

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

<p>LORAIN COUNTY BOARD OF COMMISSIONERS</p> <p>Plaintiff,</p> <p>v.</p> <p>CITY OF LORAIN, <i>et al.</i>,</p> <p>Defendants.</p>	<p>FILED LORAIN COUNTY Case No. 07 CV 152624 2010 JAN 29 P 2:39 Judge Mark A. Betleski COURT OF COMMON PLEAS N. W. NABAKOWSKI</p>
<p>CONSENT JUDGMENT AND ORDER</p>	

This Consent Judgment and Order (the "Order") of the Court is based upon agreement of the signatories among the following (collectively, the "Settlement Parties"):

- (1) the City of Lorain, Ohio (the "City");
- (2) Lorain County Auditor Mark Stewart (the "Auditor");
- (3) Lorain County, Ohio (the "County");
- (4) The Lorain County Board Commissioners (the "Commissioners");
- (5) The Lorain City School District;
- (6) The Amherst Exempted Village School District, (the Lorain City School District and the Amherst Exempted Village School District are collectively referred to as the "School Districts");
- (7) The Lorain Public Library;
- (8) The Lorain County Joint Vocational School District (the "JVSD");
- (9) The Amherst Public Library;
- (10) The Lorain County Board of Mental Retardation and Developmental Disabilities ("MRDD");
- (11) The Lorain Port Authority (the "Port");
- (12) The Lorain County TB Clinic;

- (13) **The Lorain County Children Services Board;**
- (14) **Lorain County Community College;**
- (15) **Lorain County Metro Parks;**
- (16) **Lorain County Community Mental Health Board;**
- (17) **Clarence R. Skorvanik, *ex rel.* the City of Lorain (the “Taxpayer Plaintiff”).**
- (18) **Oster Construction, Inc., Bevat Investments, LLC, and K. Hovnanian Oster Homes, LLC, Bennington Investments, LLC (collectively, “Oster Homes”).**

Also acknowledging this Order are those among the homeowners listed on the attached **Exhibit A** who also are actually eligible under this Order’s terms and who then, no later than February 19, 2010, consent to the effect of this Order upon them (collectively, the **“Consenting Homeowners”**). In this Order, a **“Homeowner”** generally is an owner of property within a CRA whose property is used for residential purposes, and not for commercial or industrial purposes; this would include any Oster Homes properties for which Oster Homes applied for exemption, relevant to this dispute.

The City, the Auditor, the County, the Commissioners, the School Districts, the Lorain Public Library, the JVSD, the Amherst Public Library, MRDD, the Port, the Lorain County TB Clinic, the Lorain County Children Services Board, the Lorain County Community College, Lorain County Metro Parks, the Lorain County Community Mental Health Board, are collectively referred to as the **“Governmental Parties.”**

BACKGROUND

- (1) A Community-Reinvestment Area (CRA) program is an economic-development tool that municipal and county governments administer to provide real-property tax exemptions for certain investments in real property. Under Ohio law, municipalities, and counties may survey the housing within their jurisdictions and designate geographical areas in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged. Once the CRA is properly designated, municipalities and counties may offer real-property tax exemptions to taxpayers who invest in the CRA.
- (2) Once a municipality receives an exemption application from a taxpayer whose property is located within a CRA, and who has undertaken new construction or remodeling within the CRA, the municipality confirms that the construction or remodeling is eligible for an exemption and certifies those exemption applications

to the County Auditor for placement on the tax-exempt list that the Auditor maintains.

- (3) In 1980, the City established CRAs 1 and 2 in Res. No. 51-80. In 1990, the City established CRA 5 in Ord. 122-90. The legislation City Council passed to establish CRAs 1, 2, and 5, along with all amendments to that legislation, is collectively referred to as the "CRA 1, 2, and 5 Legislation."
- (4) On December 2, 1985, under R.C. 3735.66, Lorain City Council ("City Council") passed an ordinance, Ord. No. 179-85 establishing an area of the City as CRA No. 3 ("CRA 3"). The City amended CRA 3 in 1988 in Ord. No. 127-88. On December 18, 1989, City Council passed an ordinance, Ord. No. 178-89, establishing another area of the City as CRA No. 4 ("CRA 4"). The legislation City Council passed to establish CRA 3 and CRA 4, together with all amendments to that legislation, is collectively referred to as the "CRA 3 and 4 Legislation."
- (5) The CRA 1, 2, and 5 Legislation and CRA 3 and 4 Legislation are collectively referred to from time to time as the "CRA Legislation." In 2005 and 2006, the City passed ordinances affecting all CRA legislation: Ord. 220-05, and Ord. 93-06.
- (6) On April 17, 2006, City Council unanimously passed amendments to the CRA Legislation. The relevant ordinances were Ordinance Nos. 19-06 (CRAs 1 and 2); 52-06 (for CRA 3); 53-06 (for CRA 4); and 54-06 (for CRA 5) (collectively, "the Disputed Legislation"). The Disputed Legislation provided that CRA exemptions would be granted based on the written recommendation of the City Council Committee on Tax Incentives, and required applicants to sign a CRA agreement. Copies of the original legislation, legislation affecting all CRA areas, and Disputed Legislation for all CRA areas within the City of Lorain, as described in the foregoing paragraphs, are attached as **Exhibit B**.
- (7) After passing the legislation, the City in mid-2006 began actively to market the availability of 15-year, 100% CRA exemptions to persons whose homes were completed after January 1, 2000 and located in CRAs 3 and 4. This marketing effort occurred under the guidance of the Community Development Department. The City then began receiving applications for CRA exemptions from residential-property owners. Between December 12, 2006 and July 19, 2007, the City's housing officer (the "Housing Officer") decided that 28 properties in CRA 3 and 327 properties in CRA 4 met the requirements for exemption under R.C. 3735.65 et seq. (the "CRA Act") and the Disputed Legislation. Beginning in December 2006 and continuing through August 2007, the Housing Officer then certified, and Renewal Administrator forwarded, these applications to the Auditor.
- (8) The City's contracts with homeowners provided that properties with back taxes would not be eligible. Some of the applications certified by the City to the Auditor included properties for which back taxes were owed, whose construction

