



**Request for City Council Committee Action
From the City Attorney's Office**

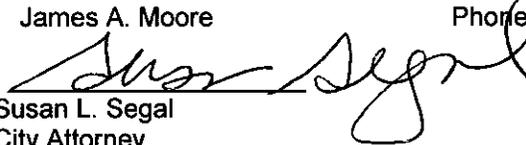
Date: August 18, 2009
To: Ways & Means/Budget Committee
Referral to:

Subject: JP Morgan Chase, N.A. v. Atlen Doe, I.T. Taylor, L.D. Taylor and the City of Minneapolis

Recommendation: That the City Council approve the settlement of this case by authorizing a refund of \$6,000 to First American Title Insurance Company, from Fund/Org. 145890 and by authorizing the City Attorney's Office to execute a subordination agreement with JP Morgan Chase, N.A., allowing JP Morgan's mortgage to be senior to and have priority in interest over a Minneapolis Mortgage in the amount of \$6,000.

Previous Directives: None.

Prepared by: James A. Moore Phone: (612) 673-2063

Approved by: 
Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: _____ Action is within the plan. _____ Action requires a change to plan. _
 Other financial impact (Explain): Payment from Fund/Org. 145890.
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact: Build Community

Background/Supporting Information

JP Morgan Chase, N.A. commenced a lawsuit against property owner, Atlen Doe, I.T. Taylor, L.D. Taylor and the City of Minneapolis to correct an improper mortgage lien payment made to the City of Minneapolis in the amount of \$6,000. At the time of payment, the City's lien was subordinate to a mortgage lien held by JP Morgan Chase.

The parties have proposed the following resolution in an effort to correct the incorrect payment:

- The property owner will execute a corrective mortgage.
- Delinquent property taxes will be paid and title to the property will revert to the original property owner.
- The City will refund \$6,000 to First American Title Insurance Company.
- First American will utilize available funds to pay off liens in legal order of priority.
- The City will execute a subordination agreement with JP Morgan allowing the original mortgage and corrective mortgage to be senior to and have priority in interest over the Minneapolis Mortgage in the amount of \$6,000.

The foregoing proposed resolution is contingent on City approval of the refund amount and authorization to execute supporting documentation. A proposed Settlement Agreement and Mutual Release document is attached for consideration.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is entered into by and between JP Morgan Chase, N.A. (“JP Morgan”), Atlen Doe (“Doe”), I.T. Taylor, L.D. Taylor, the City of Minneapolis (the “City”) and First American Title Insurance Company (“First American”) (collectively hereinafter the “Parties”).

RECITALS

A. The Parties claims and disputes regarding the property located at 4533 Park Avenue, Minneapolis, Minnesota 55407 with the following legal description:

Lot 22, Block 7, Auditor’s Subdivision Number 257, Hennepin County, Minnesota
(the “Property”).

B. JP Morgan commenced a lawsuit against the Defendants which is the subject of a pending proceeding in Hennepin County District Court for the Fourth Judicial District of Minnesota, entitled JP Morgan Chase, N.A. v. Atlen Doe, I.T. Taylor, L.D. Taylor and the City of Minneapolis, Civil No. 27-CV-08-28129 (the “Proceeding”).

C. The Parties desire to settle and resolve their claims, disputes and the Proceeding pursuant to this Settlement Agreement and Mutual Release without the Parties admitting liability or any wrongdoing.

Now, therefore, IT IS HEREBY AGREED, in consideration of the mutual promises, agreements, covenants, and representations contained in this Agreement, and other good and valuable consideration, as follows:

TERMS

1. **Execution of Corrective Mortgage.** Doe, I.T. Taylor and L.D. Taylor agree to execute a corrective mortgage (the “Corrective Mortgage”) dated “as of” August 7, 2008, naming JP Morgan as the mortgagee with the same terms as the original mortgage dated August

7, 2008 (the "Original Mortgage"). A copy of the Original Mortgage is attached as **Exhibit A**. A draft copy of the Corrective Mortgage is attached as **Exhibit B**.

2. **Payment.** After this Agreement is executed by all the Parties and within fifteen (15) days after the Corrective Mortgage described in paragraph one is executed, First American will advance \$7,401.73 (\$6,930.64 for delinquent real estate taxes and the balance of \$471.09 for interest on real estate taxes) (the "Advance"). The Advance will be made to Hennepin County to pay delinquent property taxes and related interest on the Property and to pay in full the Contract for Repurchase of Tax-Forfeited Land between Doe and the State of Minnesota dated September 12, 2008 (the "Repurchase Agreement"). A copy of the Repurchase Agreement is attached as **Exhibit C**. If the Advance occurs after August 21, 2009 and before September 22, 2009, interest in the amount of \$57.76 will be added to the Advance payment.

