUD asserted various defenses and affirmative defenses to Joliet's proposed taking, including the defense that the proposed taking violated the Fair Housing Act. See Docket Nos. 230 and 327.

8. The Parties acknowledge that there are other defendants in the Condemnation Action apart from HUD, including the owners of Evergreen Terrace I and Evergreen Terrace II (together, the "Owners"), and certain individual plaintiff residents of Evergreen Terrace

(collectively, the Owners and the individual plaintiff residents are the "Other Defendants"), and that the Condemnation Action may continue between the City and those Other Defendants after the Effective Date of this Settlement Agreement. This Agreement is not intended to resolve the Condemnation Action as it pertains to the Other Defendants and no such Other Defendant, person or entity is intended to be bound by this Settlement Agreement. Nor is any such Other Defendant or any other person or entity intended to be a third party beneficiary of the provisions of this Settlement Agreement for purposes of any civil, criminal, or administrative action. No person or entity not one of the Parties may assert any claim or right as a beneficiary or protected class under this Settlement Agreement in any civil, criminal or administrative action.

9. Attached as Exhibit A to this Agreement is an Agreed Proposed Order of Dismissal for the Condemnation Action. This Settlement Agreement is expressly conditioned upon the Court's approval of the Settlement Agreement and entry of the Agreed Order of Dismissal in the form shown in Exhibit A.

B. Civil Rights Action.

10. On August 4, 2011, the United States brought suit against the City of Joliet in the above captioned Civil Rights Action charging violations of the Fair Housing Act and nondiscrimination requirements of the Housing and Community Development Act. United States of America v. City of Joliet, 11-C-5305. On August 19, 2011, the Civil Rights Action was reassigned pursuant to Local Rule 40.4 to the Honorable Charles R. Norgle, Sr., for all proceedings.

11. The Parties acknowledge and agree that the allegations and transactions that are the subject of the Civil Rights Action are substantially the same as the Fair Housing Act defenses asserted by the Government in the Condemnation Action.

12. Attached as Exhibit B to this Agreement is an Agreed Proposed Order of Dismissal for the Civil Rights Action. This Settlement Agreement is expressly premised upon the Court's approval of the Settlement Agreement and entry of the Agreed Proposed Order of Dismissal in the form shown in Exhibit B.

C. Administrative Proceedings.

13. The Parties acknowledge and agree that in connection with HUD procedures for the disbursement to the City of CDBG and HOME funds, the City has, as required by HUD, prepared, and submitted to HUD the following documents and reports:

- a. a Consolidated Plan governing the expenditure of CDBG and HOME funds for the period from 2000 through 2005;
- b. a Consolidated Plan governing the expenditure of CDBG and HOME funds for the period 2005 through 2009;
- c. a Consolidated Plan governing the expenditure of CDBG and HOME funds from 2010 through 2014;
- d. Annual Action Plans governing the expenditure of CDBG and HOME funds for each year from 1999 to the present time;
- e. Consolidated Annual Performance and Evaluation Reports ("CAPER") submitted to HUD reporting on the expenditure of CDBG and HOME funds for each year from 1999 to the present time; and
- f. for each year from 1999 to the present, certifications to HUD that the City is affirmatively furthering fair housing through the preparation of an Analysis of Impediments to Fair Housing Choice, and that the City is acting in compliance

with anti-discrimination laws and other laws (collectively, the "Fair Housing Certifications").

14. In connection with the foregoing plans, reports and Fair Housing Certifications and the receipt of CDBG and HOME funds:

- a. On or about July 28, 2009, HUD undertook an investigation examining whether, in carrying out the Condemnation Action, the City failed to make accurate Fair Housing Certifications;
- b. acting on the completed investigation HUD commenced administrative proceedings (the "Administrative Proceedings") and on December 23, 2009 issued correspondence to the City alleging the inaccuracy of the Fair Housing Certifications for 2010 and subsequent years, which correspondence is dated December 23, 2009, January 15, 2010, January 29, 2010, May 25, 2011, June 30, 2011, September 22, 2011, September 28, 2011, October 7, 2011, December 8, 2011, December 29, 2011, March 9, 2012, January 22, 2013 and January 30, 2013;
- c. in the course of the Administrative Proceedings, which proceedings are not concluded as of the date of this Settlement Agreement, HUD has not made CDBG and HOME funds for program years 2011, 2012 and 2013 available to the City; and
- d. in 2011, as part of the Administrative Proceedings, the City completed and submitted to HUD an Analysis of Impediments to Fair Housing Choice (the "2011 AI") to replace the AI produced by the City in 1997 (the "1997 AI").