was completed prior to January 1, 2000 (the date certain City officials had established as the earliest for exemptions in CRAs 3 and 4), or were outside of the relevant CRA zone. Those properties were

- (a) Parcel 02-02-010-000-132, 4374 Santina Way, Lorain, OH 44053 (delinquent taxes due);
 - (b) Parcel 02-02-002-000-106, 3401 Cranberry Lane, Lorain, OH 44053 (became taxable prior to January 1, 2000);
 - (c) Parcel 02-03-006-103-029, 6208 Oak Point Estates, Lorain, OH 44053 (became taxable prior to January 1, 2000);
 - (d) Parcel 02-02-016-106-030, 1218 W. 24th Street, Lorain, OH 44052 (outside of applicable CRA zones; received by Auditor on December 30, 2008); and
 - (e) Parcel 02-01-017-110-003, 1941 W. 27th Street, Lorain, OH 44052 (outside of applicable CRA zones; received by Auditor on December 30, 2008).
- (9) The Auditor's office declined to place on the exempt list all 28 properties in CRA 3 and 327 properties in CRA 4 that the Housing Officer had certified, including the properties listed in divisions (a), (b), and (c) of paragraph 8, above. A dispute between the Auditor and City (and subsequently the Taxpayer Plaintiff) emerged over issues that included those recited in a letter that the Auditor sent to homeowners (a partially redacted copy of such a letter is attached as **Exhibit H**), as well as the pleadings and memoranda in this litigation and the Taxpayer Litigation.
- (10) Beginning in August 2007, the Auditor sent letters to the 355 property owners (collectively, the "CRA 3 and 4 Homeowners") informing them that he believed the CRA program was illegally established and improperly administered, and advising them that he would not place the properties on the tax-exempt list.
- (11) The City disputed the Auditor's contentions, and challenged the Auditor's authority to refuse to place on the tax-exempt list properties certified to the Auditor as exempt by the City's Housing Officer.
- (12) On September 7, 2007, the Lorain County Commissioners filed a declaratory-judgment action (Case No. 08CV158250) (the "Declaratory-Judgment Action") in the Lorain County Court of Common Pleas against the City, the County Auditor, and various parties believed to be necessary. An amended version of this action sought to declare the City's CRA program illegal. Oster Homes successfully moved to intervene in the case. In November 2007, the City filed a motion to dismiss the Declaratory-Judgment Action that has not been decided.