After the Advance has been made and the Repurchase Agreement paid in full, title to the Property will revert to Doe. After title to the Property reverts to Doe, the City will refund \$6,000 (related to Loan Number 11179 that was mistakenly paid off previously) to First American. First American will pay off a different mortgage loan on the Property in the amount of \$3,762.46, Loan Number 50067 payable to the Family Housing Fund of Minneapolis/St. Paul from the proceeds and apply the difference of \$2,237.54 towards the Advance, leaving an Advance balance of \$5,164.19. First American also agrees to pay Doe and Doe's counsel \$1,949.

3. **Tax Lien.** First American is entitled to a statutory real estate tax lien under Minnesota Statutes section 272.45 against the Property in the amount of \$5,164.19 (the "First American Lien") related to the Advance. The First American Lien shall be junior and subordinate to the Original Mortgage and the Corrective Mortgage.

4. **Satisfaction of Mortgage.** Doe agrees not to record and to destroy any Satisfaction of Mortgage Doe may have received related to the \$6,000 mortgage dated April 1, 2008 and recorded with the Hennepin County Recorder on April 18, 2008 as document number 9124024 (the “Minneapolis Mortgage”) that was previously paid by mutual mistake.

5. **Subordination Agreement.** The City agrees to execute a subordination agreement with JP Morgan allowing the Original Mortgage and Corrective Mortgage to be senior to and have priority in interest over the Minneapolis Mortgage in the amount of \$6,000.

6. **Mutual Confidentiality.** The Parties agree to keep the economic terms of this Agreement confidential, and will not disclose them to third parties, other than accountants, advisors, or attorneys, as needed, or as required by law or as directed by a court of competent jurisdiction.

7. **Dismissal.** The Parties hereby agree that upon completion of the actions described in Paragraphs 2 and 5 of this Agreement, the Parties shall stipulate to the dismissal with prejudice of any claims against any other party in this Action.

8. **Attorney Fees, Costs and Disbursements.** Upon the fulfillment of the terms recited in this Agreement, the Parties agree that they shall bear their own attorney fees and costs with respect to any and all aspects of the above-referenced lawsuit until the Agreement is fully executed by the Parties; and if one of the Parties prevails in a subsequent enforcement proceeding, then that prevailing party is entitled to attorney fees and costs related to its judicial enforcement of the Agreement.

9. **Full Agreement.** This Agreement constitutes the entire agreement of the Parties. No other agreement not expressed within this Agreement shall have any force or effect, and no

modification, amendment or change of any kind to this Agreement shall be effective unless it is in writing and signed by each of the Parties to this Agreement.

10. **Non-Admission.** By entering into this Agreement, the Parties make no admission of liability or wrongdoing.

11. **Representations and Voluntary Actions.** The Parties represent that they have carefully read and fully understand all of the provisions of this Agreement, that they have had a full opportunity to have all of the terms of this Agreement explained to them by counsel and that they fully understand that by signing this Agreement, and subject to its terms, they are giving up their right to pursue the claims specified herein against other Parties.

12. **Enforceability.** The terms of this Agreement are contractual, not mere recitals, and are enforceable as such.

13. **No Presumption Against Drafter.** The Parties acknowledge that this Agreement is the product of negotiation between parties represented by legal counsel and that the presumption of interpreting ambiguities against the drafter of this Agreement does not apply.

14. **Governing Law.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Minnesota.

15. **Captions.** The titles or captions of the paragraphs or sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, extend or describe the scope of this Agreement or the intent or meaning of any provision hereof.

16. **Savings Clause.** The Parties agree that the scope and terms of this Agreement are reasonable and that it is the Parties' intent and desire that this Agreement be enforced to the fullest extent permissible under the laws of the State of Minnesota. Should any portion of this

Agreement be declared void and unenforceable, that portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

17. **Counterparts.** This Agreement may be executed in counterparts and by facsimile signatures, which are to be deemed originals for all purposes herein.

18. **Disputes.** The parties agree that all disputes with respect to the interpretation of this Agreement shall be submitted to the Court for resolution.

Dated: August ____, 2009

Atlen Doe

Dated: August ____, 2009

I.T. Taylor

Dated: August ____, 2009

L.D. Taylor

Dated: August ____, 2009

The City of Minneapolis

By: _____

Its: _____

Dated: August ____, 2009

JP Morgan Chase, N.A.

By: _____

Its: _____

Dated August ____, 2009

First American Title Insurance Company

By: _____

Its: _____