15. By entering into this Agreement the Parties agree that:



- a. upon execution of the Settlement Agreement by the Parties, the commitments made by the City in this Settlement Agreement shall constitute adequate assurances of the accuracy of the City's Fair Housing Certifications;
- b. upon execution of the Settlement Agreement by the Parties, the Administrative Proceedings shall be terminated;
- c. upon execution of the Settlement Agreement by the Parties, HUD and the City shall promptly execute a grant agreement (a "Grant Agreement") and HUD shall award in full and pay into HUD's Line of Credit Control System ("LOCCS") all of the City's CDBG and HOME funds for federal fiscal years 2011, 2012 and 2013; and
- d. there shall be no recovery by HUD of CDBG or HOME funds disbursed to the City at any time prior to the Effective Date or of any such funds disbursed for the years 2011, 2012 and 2013 based on assertions that the City's Fair Housing Certifications during such period were inaccurate.
- e. the provisions of this Section II.C shall remain in full force and effect notwithstanding the outcome of the Condemnation Action with respect to the Other Defendants; provided that it shall be a condition of the Grant Agreement that no funds shall be disbursed to the City from LOCCS until the Effective Date, as defined in paragraph 21.

16. Notwithstanding the foregoing, any breach of this Settlement Agreement may provide a basis for a future rejection of the City's certifications and such other actions by HUD as may be authorized by applicable laws and regulations.

17. Within 120 days of the Effective Date, the City will modify its 2011 AI to reflect the obligations it has undertaken in this Settlement Agreement.

D. Court Approval; Effective Date

18. The Parties intend this Settlement Agreement to fully and finally resolve and release all of the Parties' actual and potential interests, allegations, defenses, claims, counterclaims and rights of appeal relating to the subject matter of the Disputes that have been or could have been raised against the City by the Government or against the Government by the City in the Condemnation Action and the Civil Rights Action (except that HUD may reenter the Condemnation Action solely to defend its interests in any distribution of the just compensation awarded pursuant to an eminent domain award), and to fully and finally resolve and release all of the Parties' actual and potential interests, allegations, defenses, claims counterclaims and rights of appeal relating to the subject matter of the Disputes that have been or could have been raised against the City by the Government or against the Government by the City in the Administrative Proceedings. This Settlement Agreement is not intended to resolve or release claims that may arise in the future and that do not relate to the subject matter of the Condemnation Action, the Civil Rights Action, or the Administrative Proceedings.

19. This Agreement reflects a compromise of disputed claims and shall not be construed as an admission by the Government of the veracity of any allegation made by the City or any of the Other Defendants or any other party in the Disputes or as an admission by the City of the veracity of any allegation made by the Government or any of the Other Defendants or any other party in the Disputes. Neither Party admits liability in this matter.

20. Except as otherwise provided herein, this Settlement Agreement is expressly conditioned on and shall become effective only upon the Court's approval of the Settlement

Agreement and entry of the Agreed Orders of Dismissal. Upon execution of the Settlement Agreement with respect to the provisions of Section II.C, and otherwise upon the Effective Date, the Parties agree not to violate, terminate, rescind, revoke or repudiate this Settlement Agreement.

21. Except as otherwise provided herein, this Settlement Agreement shall be effective upon its approval and entry as an Order of the Court and the entry of the Agreed Orders of Dismissal (the "Effective Date"). The Agreement shall remain effective through its Term (as defined in Section V) notwithstanding the outcome of the Condemnation Action with respect to the interests of the Other Defendants, and during the period of any appeal in the Condemnation Action by the City or any Other Defendant.

### **III. AGREEMENTS REGARDING EVERGREEN TERRACE IF ACQUIRED BY THE CITY**

22. For the purposes of this Settlement Agreement, "Acquisition" shall have occurred on the earliest of the following dates: (i) when the City makes payment of compensation pursuant to an eminent domain award by a jury and/or the Court; (ii) when the City makes any payment under a settlement agreement with the Owners under which title to the Property vests in the City or an entity designated or controlled by the City; (iii) when title vests in the City or an entity designated or controlled by the City by any other means; or (iv) when the City takes physical possession and control of the Property. As used in this Agreement, the term "Compensation" shall include payment of compensation pursuant to an eminent domain award and by settlement with the Owners. The "Acquisition Date" is the earliest date on which any of the preceding conditions have occurred. In the event of Acquisition, the Parties shall forthwith take or cause to be taken the actions described in this Section III. Notwithstanding the foregoing,

any actions necessary for review and approval of the obligations set forth in Section III may commence prior to Acquisition.