- (13) In August 2008, the Auditor filed a cross-claim against the City in the Declaratory-Judgment Action. The Lorain County Commissioners, under a Memorandum of Understanding reached separately with the City, filed a motion to voluntarily dismiss without prejudice the Declaratory-Judgment Action. Shortly thereafter, the Auditor filed a separate lawsuit against the City and necessary-party defendants that included many of the Settlement Parties (the "Auditor's Separate Action.") The Auditor's Separate Action essentially restated the cross claims from the Declaratory-Judgment Action. The City filed motions to dismiss the Auditor's Separate Action and cross-claim in the Declaratory-Judgment Action. Those motions remain pending.
- (14) In September and October 2007, the City and nearly 200 property owners (the "Litigation-Party Homeowners") brought administrative appeals *City of Lorain, et al. v. Mark Stewart*, Case No. 07CV152733 (Miraldi, J), *Zemanek, et al. v. Stewart, et al.*, Case No. 07 CV 153674 (Betleski, J.); *Bennington Investments, LLC, et al. v. Mark R. Stewart*, Case No. 07CV152734 (Rothgery, J.), *Pagan, et al. v. Mark R. Stewart*, Case No. 07CV152758 (Rothgery, J.), *Klement v. Mark R. Stewart*, Case No. 07CV152735 (Zaleski, J.), *Romancak v. Mark R. Stewart*, Case No. 07CV152736 (Zaleski, J.), *Balawender v. Lorain County Auditor*, 07cv153669 (Zaleski, J.); *Hughes v. Lorain County Auditor*, 07cv153670 (Zaleski, J.) (collectively, the "Administrative Appeals") against the Auditor in the Lorain County Court of Common Pleas to appeal the Auditor's decision not to place properties on the exempt list.
- (15) In December 2007, the City filed an original action in the Ohio Supreme Court (Case No. 07-2289) (the "Mandamus Action") seeking a writ of mandamus to compel the Auditor to place the properties on the exempt list. In August 2008, the Ohio Supreme Court issued a writ of mandamus (Slip Opinion No. 2008-Ohio-4062), ordering that the Auditor place properties the City certified on the list. The Supreme Court further quoted R.C. 5713.08, which provides that the Auditor has the right to remove properties from the exempt list that, in his opinion, have lost their right of exemption. The Supreme Court expressly declined to decide the question of whether the Auditor's contentions about the alleged illegality of the City CRA program are correct. The Auditor raised such contentions in his Cross Claim and Separate Action.
- (16) In September 2008, the Taxpayer Plaintiff filed a taxpayer lawsuit in the name of the City (Case No. 08CV158515) (the "Taxpayer Suit") in the Lorain County Court of Common Pleas seeking to enjoin the City and its various officials from engaging in conduct that would permit them to administer the CRA 3 and 4 Legislation. The Taxpayer Suit cited the same issues with the CRA program's inception and implementation that the Auditor cited, although it sought injunctive relief as a remedy.
- (17) In late 2008, the City filed a complaint for a writ of prohibition (Case No. 08CA9473) (the "Prohibition Action") in the Ohio Ninth District Court of

Appeals to attempt to stop the Lorain County Court of Common Pleas from taking jurisdiction over the Declaratory-Judgment Action.

- (18) The Declaratory-Judgment Action (Auditor's Cross Claim only), the Auditor's Separate Action, the Prohibition Action, some of the Administrative Appeals, and the Taxpayer Suit (collectively, the "Pending Litigation") are all still pending. In August 2008, the Commissioners dismissed without prejudice their Declaratory-Judgment Action. The administrative appeals captioned *Bennington Investments, et al.*, Case No. 07CV152734; and *Zemanek, et al.*, Case No. 07CV153674 were dismissed on March 6, 2009.
- (19) All lawsuits or administrative actions related to the City's CRA program, whether specifically named above or not, including those dismissed that could be refiled, in which any Settlement Party, or Consenting Homeowner, is or was a participant in any way are collectively referred to as "Pending Litigation." The "Pending Litigation" term does not include CRA exemption applications that the City's Housing Officer has certified.
- (20) The Settlement Parties intend that, if this Court is ever held to lack subject-matter jurisdiction over the matters set forth in this Order, this Order shall function as a settlement agreement among the parties, and the Settlement Parties shall endeavor without delay and in good faith to implement the terms and conditions of, and to protect from collateral attack the terms of, this Order.
- (21) The Auditor by entering into this Order is not intending to set the term and percentage of any exemptions being offered by the City. Rather, the Auditor is deferring to the City Council on that point, as policymakers, as long as the term and percentage is expressly stated in the New Legislation and otherwise consistent with the CRA Act. Furthermore, some of the Settlement Parties, including the Amherst Exempted Village School District, are opposed in principle to certain CRA exemptions, including residential CRA exemptions in CRA 3 and CRA 4.
- (22) The Settlement Parties have consented to this Order to seek a mutually acceptable resolution to the dispute, and to avoid the inconvenience and costs of further litigation.

TERMS AND CONDITIONS

The parties agree, and the Court accordingly adjudges, orders, and decrees, as follows:

- (1) **New CRA legislation.** The City may pass, or may have already passed, new ordinances substantially in the form attached and incorporated as **Exhibit C** ("the New Legislation."). The parties agree that if the City adopts, or has already adopted, the New Legislation, both it and any future City CRA legislation are adopted under, governed by, and shall be interpreted under R.C. 3735.65, *et seq.*,

as amended in 1994 or as applicable Revised Code sections shall be later amended. The City agrees to consult with the Ohio Department of Development prior to adopting or implementing any changes to its CRA program, disclosing all relevant facts, and consistent with the principles provided in this Order. The City also agrees that the Clerk of Council promptly will provide to the Auditor courtesy certified copies of the adopted New Legislation and any future amendments to the City's CRA legislation.

