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September 6, 2007

To the Honorable Common Council
of the City of Milwaukee
Room 205 – City Hall

Re: Common Council File No. 070734, a resolution authorizing the settlement of the claim of Sgt. Kevin Moore, in the amount of \$89,630.80 less taxes, and the return of property located at 313 E. Burleigh Street, Milwaukee, Wisconsin.

Dear Council Members:

Enclosed is a resolution recommending settlement of the above-referenced claim, which was introduced by title only and has been referred to the Committee on Judiciary and Legislation for its recommendation.

Kevin Moore filed a claim with the City of Milwaukee ("City") on October 24, 2006, in the amount of \$186,517.00 for properties located at 2822 North 9th Street and 313 East Burleigh Street taken by *in-rem* foreclosure in 2004 and 2005 respectively, in violation of the Servicemembers Civil Relief Act ("SCRA"). Kevin Moore was an active duty service member at the time the City took the properties by *in rem* foreclosure and to date, he continues to be an active duty service member. The 2822 North 9th Street ("the 9th Street Property") was taken *in rem* foreclosure on a default judgment on July 14, 2004 and the 313 East Burleigh ("the Burleigh Street Property") was taken on July 25, 2005.

When the City took the Burleigh Street Property, it was unoccupied and boarded. It remains boarded and unoccupied and in the City's inventory. When the City took the 9th Street Property, the property was occupied by a tenant who was paying \$525 monthly rent to the Kevin Moore. Several months after the *in rem* foreclosure, the City requested that the tenant vacate the property, and the City sold the Property to a new owner in January 2005.

To prevent the taking of a property by *in rem* foreclosure in violation of the SCRA from recurring, the City Attorney's Office and the Office of the Treasurer have instituted an aggressive procedure to check the military status of all owners or interested parties prior to obtaining the *in rem* foreclosure judgment. SFC Al Rohmeyer, G1 Mobilization Awards NCOIC Senior Paralegal, will be checking the names on the DOD website to verify whether any of the persons with ownership interest for any of the properties on the list of tax liens are on active military duty. If any person with ownership interest for any of the properties on the list of tax liens is on active military duty, that property will not be included in the judgment.

Section 401 of the SCRA provides that if a default judgment is entered against a member on active duty (or within 60 days after termination of or release from active duty), an application can be made within 90 days of release from or termination of active duty to the court by the member or on behalf of the member requesting the court or administrative body set aside or vacate the default judgment. Upon such application, the court or administrative body must reopen the judgment for the purpose of allowing the member to defend the action if it appears that: (1) the member was materially affected by reason of the military service in making a defense to the action; and (2) the member has a meritorious or legal defense to the action.

Furthermore, section 501 of the SCRA entitled, Taxes Respecting Personal Property, Money, Credits, and Real Property, provides in relevant part:

(N)o property owned by a servicemember or jointly by a servicemember and the servicemember's dependants can be sold to enforce the collection of a tax which became due before or during the time a servicemember is on active duty, on a servicemember's personal property or real property occupied as a dwelling, or for professional, business, or agricultural purposes by a member or a servicemember's dependents or employees while a servicemember is on active duty, without a court order and upon a determination by the court that the military service does not materially affect the servicemember's ability to pay the tax.

A court may stay a proceeding to enforce collection of a tax or sale of the property while the servicemember is on active duty and up to 180 days after the release from active duty.

When a servicemember's property is sold pursuant to a court order, a servicemember has the right to redeem or commence an action to redeem the property during the period of active duty or within 180 days after release from active duty, unless state law would provide a longer period in which case, the state law applies.

Where a servicemember does not pay a tax on property covered by this rule, the amount of interest on the tax that can accrue on the unpaid amount until paid is 6% and no additional penalty or interest shall be incurred by reason of non-payment.

Sgt. Moore, who is currently an active duty service member, did not pay the property taxes for either property, so they were taken *in rem*. Pursuant to the SCRA, he may reopen the judgment and redeem the property. However, the City sold the 9th Street property on January 21, 2005.

Sgt. Moore provided a Comparable Market Analysis (CMA) of the properties which concluded that the 9th Street property was valued at \$51,750. Assistant City Attorney Genevieve O'Sullivan-Crowley requested the Assessor's Office review the CMA and evaluate the property. Jerry Gilbert, Supervising Assessor concluded that while the methodology used in the CMA was faulty, the result was not unrealistic and that a \$51,750 value for the property seems to be reasonable.

Sgt. Moore also filed a claim for lost income in the amount of \$31,600 because the 9th Street Property's was occupied and the tenant paid a monthly rent of \$525.00 at the time the City took title to the property. If Sgt. Moore had continued to receive the rent on the property from the time the City took title to the property to today, he would have earned \$19,580.40 including interest, which brings the total for the value of the 9th Street property and the lost income including interest to \$89,630.80.

The Burleigh Street property remains vacant and boarded and the judgment of *in rem* foreclosure will be reopened, vacated and returned to the former owner.

The total taxes for tax years 2001 through 2003 at 6% interest for the 2822 North 9th Street property is \$4,103.06. The total taxes for tax years 2001 through 2004 at 6% interest for the 313 East Burleigh Street property is \$28,430.46. The total amount owed in taxes equals \$32,533.52. Penalties may not be added pursuant to section 501(d) of the SCRA. The total amount due to Sgt. Moore is \$89,630.80 less \$32,533.52 in delinquent taxes which equals \$57,097.28.

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Sgt. Moore would accept in settlement, \$89,630.80 less the taxes owed for the 9th Street property and lost income plus the return of the Burleigh Street property. Based upon the reasons set forth above, a check should be issued to Kevin Moore in the amount of \$57,097.28 and to the Tax Deed Account in the amount of \$32,533.52.

Very truly yours,

GRANT F. LANGLEY
City Attorney

GENEVIEVE E. O'SULLIVAN-CROWLEY
Assistant City Attorney

GOSC:amp
Attachment

c: Mr. Ronald D. Leonhardt, City Clerk
Mr. James Klajbor, Treasurer's Office

1060-2006-2997/122946