A. Payment of the HUD Loans.

23. The Parties acknowledge and agree that:

- a. As of September 30, 2013, the unpaid principal balance of the HUD Loan for Evergreen Terrace I is \$8,513,737.23 (the "Evergreen Terrace I Balance") and accrued interest thereon is in the amount of \$587,447.78, and non-compounding interest continues to accrue thereafter on the Evergreen Terrace I Balance until paid at the amount of one per cent (1%) per annum;
- b. Any Compensation awarded with respect to Evergreen Terrace I shall be used first to fully satisfy the HUD Loan secured by Evergreen Terrace I. If the amount of Compensation paid by the City as to Evergreen Terrace I is less than an amount equal to the Evergreen Terrace I Balance plus all interest accrued to the date of payment, the City will satisfy the remaining deficiency balance upon Acquisition;
- c. In the event of an Acquisition through a settlement with the current owner of Evergreen Terrace I or through any other means apart from payment of a just compensation award, the City agrees that any compensation paid for such an Acquisition shall be applied first to satisfy the HUD Loan for Evergreen Terrace I, including any accrued interest to that date, and the City further agrees to satisfy any remaining balance upon such Acquisition in an amount equal to the Evergreen Terrace I Balance plus all interest accrued to the date of payment;

- d. Subject to any determination of allocation of the Compensation by the Court, no Other Defendant or any other person shall be entitled to any part or participation in any award of Compensation for Evergreen Terrace I unless and until the principal and interest due on the HUD Loan for Evergreen Terrace I has been fully satisfied; and
- e. It is hereby acknowledged and agreed that HUD has first right to the Compensation for Evergreen Terrace I in an amount not to exceed the Evergreen Terrace I Balance plus accrued interest at the time of the award of the Compensation.

24. The Parties acknowledge and agree that:

- a. As of September 30, 2013, the unpaid principal balance of the HUD Loan for Evergreen Terrace II is \$2,934,064.12 (the "Evergreen Terrace II Balance") and accrued interest thereon is in the amount of \$51,915.58, and non-compounding interest continues to accrue thereafter on the unpaid principal balance until paid at the amount of one per cent (1%) per annum;
- b. Any Compensation awarded with respect to Evergreen Terrace II shall be used first to fully satisfy the HUD Loan secured by Evergreen Terrace II. If the amount of Compensation paid by the City as to Evergreen Terrace II is less than an amount equal to the Evergreen Terrace II Balance plus all interest accrued to the date of payment, the City will satisfy the remaining deficiency balance upon Acquisition;
- c. In the event of an Acquisition through a settlement with the current owner of Evergreen Terrace II or through any other means apart from payment of a just

compensation award, the City agrees that any compensation paid for such an Acquisition shall be applied first to satisfy the HUD Loan for Evergreen Terrace II, including any accrued interest to that date, and the City further agrees to satisfy any remaining balance upon such Acquisition in an amount equal to the Evergreen Terrace II Balance plus all interest accrued to the date of payment;

- d. Subject to any determination of allocation of the Compensation by the Court, no Other Defendant or any other person shall be entitled to any part or participation in any award of Compensation for either Evergreen Terrace II unless and until the principal and interest due on the HUD Loan for Evergreen Terrace II has been fully satisfied; and
- e. It is hereby acknowledged and agreed that HUD has first right to the Compensation for Evergreen Terrace II in an amount not to exceed the Evergreen Terrace II Balance plus accrued interest at the time of the award of the Compensation.

**B. Provisions for Acquisition.**

25. Upon Acquisition, the Parties agree to execute a new use agreement (the "Replacement Use Agreement") for Evergreen Terrace I and II in the form attached to this Settlement Agreement as Exhibit C, and the City shall forthwith cause the Replacement Use Agreement to be recorded in the land records of Will County with priority over all other instruments recorded in connection with the Acquisition, except those instruments effectuating the vesting of title to the Property in the City. Subject to the payment of Compensation as provided in Section III.A, HUD agrees to take any action necessary to cause the release of the

HUD Encumbrances to the extent not released by operation of a judgment of condemnation or other order entered by the Court, including, without limit, the execution and recording of any necessary instruments in the land records of Will County, Illinois. The term of the Replacement Use Agreement shall be for twenty (20) years.