- (2) **CRA Real-Property Tax Exemptions.** If the City passes, or has passed, the New Legislation referenced in Terms Section 1, above, the City shall consider, and the Auditor shall process, as described in this Section 2, residential CRA-exemption applications.
- (a) *Interim-Period Homeowners.* "Interim-Period Homeowners" are Consenting Homeowners (i) whose homes were completed on or after April 18, 2006 and before the effective date of the New Legislation, or (ii) who, after April 18, 2006 and before the effective date of the New Legislation, purchased a home within CRA 3 or CRA 4 and can demonstrate to both the City Housing Officer and the Auditor (in their respective, sole, individual discretion) that the home was purchased in justifiable, detrimental reliance on receiving a 15-year, 100% tax exemption. "Detrimental" reliance does not include failure to pay property tax. Interim-Period Homeowners who apply for CRA exemptions within 90 days after the New Legislation's effective date shall be eligible to receive the CRA exemptions for new construction or remodeling at the term of years and percentage that the City Council establishes for the Interim-Period Homeowners in the New Legislation. The City shall date-and-time stamp all new Interim-Period Homeowners' exemption applications when received, certify those eligible, and will forward those approved to the Auditor no later than 90 days after receipt. Interim-Period Homeowners who apply after 90 days will only be entitled to only those exemption years remaining for their respective CRA, as if the exemption for the Interim-Period Homeowners in the New Legislation had been passed in April 2006. (E.g., if the City Council in the New Legislation establishes a 15-year, 100% exemption for Interim-Period Homeowners in CRA 3, a CRA 3 home built in 2006 whose owner applies in 2010 but more than 90 days after the New Legislation's effective date, will be eligible for only 12 years of 100% exemption.) The potentially non-exclusive list of Interim-Period Homeowners and their properties is attached and incorporated as **Exhibit D**.
- (b) *Post-New-Legislation Homeowners.* Consistent with the post-1994 CRA Act, all CRA 1, 2, 3, 4, and 5 homeowners whose homes are completed or remodeled after the New Legislation's effective date ("Post-New-Legislation Homeowners") are eligible to apply for and receive CRA exemptions for new construction (in the case of completion of new

construction after the New Legislation's effective date) or remodeling (in the case of remodeling after the New Legislation's effective date) at the term of years and percentage that the City Council establishes for the applicable CRA in the New Legislation. The City shall date-and-time stamp all new Post-New-Legislation Homeowners' CRA-exemption applications when received and will forward to the Auditor those approved no later than 90 days after the later of (i) receipt, or (ii) completion of the home or remodeling.

- (c) *Pre-2006 CRA 3 or CRA 4 Homeowners.* "Pre-2006 CRA 3 or CRA 4 Homeowners" are Consenting Homeowners (i) whose homes are located in either CRA 3 or CRA 4, (ii) whose homes were completed before April 18, 2006, (iii) who are not Interim-Period Homeowners, and (iv) who, prior to September 11, 2008, have either (A) executed CRA agreements with the City or (B) completed preliminary or final CRA-exemption applications, substantially in the form attached and incorporated as **Exhibit E**. The City materially represents that on July 13, 2009, it provided all preliminary applications that it had not yet certified to the Auditor and that no others exist. Pre-2006 CRA 3 or CRA 4 Homeowners shall be eligible to receive, for one year, a 100% exemption for new construction (not remodeling). A list of homeowners (with their properties) believed to be eligible to become Pre-2006 CRA 3 or CRA 4 Homeowners is attached and incorporated as **Exhibit F**. The City shall not certify to the Auditor any new-construction (i.e., as opposed to remodeling) exemptions in CRA 3 or CRA 4 for homes completed before April 18, 2006 except as specified in this Order. The City shall not certify to the Auditor any remodeling exemptions in CRA 3 or CRA 4 for homes completed before April 18, 2006 where the remodeling at issue took place prior to April 18, 2006.
- (d) *Pre-2006 CRA 1, CRA 2, or CRA 5 Homeowners.* "Pre-2006 CRA 1, CRA 2, or CRA 5 Homeowners" are homeowners (i) whose homes are located in either CRA 1, CRA 2, or CRA 5, and (ii) whose homes were completed before April 18, 2006. The Pre-2006 CRA 1, CRA 2, or CRA 5 Homeowners are eligible to receive the balance of a 15-year, 100% exemption provided in the City's CRA legislation prior to the Disputed Ordinances, dated from the time of the construction of the home, and shall not be required to sign this Order or an agreement. *Example: if a home in CRA 2 is reflected on the Auditor's tax rolls as having had its structure completed and taxable for tax year 2003, and the homeowner applies for the exemption in 2010, then they would receive only the balance of the 15 years, which is 8 years, at 100% exemption.*
- (e) The Pre-2006 CRA 3 or CRA 4 Homeowners' exemptions described in Terms Section 2(c), above, are exclusive to the particular homeowners who contract for them. These exemptions do not "run with the land" or

properties, i.e., they are not transferrable to subsequent homeowners upon transfer of the property.

