

EM SUBMISSION NO.: EME5812014

PRESENTED: 10-23-14

ADOPTED: 10-23-14

BY THE EMERGENCY MANAGER:

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT IN *USALAND LLC V CITY OF FLINT*, CASE NO. 14-103299-AS

USALand, LLC, filed a lawsuit against the City of Flint entitled *USALand, LLC v. City of Flint*, Case No. 14-103299-AS, to prevent the City from shutting off water services to 1718 W. Pierson Road due to nonpayment of water bills; and

The USALand, LLC, FL Investcom, LLC and the City of Flint have entered into a Settlement Agreement, attached hereto and made a part hereof, relative to the unpaid water bills; and

Pursuant to Sections I, II and VII, monthly payments shall be made to the City of Flint in accordance with the structured installment payment plan outlined in the attached Settlement Agreement; and, should either payment plan become delinquent, water service will be shut off at the entire complex and not restored until all accounts are paid in full.

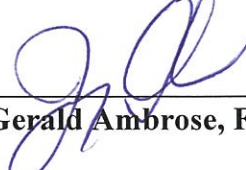
IT IS RESOLVED that the Emergency Manager hereby approves the Settlement Agreement between USALand, LLC, FL Investcom LLC and the City of Flint, which is attached hereto and made a part hereof.

APPROVED AS TO FORM:



Peter M. Bade, City Attorney

APPROVED AS TO FINANCE:



Gerald Ambrose, Finance Director

EM DISPOSITION:

ENACT ✓ FAIL _____

DATED 10-23-14



Darnell Earley, Emergency Manager

USALand LLC, FL Investcom LLC, and CITY OF FLINT
SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is executed this ____ day of October, 2014 by and between USALand LLC, a Michigan limited liability company (hereinafter "USA"), FL Investcom, LLC, a Michigan limited liability company (hereinafter "Investcom") and the City of Flint (hereinafter "Flint") as follows:

RECITALS

- A. USA owns property at 1910 W. Pierson Road (the "1910 Parcel") and 1718 W. Pierson Road (the "1718 Parcel"), Parcel numbers 46-26-379-018 and 46-26-379-019, respectively. Flint records indicate that USA has an outstanding water bill on the 1718 Parcel in the amount of \$168,921.61 as of September 30, 2014.
- B. USA has an outstanding water bill on the 1910 Parcel in the amount of \$78,512.54 as of September 30, 2014.
- C. USA filed an action in the Genesee County Circuit Court, Case Number 14-103299-AS, to prevent Flint from shutting off services to the 1718 Parcel.
- D. Pursuant to an Order entered September 2, 2014, the Circuit Court placed USA in receivership and ordered Flint to refrain from discontinuing services at the 1718 Parcel.
- E. USA and Flint have agreed to a time frame regarding payment of amounts due for outstanding water bills at the 1718 Parcel and the 1910 Parcel.
- F. Flint discontinued services at the 1718 Parcel on September 29, 2014 in accordance with the terms of the Court's Order and upon mutual agreement of the parties.
- G. On or about September 26, 2014, USA entered into a Purchase and Sale Agreement with Investcom (the "Purchase Agreement") for the sale and purchase of the 1910 Parcel and the 1718 Parcel (collectively, the "Property"). Pursuant to the terms of the Purchase Agreement, the closing on the sale and purchase of the Property is scheduled to take place on or before October 24, 2014 (the "Closing").
- H. Pursuant to the Purchase Agreement, after the Closing, Investcom will assume the duties and responsibilities for payment of the outstanding water bills and current and impending tax liens with respect to the Property, in accordance with applicable law and as more particularly provided in this Agreement.
- I. Notwithstanding anything in this Agreement to the contrary, the City reserves the right to pursue collections against USA.
- J. All rights and liabilities of Investcom hereunder and expressly contingent upon the occurrence of the Closing and Investcom shall have absolutely no liability for payment or otherwise under the terms of this Agreement unless and until the Closing on the sale and purchase of the Property occurs as provided in the Purchase Agreement.

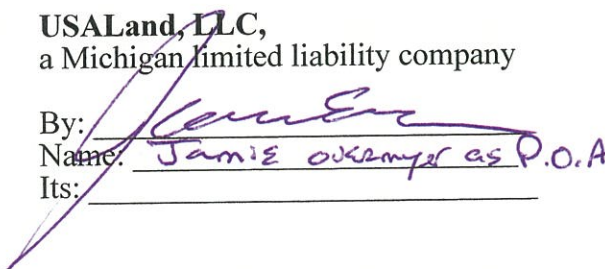
NOW, THEREFORE, in consideration of the mutual agreements of the parties, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

- I. Investcom agrees to make monthly payments toward the outstanding balance of \$78,512.54 on the 1910 Parcel. Investcom agrees to pay such past due amount within twelve (12) equal monthly installments. Investcom further agrees to pay all current use charges. Payments for both the past due amount and current use shall be made beginning on November 15, 2014 with the second and every subsequent payment thereafter made on the 27th day of every month (approximately \$7,100.00 per month) (the "City Payment Plan").

- II. Investcom will set up a payment plan with the County to pay off all delinquent taxes with respect to the Property (\$13,000.00 per month) (the "County Payment Plan").
- III. Once the County Payment Plan is in writing, Investcom will forward to the City a copy of the County Payment Plan.
- IV. The City will monitor the payments made to the County under the County Payment Plan.
- V. The 1718 Parcel delinquent water bill will be transferred to the 2015 tax roll and will become part of the County Payment Plan.
- VI. If all payments as provided herein are current (under the City Payment Plan and the County Payment Plan), water will be restored at the 1718 Parcel no later than May 2015.
- VII. If *either payment plan* becomes delinquent, water service will be shut off at the *entire complex and will not be restored until accounts are paid in full*.
- VIII. All parties to this Agreement agree to release each other from any claim *other than* a claim for payment of the outstanding balances on the 1718 Parcel and/or the 1910 Parcel or a breach of this Agreement, including without limitation, all actions, causes of action, claims, and demands for any damage, loss, or injury in connection with this Agreement.
- IX. All parties agree that each has contributed input to draft this Agreement and that this Agreement shall not be construed against any party. The parties further agree that Michigan law controls any dispute surrounding this Agreement. This Agreement is the entire agreement of the parties and any changes, amendments, or alterations must be made in writing and signed by all parties hereunder.
- X. All rights and liabilities of Investcom hereunder and expressly contingent upon the occurrence of the Closing and Investcom shall have absolutely no liability for payment or otherwise under the terms of this Agreement unless and until the Closing on the sale and purchase of the Property occurs as provided in the Purchase Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement on the day and date first set forth above.

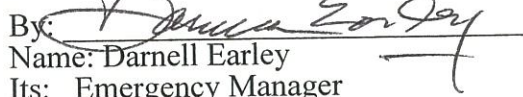
USALand, LLC,
a Michigan limited liability company

By: 
Name: Jamie Oxenmyer as P.O.A
Its: _____

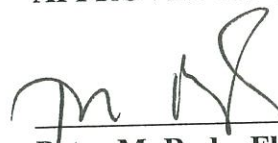
FL Investcom, LLC,
a Michigan limited liability company

By: 
Name: Corneliu Iacoban
Its: Authorized Member

City of Flint,
a Michigan municipal corporation

By: 
Name: Darnell Earley
Its: Emergency Manager

APPROVED AS TO FORM:


Peter M. Bade, Flint City Attorney