26. Upon Acquisition the City shall retain Holsten Management Company or an alternate management company (the "Management Agent") to act as the management company for Evergreen Terrace under a management agreement that is substantially the same as the contract attached as Exhibit D. The Management Agent and any subsequent management company shall obtain prior approval from HUD pursuant to the procedures set forth in HUD Handbook 4381.5, including the previous participation review and clearance procedure set forth in 24 C.F.R. Part 200, subpart H or any successor regulation.

27. On or before the Acquisition Date, HUD and the City shall execute HAP Contracts for Evergreen Terrace I and II (the "Acquisition HAP Contracts") in the form attached to this Settlement Agreement as Exhibit E. Each Acquisition HAP Contract shall provide for contract rents in an amount equal to the contract rents in effect on the date of Acquisition. Acquisition HAP Contract rents (including the contract rents provided by any extension contract) shall be subject to adjustment as provided therein, pursuant to the regulations and other HUD directives governing the Section 8 program.

28. It is acknowledged that the replacement reserves for Evergreen Terrace I and Evergreen Terrace II (the "Reserves") are required to be and are being deposited into and held in accounts controlled by HUD pursuant to 24 CFR § 880.602. Following Acquisition, the Reserves will remain project funds which will continue to be used for the benefit of the Property, subject to the requirements of the Acquisition HAP Contracts and other program requirements.

29. On or before the Acquisition Date, HUD will issue a letter directing the Owners to transfer to the possession of the City or the Management Agent all documents and records in possession of the Owners and used in the operation of Evergreen Terrace, including without limit, all resident leases, financial records, maintenance, repair and similar records related to the dwelling units, common areas, accessory buildings, mechanical systems and other physical structures, all contracts with third parties for services, all warranties and guaranties in effect at the time of Acquisition and any other documents and records related to the operation of Evergreen Terrace (the "Records"). The City shall afford the Owners of Evergreen Terrace a reasonable opportunity to copy such Records as they may require. All Records transferred to the City or the Management Agent pursuant to this paragraph shall constitute property of Evergreen Terrace, the ownership and control of which shall at all times be subject to the requirements of HUD applicable to multifamily rental housing operating under HAP contracts.

30. On or before the Acquisition Date, HUD will issue a letter directing the Owners to transfer to the possession of the City or the Management Agent all refrigerators, ovens, air conditioners, fire extinguishers and similar equipment affixed to Evergreen Terrace I and Evergreen Terrace II and appurtenant to each respective Property (the "Fixtures"). In the event of a failure or refusal by the Owners to transfer the Fixtures, the City may request and HUD shall approve a disbursement of funds from available Reserves to replace any items not so transferred.

31. By entering into this Agreement, HUD does not warrant compliance by the Owners with any HUD directives for transfer of the Reserves, the Records or the Fixtures to the City. At any time after the Effective Date, the City may petition the Court to appoint a receiver for Evergreen Terrace I and/or Evergreen Terrace II pursuant to Rule 66 of the Rules of Civil Procedure to effectuate transfer of the Reserves, the Records and the Fixtures and for the



issuance of other orders necessary for the protection and preservation of the Property. HUD shall be made a party to any such petition and shall have the right to request such orders of the Court as may be necessary for the protection of HUD's interests in Evergreen Terrace.

32. Within thirty (30) days of Acquisition, the City Owner shall provide notice and a copy of this Settlement Agreement in the form approved by the Court to each Evergreen Terrace tenant then in occupancy.

C. Transfer of the Property Subsequent to Acquisition.

33. On or before the Acquisition Date, the City shall cause to be organized a single asset business organization that the City shall own or control (the "City Owner"), to which the City shall transfer title, possession or other interest in Evergreen Terrace after Acquisition, which HUD shall approve based on the terms and conditions set forth in this Section III.C.