- (f) For homes not listed on **Exhibits D** or **F**, the Auditor's tax list shall be presumed to be correct regarding the completion date, that is, (i) homes that first appear as completed structures on the Auditor's tax list for tax year 2006 or earlier shall be presumed to be homes completed prior to April 18, 2006; (ii) homes that first appear as completed structures on the tax list for tax year 2007 or later shall be presumed to be homes completed on or after April 18, 2006; (iii) homes that first appear as completed structures on the tax list for tax years 2008, 2009, or 2010 shall be presumed to be homes completed before the New Legislation's effective date; and (iv) homes that first appear as completed structures on the tax list for tax year 2011 or later shall be presumed to be homes completed after the New Legislation's effective date. The presumption regarding completion date may be overcome only by compelling evidence. The City agrees that it shall decertify, if it has not already, the applications for the properties that are listed in paragraphs 8(d), and (e) of the Background Section, above, notify the affected homeowners, and will not submit additional applications that violate the terms of this Order or the New Legislation. The properties listed in Background Section paragraphs 8(b) and (c) will be eligible to be Pre-2006 CRA 3 or CRA 4 Homeowners under this Order.
- (g) The Settlement Parties agree to a prospective interpretation (i.e., beginning with tax year 2008) of the Supreme Court's writ of mandamus in Case No. 07-2289. The Settlement Parties further agree that there shall be no tax refunds issued to the Consenting Homeowners described above in this Agreement regarding tax years prior to tax year 2008.
- (h) All Consenting Homeowners shall be responsible for paying any accrued back taxes on their respective properties as assessed by the Auditor. The Auditor will, however, suspend and not take any actions to assess or collect any penalties and interest on any amounts due as a result of this dispute from tax year 2007 through tax year 2009, and waive the right to collect those penalties and interests if back taxes are paid in full by February 19, 2010. After that date, the Auditor is free to assess penalties and interest accrued back through the time that taxes became overdue. This suspension does not apply to any back taxes, penalties, and/or interest owed on deficiencies preceding tax year 2007, which are owed in any case.
- (i) Consenting Homeowners for whom the City has, prior to December 31, 2008, provided certified applications to the Auditor will receive the applicable exemption above for tax year 2009, payable in 2010. The Auditor will take the necessary steps to effect this provision.

- (j) Regardless of the provisions above, the Auditor shall have no obligation to place any property on the exempt list if back taxes are owed on the property or if the property is not within the boundaries of the relevant CRA that the City has established. This provision regarding back taxes shall not apply in situations in which (i) the homeowner has elected not to pay a portion of the homeowner's taxes in connection with the filing of a valuation complaint under R.C. 5715.19; or (ii) the homeowner has elected to pay only the taxes on the portions of the homeowner's property expected to be non-exempt while a CRA-exemption application is pending or while another type of exemption application is pending, provided that the taxpayer has paid any amounts due under Terms Section 2(h), above; or (iii) the City, through credible evidence, has persuaded the Auditor, in his sole discretion, that there was some other justifiable reason for the homeowner's failure to pay real-property taxes.
- (k) Except as otherwise specifically provided in this Terms Section 2, the term and percentage of CRA exemptions in the New Legislation is committed to the discretion of the City's legislative authority, i.e., the City's City Council. The Auditor takes no position on term and percentage other than that they must not exceed the statutory limits for which Ohio's CRA Act provides (e.g., currently 15 years, 100%, for new construction).
- (l) Any terms in Consenting Homeowners' prior CRA Agreements with the City that vary from the terms of this Order, including, but not limited to, administrative fees and the term and/or percentage of exemption, are modified to be read consistently with this Order.
- (3) **Ethics compliance.** The City and the Auditor represent that their respective officials will comply with Ohio ethics law and undertake all required Ohio ethics training.
- (4) **Non-precedent-setting nature of this Order.** The Settlement Parties acknowledge that the relief provided in this Order and the New Legislation is intended to resolve this Dispute, and does not set precedent for the future. It should in no way be interpreted or represented as authorizing any of the practices the Auditor or Taxpayer Litigant alleged as referenced in the Background Section, paragraph 9, above.
- (5) **Consolidation and dismissal with prejudice of Pending Litigation.**
- (a) *Consolidation.* The Court grants all pending motions to consolidate and consolidates with the captioned case and above-referenced administrative appeals the following Case Nos.: *Lorain County Auditor v. Lorain County Commissioners, et al.*, 08cv158250 (Zaleski, J.); and *State of Ohio, City of*

Lorain, ex rel. Clarence R. Skorvanik v. City of Lorain, et al., 08CV158515 (Rothgery, J.).

- (b) *Dismissal with prejudice of Commissioners' case.* The Court dismisses with prejudice the Commissioners' claims in Case No. *Lorain County Commissioners v. City of Lorain*, 07cv152624 (Betleski, J.) (previously dismissed without prejudice).
- (c) *Dismissal with prejudice of Auditor's cases.* The Court dismisses with prejudice the Auditor's cross-claim in Case No. *Lorain County Commissioners v. City of Lorain*, 07cv152624 (Betleski, J.) and claims in *Lorain County Auditor v. Lorain County Commissioners, et al.* Case No. 08CV158250 (Zaleski, J.).
- (d) *Dismissal with prejudice of Taxpayer Suit.* The Court also dismisses with prejudice the Taxpayer Suit in *Skorvanik ex rel. City of Lorain v. City of Lorain*, Case No. 08CV158515 (Rothgery, J.).
- (e) *City parties' obligation to dismiss Court of Appeals case and waiver of rights under Ohio Supreme Court case.* The City and any of its municipal officials shall voluntarily dismiss with prejudice all remaining Pending Litigation. The City parties knowingly, voluntarily, and intelligently waive any objection to this Order's existence in the Court of Common Pleas. The City further acknowledges that the Auditor has fully complied with Ohio Supreme Court Case No. 07-2289 (the "Mandamus Action"), and waives any future enforcement rights regarding that order that are inconsistent with this Order.
- (f) *Dismissal with prejudice of any pending administrative appeals by any Consenting Homeowner.* The Court further dismisses with prejudice any pending administrative appeals by any Consenting Homeowner. This would include Case Nos.

[TO BE FILLED IN BY COURT DEPENDING ON WHICH PENDING ADMINISTRATIVE-APPEAL HOMEOWNERS BECOME SETTLEMENT PARTIES]. Furthermore, Consenting Homeowners will, by their release, waive any right to file, join in, file amicus briefs in, join or benefit from class-action lawsuits, or otherwise participate in related claims before the City's Housing Officer, Housing Council, the Common Pleas Court, Ohio appeals courts, the Ohio Supreme Court, federal courts, or in any other jurisdiction or forum, judicial, or administrative.

- (g) If the City fails to file the required dismissals of any portion of any Pending Litigation, the failure to file shall constitute an event of default under Terms Section 9 of this Agreement.

- (6) The City will not collect fees from, and will reimburse previously collected fees to, Consenting Homeowners.
- (7) The Auditor's office, by the close of business on the February 19, 2010 deadline for Consenting Homeowners to obtain the benefits for which this Order provides, will have made available a knowledgeable chief deputy auditor on-site at City Hall for three business days upon which the Auditor and City will agree, to assist the City in working with Consenting Homeowners to obtain releases.
- (8) **Attorneys' fees and costs.**
- (a) *City's agreement to pay Auditor's attorneys' fees and costs and Auditor's agreement to assign a portion to the School Districts.* To partially reimburse the Auditor's attorneys' fees and costs associated with this dispute, no earlier than February 19, 2010, the Auditor is authorized to deduct from the City's Tax-Increment-Financing allocation, local-government fund, or as the City may otherwise direct including direct payment to the Auditor instead of a deduction, \$50,000 as compensation for the Auditor's services as described in R.C. 319.54 and 325.31 and transfer it directly into the County's real-estate-assessment fund established under R.C. 325.31. By no later than February 5, 2010, the City through its Mayor shall specify in writing a specific fund or funds from which the amount will be deducted or the manner in which the City will otherwise make payment, which must be made no later than February 19, 2010. If the City does not timely specify in writing a method of payment, the Auditor will make the deduction from the City's Tax-Increment-Financing allocation. If the Amherst Exempted Village School District and/or the Lorain City School District are parties to this Order by no later than January 29, 2010, the Auditor waives his right to retain the \$50,000, and shall allocate a share of that \$50,000 to each school district that is a party to this Order proportionally based on the percentage of CRA-exempted real-property values located in each school district that is a party to the Order. Such payment by the Auditor to the party school district(s) shall occur no later than 60 days after the City's payment(s) toward the \$50,000 are deducted. Within 30 days after dispensing the entirety of any such amounts, the Auditor shall provide the City with an accounting of how the amount was split between the two school districts.
- (b) *City's agreement to pay Taxpayer Plaintiff's attorneys' fees and costs.* The City further agrees to pay the Taxpayer Plaintiff's attorneys' fees and costs, totaling \$18,775.39, the reasonableness of which the City expressly acknowledges. The Auditor is authorized and agrees to deduct from the City's Tax-Increment-Financing allocation, local-government fund, or as the City might otherwise direct including direct payment to The Chandra Law Firm, LLC instead of a deduction, a total of \$18,775.39 and remit payment to The Chandra Law Firm, LLC/1265 W. 6th Street, Suite

400/Cleveland, OH 44113.1326. By no later than February 5, 2010, the City through its Mayor shall specify to the Auditor in writing, with a copy to the Chandra Law Firm, LLC, specific funds or funds from which the amount will be deducted or the manner in which the City will otherwise make payment, which must be made to arrive no later than February 22, 2010. If the City does not timely specify in writing a method of payment, the Auditor will, no later than February 19, 2010 make the deduction from the City's Tax-Increment-Financing allocation, make payment to the Chandra Law Firm, LLC, and notify the City that it has done so. If the Auditor does not or is unable to do this, the City shall pay these fees and costs directly to The Chandra Law Firm, LLC to arrive no later than February 22, 2010.