34. The standards of approval to be applied by HUD to the review of a request by the City for transfer of Evergreen Terrace to the City Owner shall be the Determinative Criteria for Review of Transfers of Physical Assets set forth in Chapter 13 of the HUD Handbook 4350.1; provided that:

- a. the HUD review process shall be deemed to consist of a modified TPA as such term is defined in Handbook 4350.1 and shall require a single review and approval;
- b. with respect to any physical inspection of Evergreen Terrace, approval of transfer to the City Owner shall not be withheld based on conditions existing on or before the date of the Acquisition;

- c. as a condition of the transfer approval, HUD agrees not to impose any additional replacement reserve funding requirement to complete needed physical improvements, if any;
- d. neither the City or the City Owner shall be required to establish an escrow account, or obtain a letter of credit, bond or similar instrument for the purpose of carrying out repairs based on any physical inspection completed by HUD as part of the approval process, nor shall the City or the City Owner be required at the time of transfer to the City Owner to clear any accounts payable or establish an escrow, or provide a letter of credit or similar instrument for the purpose of clearing any accounts payable assumed by the City Owner as part of the transfer; and
- e. HUD shall not impose or require payment of a fee in connection with the review and approval of the transfer to the City Owner.

35. As a further condition for receiving HUD's approval of this transfer of ownership, the City Owner must assume and become bound by and to, jointly and severally with the City, this Settlement Agreement, and at the time of the transfer of Evergreen Terrace or any interests therein to the City Owner, must assume and be bound by all obligations of the Acquisition HAP Contracts and the Replacement Use Agreement.<sup>2</sup>

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<sup>2</sup> The City Owner may become bound to this Agreement by signing below after the Effective Date.

D. Renewal and Non-Renewal of the Acquisition HAP Contracts; Provisions for Tenant Protection

36. After Acquisition, and except for a valid termination of a tenancy for cause pursuant to the terms of the residential lease and applicable law, no tenant will be displaced from Evergreen Terrace except in accordance with this Settlement Agreement. Each tenant and HUD shall receive a minimum one year notice, in the manner required by the Section 8 program and subject to its requirements, before any nonrenewal of any HAP Contract that provides assistance to an Evergreen Terrace tenant's unit.

37. During the term of any HAP Contract that remains in place on Evergreen Terrace, on any portion of Evergreen Terrace, or on any Successor Development (as defined below), the City Owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. In making units available for occupancy by eligible families, the City Owner will: (a) conduct marketing in accordance with 24 C.F.R. § 886.321; (b) lease or make good faith efforts to lease the units to eligible families, including taking all feasible actions to fill vacancies by renting to such families and (c) determine the eligibility of applicant families for admission in accordance with HUD requirements as such term is defined in the HAP Contracts. The City Owner will maintain said property or properties in a condition consistent with the terms of the HAP Contracts and all HUD requirements, as defined therein. The City Owner will not, by deliberate, willful or grossly negligent action or inaction, create cause for HUD to terminate or abate any HAP Contract.

38. The Acquisition HAP Contracts will have terms of one (1) year and may initially be renewed once for an additional one (1) year term ("Acquisition HAP Renewal Contracts"). The "Initial Expiration Date" is the latest of (a) the expiration date of the Acquisition HAP Contracts or their one-year Acquisition HAP Renewal Contracts, (b) the one year anniversary

date of any notice provided to tenants and HUD pursuant to paragraph 36, or (c) the one year anniversary date of the first such notice if notices are provided on more than one date.

39. Subject to the provisions of this Section III.D, the City Owner shall have the option not to renew one or both of the Acquisition HAP Contracts (or their one-year Acquisition HAP Renewal Contracts), in whole or in part (the "Non-Renewal Option"); provided that the Non-Renewal Option may not be exercised with respect to more than 241 units and may be exercised only at the Initial Expiration Date; and provided further that HUD and the affected tenants have been given proper and timely notice of City Owner's intent to non-renew.

40. All units that are subject to the Non-Renewal Option ("Nonrenewed Units"), up to a maximum of 241 units, shall, upon nonrenewal and subject to the availability of appropriations, be replaced by tenant-based rental assistance vouchers pursuant to 42 U.S.C. §1437f(o) and (t), which vouchers shall be administered by the Housing Authority of Joliet ("HAJ"). For any Nonrenewed Units, the City and/or City Owner shall relocate tenants to other existing housing, subject to the following:

- a. The City Owner may seek and HUD agrees to approve short term extensions of any expiring Acquisition HAP Contract (or its one-year Acquisition HAP Renewal Contract) in the event of a delay in tenant relocation caused by a delay in funding for the tenant-based rental assistance vouchers and/or an inability to identify appropriate rental housing options for relocating tenants within the City of Joliet or Will County, as applicable. A delay in tenant relocation shall not be cause for a reduction by HUD of the number of units subject to the Non-Renewal Option, or the number of units that may be replaced by tenant-based rental assistance pursuant to this paragraph 40.