- (c) *Other Settlement Parties' attorneys' fees and costs.* All other Settlement Parties are to bear their own attorneys' fees and costs.
- (9) **Default and Remedies.** If any of the Settlement Parties defaults on any of the obligations contained in this Order, any other aggrieved Settlement Party shall be entitled to any and all remedies available at law or in equity, including specific performance. In addition, if any signatory Governmental Party violates any of its obligations under this Order, other Settlement Parties shall no longer have obligations under this Order until the obligations of all signatory Governmental Parties are performed, unless the remaining parties agree in writing otherwise. If any Consenting Homeowner violates this Order, the City shall, no later than February 26, 2010, immediately and prospectively, terminate the CRA exemption for the property owned or once owned by that Consenting Homeowner, regardless of whether that Consenting Homeowner owns the property as of the termination date, and the Auditor will have the right of collection described above regarding that Consenting Homeowner and his or her property.
- (10) **Amendment.** This Order may be amended or modified by the Settlement Parties (which do not include Consenting Homeowners) only in writing, signed by both the Auditor and City, and if they are affected by any amendments or modification, all other Settlement Parties; or their successors, heirs, and assigns.
- (11) **Counterparts.** This Order may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this Order may execute this Order by signing any such counterpart.
- (12) **Extent of Covenants; Binding Effect; No Personal Liability.** All covenants, stipulations, obligations, and agreements of the Settlement Parties contained in this Agreement shall be effective to the extent authorized and permitted by law. Each provision of the Order is binding upon the officer(s) or other person(s) and any body or bodies as may from time to time have the authority under law to take the actions as may be necessary to perform all or any part of the duty required by a given provision of this Order. No covenant, stipulation, obligation, or agreement shall be

deemed a covenant, stipulation, obligation, or agreement of any present or future member, officer, agent, or employee of any of the Governmental Parties in their individual capacity.

- (13) **No admission of liability.** The Settlement Parties understand and agree that this Order is in full settlement of the Pending Litigation, and that the execution of this Order is not an admission of liability by any Settlement Party.
- (14) **Governing Law and continuing jurisdiction.** The Settlement Parties understand and agree that all questions concerning the meaning and validity of this Order and all questions relating to any performance or breach shall be governed under Ohio law, and the Lorain County, Ohio Court of Common Pleas shall have exclusive original jurisdiction and venue relating to any suit or other legal proceeding concerning the breach of this Order. The Court of Common Pleas will maintain continuing jurisdiction over the enforcement of this Order.
- (15) **Entire agreement and modification.** This Order is the entire agreement between the Settlement Parties regarding the settlement of the Litigation. It supersedes all prior and contemporaneous agreements, representations, and undertakings, oral or written. No other agreement exists.
- (16) **Memorandum of Consent Judgment and Order.** Within 60 days of this Order's entry, the City shall file and record with the Lorain County Recorder a Memorandum of Consent Judgment and Order (the "Memorandum"), substantially in the form attached as **Exhibit G**. The purpose of the Memorandum is to place all successors and assigns of the Consenting Homeowners on notice of this Order's provisions and the Consenting Homeowners' rights and obligations. Each Consenting Homeowner grants to the City the authority to prepare and file the Memorandum.
- (17) **No Further Litigation, and Auditor and City's mutual duty to defend.** Each Settlement Party agrees not to initiate any future litigation related to the Disputed Ordinances or the subject matter of the Order as described in the Background Section, above, or any provision in this Order, except to implement, enforce, protect, or seek if necessary to amend this Order ("Enforcement Litigation"). The Auditor and City (and its relevant officials in their official capacities) each undertake an affirmative, mutual duty to defend this Order and its terms, and shall undertake such Enforcement Litigation, and/or implead, interplead, or otherwise name as "necessary and indispensable parties" the other, should this Order be collaterally attacked in any forum, in any way, by any homeowner or others. If this mutual duty (except for the need to amend) is triggered, and if the City demonstrates to the satisfaction of the Lorain County Prosecuting Attorney and Board of Commissioners that the City's law department is not capable of handling the matter and that the outside engagement is warranted, the Auditor will from his real-estate-assessment fund reimburse the City 50% in documented outside

reasonable attorneys' fees, but no more than \$35,000. Prosecuting Attorney and Board of Commissioners' approval must be in writing.