Neither a short term extension nor any other delay shall affect the City Owner's obligation to provide such notice as may be required to tenants and HUD pursuant to paragraph 36 and the Section 8 program, including notice on more than one occasion if the program so requires.

- b. The Parties agree that the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA") as amended and regulations pertaining thereto, shall apply to the displacement of any tenant of Evergreen Terrace required to move from the Property because of the exercise of the Non-Renewal Option, including, without limit, the obligation to provide advisory services, payment of moving expenses, and a written notice of displacement to be provided no less than ninety (90) days in advance of the date the tenant will be required to move from the Property.
- c. To the extent not required by the URA, the City Owner will (at its expense) arrange for all relocating tenants to receive mobility counseling which shall include pre-move counseling, assistance in accessing obtaining various relocation services, housing voucher counseling, and post-move counseling. Such services will be provided by a qualified agency or organization approved by HUD.
- d. Concurrent with the one year notification required by both this Settlement Agreement and the applicable HAP Contracts, and again at a reasonable time or times thereafter in connection with the advisory services and mobility counseling provided under this paragraph 40, the City Owner will obtain from each tenant that is subject to possible displacement due to the exercise of the

Non-Renewal Option (i.e., a relocating tenant) his or her preferences for the location of any replacement housing in the event of displacement. These statements of preference shall be made or recorded in writing. For each relocating tenant expressing a desire to reside within the City of Joliet, the 90 day notice of displacement required by the URA shall identify one or more replacement housing units within the City of Joliet that qualify for and will accept tenant-based rental assistance. For each relocating tenant expressing a desire to reside within Will County, the 90 day notice of displacement shall identify one or more replacement housing units within Will County that qualify for and will accept tenant-based rental assistance. Sufficient housing opportunities must be offered to accommodate these tenant preferences. Replacement housing units must be adequate in size to accommodate the displaced household and must pass HAJ's housing quality standards inspection. The City Owner will develop a relocation plan for persons with disabilities that follows guidance in HUD Handbook 1378 (CHG 8).

- e. The City Owner may require any tenant occupying a dwelling unit subject to the Non-Renewal Option to move to another unit within Evergreen Terrace on a temporary basis for the purpose of consolidating occupancy without otherwise affecting the tenant's status as an occupant of a unit subject to the Non-Renewal Option and possible displacement.

41. Upon the expiration of an Acquisition HAP Contract (or its one-year Acquisition HAP Renewal Contract), the City Owner agrees to accept and enter into one or more renewals to that Acquisition HAP Contract (each a "Renewal HAP Contract") in a form provided by HUD,

for all units not subject to the Non-Renewal Option. The term of any such Renewal HAP Contract shall be twenty (20) years or any shorter term agreed to by the Parties. In the event a term shorter than twenty (20) years is selected for any Renewal HAP Contract, it shall be on the condition that the cumulative terms of that contract and its subsequent renewals and extensions shall be no less than twenty (20) years. No fewer than 115 of the units currently existing at Evergreen Terrace (or any such larger number as the City Owner elects) shall be made subject to a Renewal HAP Contract.

42. The City Owner may demolish any building within Evergreen Terrace that is completely vacant of residents after the tenants are relocated pursuant to this Section III.D; provided that no more than 241 units may be demolished except as permitted in Section III.E.

43. The City Owner shall maintain or cause to be maintained all records relating to its efforts to relocate displaced Evergreen Terrace tenants pursuant to Section III.D of the Settlement Agreement, and shall provide such records to counsel for the United States upon request.

E. Transfer of Budget Authority to Successor Assisted Housing.

44. At any time after Acquisition, the City Owner may submit a request to HUD for approval to transfer budget authority from one or more Renewal HAP Contracts and/or from one or more Acquisition HAP Contracts (or its one-year Acquisition HAP Renewal Contract) with respect to units as to which the Non-Renewal Option provided in Section III.D above has not been exercised, to new, substantially rehabilitated or existing residential rental units developed as family housing within the City of Joliet, either within or outside the Evergreen Terrace site (each such development a "Successor Development").

45. Any such request for a transfer of budget authority shall be made pursuant to Section 8(bb) of the U.S. Housing Act of 1937, 42 U.S.C. §1437f(bb) ("Section 8(bb)"), or, if that provision has been repealed, under any corresponding provision of law then in effect. HUD shall review and act on each such request in the same manner and applying the same legal authorities, policies and standards lawfully and customarily used to consider requests from assisted owners pursuant to Section 8(bb) or the applicable successor authority; provided that:

- a. No Acquisition HAP Contract, Acquisition HAP Renewal Contract, or Renewal HAP contract, or portion thereof, shall be terminated or not renewed in whole or in part with respect to the units that are subject to such a request prior to the date the corresponding Successor Development is approved, complete and available for occupancy, at which time budget authority shall be transferred to the Successor Development and applied to a Renewal HAP Contract with a twenty (20) year term, unless, subject to paragraph 41 above, a shorter term consistent with the intent of this Settlement Agreement is requested by the City Owner and approved by HUD.
- b. The Parties agree that the physical and financial condition of Evergreen Terrace make it eligible as a transferor property under Section 8(bb).

46. Upon completion of any Successor Development, residents of the dwelling units from which budget authority is transferred shall have a first right of refusal to occupy units at the Successor Development, and thereafter a selection preference for occupancy in the Successor Development shall be extended to other remaining residents of Evergreen Terrace and former residents of Evergreen Terrace in occupancy at the time of the Acquisition, in that order. Any resident of Evergreen Terrace who has a first right of refusal to occupy an appropriate unit at a



Successor Development and who elects not to accept an offer to occupy such a unit shall be provided the option to move to another available and appropriate unit at Evergreen Terrace or, if no appropriate units are available, may be required to vacate Evergreen Terrace. Any such tenant shall not be entitled to tenant-based rental assistance but shall otherwise be provided relocation assistance consistent with the requirements of paragraph 40.

47. Subject to the foregoing requirements, the City Owner may demolish any building fully vacant of tenants as a result of a transfer of budget authority pursuant to this Section III.E.

#### IV. USE OF THE EVERGREEN TERRACE SITE

48. The City agrees that it will construct and operate a community center on all or a part of that portion of the Evergreen Terrace site known as 363 North Broadway. The community center will provide services that benefit the present and former tenants of Evergreen Terrace and other low- and moderate-income residents of the City of Joliet, which services shall meet a national objective of the CDBG program as set forth in 42 U.S.C. §5301(c), the certifications required by 42 U.S.C. §5304(b)(3) and the criteria for CDBG eligible activities in 42 U.S.C. §5305(c), other than economic development or the provision of a park. The completion of the community center and the provision of the foregoing services shall commence no less than two (2) years after the date of recording of the Replacement Use Agreement and shall continue through the term thereof. Any portion of the 363 North Broadway parcel not used for the community center may be utilized by the City for any lawful purpose, including a sale or conveyance to other parties, or another use.

49. The City agrees that it will use the remainder of the Evergreen Terrace site exclusive of 363 North Broadway for a public purpose, which may include without limitation its current use as a site for any number of the units currently comprising Evergreen Terrace, use as a

location for a Successor Development, use as a park, or use as a site for affordable housing, as described in paragraph 50. Any use of CDBG funds on the site of Evergreen Terrace is subject to Section 726 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act for FY2006, (Pub. L. 109-115) and subsequent enactments to date.

50. Any portion of the Evergreen Terrace site used for new residential development (including any Successor Development) shall assure that, at a minimum, such residential development includes affordable rental housing so that no less than twenty (20) percent of dwelling units are occupied by and are affordable to households with incomes less than or equal to fifty (50) percent of area median income as defined by HUD, or no less than forty (40) percent of units are occupied by and are affordable to households with incomes less than or equal to sixty (60) percent of area median income.

51. The Replacement Use Agreement shall for its term, in addition to other provisions consistent with this Agreement, secure the restrictions on use of the Evergreen Terrace site in the manner set forth in this Section IV. The portion of the 363 North Broadway parcel not to be used for a community center may be excluded from the restrictions of the Replacement Use Agreement at the time of Acquisition or the City may seek and HUD shall grant a release of said parcel from the Replacement Use Agreement at any time thereafter, in the sole discretion of the City.