- (18) **Effective date.** This Order shall be binding and effective on its then signatory parties or subsequent signatory parties as of the date the Court signed it, provided that it will not be binding and effective unless it is also signed by (i) the City of Lorain Mayor and Law Director (as to form), (ii) the Auditor, (iii) the Taxpayer Plaintiff, and (iv) the County Prosecuting Attorney on behalf of the Board of County Commissioners.
- (19) **Extent to City's consent of jurisdiction.** The City consents to the jurisdiction of the Court solely for the purpose of satisfying and accomplishing this Order. The City agrees not to challenge the Court's jurisdiction to enforce this Order.
- (20) **Binding Effect/No Third-Party Beneficiaries.** This Order binds and inures to the benefit of the Settlement Parties, their officers and employees, their respective successors and assigns; and Consenting Homeowners. Neither this Order, nor any document that it contemplates, creates or is intended to create any right or benefit, or potential right or benefit, to any person or entity that is not a Settlement Party or Consenting Homeowner, except the Taxpayer Plaintiff's law firm solely as to the fees and costs specified in Terms Section 8(b), and except to the extent homeowners' homes are completed after the effective date of the New Legislation.
- (21) **Representations and warranties.** Each party to this Order represents and warrants to the other party as follows:
 - (a) They have carefully read and reviewed this Order with their attorneys (or have voluntarily chosen not to consult with an attorney), know and understand this Order's full contents, and are voluntarily entering into this Order.
 - (b) They have not assigned to any person or entity any of the claims, or any portion of any of the claims, that were or could have been asserted in the Litigation.
 - (c) They are fully authorized and competent to execute this Order and do so relying on their own judgment of the nature, extent, and duration of any damages or losses they have incurred or legal rights that have allegedly been violated.
 - (d) They are not relying on any statement, representation, omission, inducement, or promise of any other party in executing this Order, except as expressly stated in this Order.

- (e) The signatory to this Order has full authority to execute his/her signature on the Order and, by doing so, bind the party on whose behalf the signature is executed.
- (22) **Choice of Law.** The rights and obligations of the parties shall be construed and enforced under Ohio law.
- (23) **Waiver.** No waiver of any term of this Order constitutes a waiver of any other provision, whether similar or dissimilar. No waiver of any term constitutes a continuing waiver of that term. No waiver is binding unless signed in writing by the waiving party.
- (24) **Assignment.** Consenting Homeowners may not assign any benefits that this Order authorizes without the prior written consent of both the City and the Auditor, unless they are Interim-Period Homeowners.
- (25) **Headings.** The headings in this Order are for convenience of reference only and do not constitute a part of it. The headings do not affect its interpretation.
- (26) **Cooperation and construction.** This Order is to be construed as though all parties drafted it.

- (27) **Additional Acts/Documents.** The parties shall perform all additional acts and execute and/or deliver all additional documents necessary to carry out the terms of this Order, although this provision shall not be interpreted to require the City to revoke or decertify currently certified exemptions of Non-Consenting Homeowners whose properties were certified prior to December 31, 2008.

Mark Stewart
Lorain County Auditor

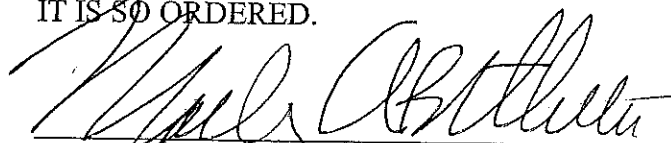
Anthony Krasienko
City of Lorain Mayor

Subodh Chandra
Special counsel for Lorain County Auditor
(As to form)

Patrick Riley
City of Lorain Law Director
(As to form)

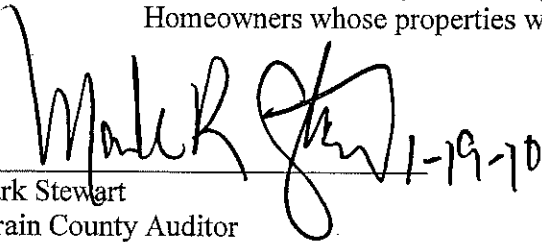
[ADDITIONAL SIGNATORIES TO BE ADDED ON NON-NUMBERED PAGES TO BE ATTACHED]

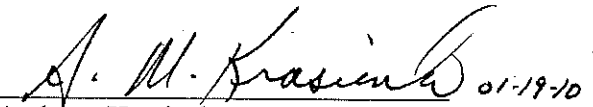
IT IS SO ORDERED.




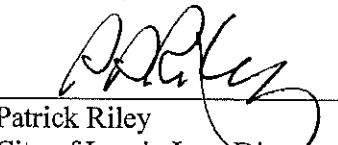
Honorable Mark Betleski
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 1-19-10
Mark Stewart
Lorain County Auditor

 01-19-10
Anthony Krasienko
City of Lorain Mayor

 1/19/2010
Subodh Chandra
Special counsel for Lorain County Auditor
(As to form)


Patrick Riley
City of Lorain Law Director
(As to form)

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Honorable Mark Betleski
Lorain County Court of Common Pleas