## V. GENERAL PROVISIONS

### A. Term.

52. The term of the Settlement Agreement (the "Term") shall commence upon the Effective Date and shall continue for twenty (20) years from the Initial Expiration Date. Notwithstanding any transfer of any interest in Evergreen Terrace to the City Owner (or any failure to transfer any such interest) and notwithstanding any assumption by the City Owner of the obligations under this Settlement Agreement, an Acquisition HAP Contract and/or the Replacement Use Agreement, the City shall for the term of the Settlement Agreement be jointly and severally liable with the City Owner for all obligations under this Settlement Agreement, and for the City Owner's performance under the Settlement Agreement, the Replacement Use Agreement and all HAP Contracts, including without limitation the Acquisition HAP Contracts. Until such transfer occurs, all of the obligations imposed upon the City Owner by this Agreement shall remain the exclusive obligations of the City.

### B. Enforcement.

53. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Settlement Agreement. After such good faith efforts, if during the Term of the Agreement any party contends that there has been a failure by the other to perform in a timely manner any act required by the Settlement Agreement, or otherwise to act in conformance with any provision thereof, it may move this Court for relief and for any remedy authorized by law or equity.

### C. Miscellaneous Provisions.

54. Each Party will bear its own costs, expenses and attorneys' fees associated with this litigation.

55. This Settlement Agreement is not intended to relieve any obligation otherwise imposed by law and does not create any affirmative obligations except as expressly set forth herein.

List of Exhibits:

- Exhibit A: Agreed Proposed Order of Dismissal for the Condemnation Action
- Exhibit B: Agreed Proposed Order of Dismissal for the Civil Rights Action
- Exhibit C: Form of Replacement Use Agreement
- Exhibit D: Management Contract
- Exhibit E: Form of Acquisition HAP Contract

[Signatures appear on the following pages.]

The undersigned hereby consent to and apply for entry of this Settlement Agreement as an Order of the Court:


For Department of Housing and Urban Development and The United States of America:

Dated: 10/31, 2013

ZACHARY T. FARDON  
United States Attorney  
Northern District of Illinois

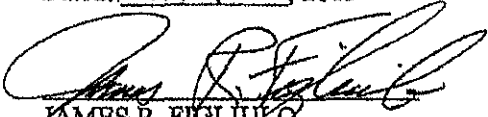
PATRICK JOHNSON  
ERNEST Y. LING  
Assistant United States Attorneys  
Northern District of Illinois  
219 S. Dearborn St., 5th Floor  
Chicago, IL 60604  
Phone: (312) 353-5327  
Fax: (312) 353-2067

JOCELYN SAMUELS  
Acting Assistant Attorney General  
Civil Rights Division

  
STEVEN H. ROSENBAUM  
Chief  
TIMOTHY J. MORAN  
Deputy Chief  
BETH FRANK  
ANDREA STEINACKER  
KATE ELENGOLD  
JOEL FLAXMAN  
MAX LAPERTOSA  
Trial Attorneys  
Housing and Civil Enforcement Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W -- NWB  
Washington, D.C. 20530  
Phone: (202) 305-8196  
Fax: (202) 514-1116

For the City of Joliet

Dated: Nov. 4, 2013



JAMES R. FIGLIULO  
Figliulo and Silverman  
10 S. La Salle  
Street Suite 3600  
Chicago, IL 60603

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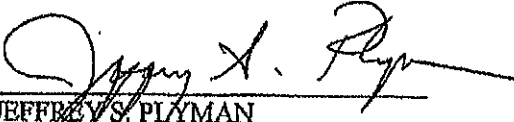
JEFFREY S. PLYMAN  
Corporation Counsel, City of Joliet  
150 West Jefferson Street, East Wing  
Joliet, IL 60432

For the City of Joliet

Dated: 11/4, 2013

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JAMES R. FIGLIULO  
Figliulo and Silverman  
10 S. La Salle  
Street Suite 3600  
Chicago, IL 60603

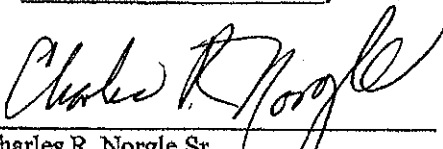


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JEFFREY S. PLYMAN  
Corporation Counsel, City of Joliet  
150 West Jefferson Street, East Wing  
Joliet, IL 60432

The Court hereby approves this Settlement Agreement and enters it as an Order of the Court.

IT IS SO ORDERED this 12<sup>th</sup> day of November, 2013.

  
\_\_\_\_\_  
Charles R. Norgle Sr.  
UNITED STATES DISTRICT JUDGE



**For City Owner**

Dated: \_\_\_\_\_, 2013

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