

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

WILLIAM ANTHONY HILL,
ELIZEBETH A. WORTHMAN, and
GOLDA BAILEY,
On Behalf of Themselves and Others
Similarly Situated,

Plaintiffs,

v.

MERRILL GARDENS LLC,

Defendant.

CAUSE: 1:04-CV-248-TLS

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

MERRILL GARDENS LLC,

Defendant.

CAUSE: 1:05-CV-4-TLS

ORDER

This matter is before the Court on the Stipulated Order Granting Preliminary Approval to Class Action settlement, Conditional Class Certification, and Proposed Consent Decree (“Stipulation”) proposed by the Defendant, Merrill Gardens, LLC, on June 8, 2005, as Docket Entry 50 in 1:04-CV-248 and Docket Entry 30 in 1:05-CV-4. The Stipulation is for the purposes of both of the above captioned matters, collectively referred to as the “Litigation.”

EXHIBIT A
TO STIPULATED ORDER
(with Exhibits A-1 to A-3)

[SETTLEMENT AGREEMENT]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

WILLIAM ANTHONY HILL,)
ELIZEBETH A. WORTHMAN, and)
GOLDA BAILEY,)
On Behalf of Themselves and Others)
Similarly Situated,)

Plaintiff,)

v.)

MERRILL GARDENS LLC,)

Defendant.)

CASE NO.: 1:04-cv-248

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between Plaintiff William Anthony Hill (“Plaintiff Hill”) and Golda Bailey (“Plaintiff Bailey”), on behalf of themselves and the Settlement Class, as defined below, and Merrill Gardens LLC (“Merrill Gardens”), to fully and finally settle all of the claims that have been or could have been brought relating to the above-referenced litigation and applications for employment by African-Americans or other minorities at Merrill Gardens.

I. Definitions.

As used throughout this Settlement Agreement, in addition to any definitions elsewhere in the Settlement Agreement, the following terms shall have the meanings set forth below:

A. The “Applicable Period” shall mean the period of February 17, 1998 to April 18, 2005.

B. “Georgetowne Place” means the retirement community located at 1717 Maplecrest Road, Fort Wayne, Indiana, and owned by Merrill Gardens since February 17, 1998.

C. “Plaintiff Hill” means William Anthony Hill.

D. “Plaintiff Bailey” means Golda Bailey.

E. “Parties” mean, collectively, Plaintiff Hill, Class Members, and Merrill Gardens.

F. “Merrill Gardens” means Merrill Gardens LLC and its past, present, and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of its past, present, and future officers, directors, employees, attorneys, and representatives, and any of them, including any person or entity acting on behalf or at the direction of any of them.

G. The “Hill Action” shall mean and include the above-captioned lawsuit and all claims that were brought or that could have been brought by Plaintiff Hill or any Settlement Class Member in that action, or in or before any administrative agency, or in any other action or proceeding (except the “EEOC Action,” defined below), whether brought in an individual or representative capacity regarding applications of employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, and owned by Merrill Gardens (“Georgetowne Place”) during the Application Period.

H. The “EEOC Action” shall mean the action brought against Merrill Gardens by the Equal Employment Opportunity Commission (“EEOC”) on January 4, 2005, in the United States District Court for the Northern District of Indiana, Fort Wayne Division, as Case No. 1:05-CV-004, and all claims that were brought or that could have been brought in that action, or before any administrative agency, or in any action or proceeding regarding applications for employment at Georgetowne Place during the Applicable Period.

I. The “Litigation” refers to the Hill Action and the EEOC Action collectively.

J. “Settlement Class” or “Class Member” shall mean and include all persons within the description of the Settlement Class quoted below in Section II.E.

K. “Class Counsel” shall mean and include John T. Menzie and/or Shane C. Mulholland of the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP.

L. “Effective Date” shall mean and include the day on which the Order Granting Final Approval to Class Action Settlement, Entry of Final Judgment, and Entry of Consent Decree (“Final Order”) described in Section III.H below becomes final. For purposes of this Settlement Agreement, the Final Order shall be deemed to become final on the later of (a) the day following the date on which the Final Order is no longer subject to review by appeal if no notice of appeal, motion to correct errors, or similar motion or notice is filed; or (b) if any such notices or motions are filed, on the day following the date on which the Final Order is not subject to further judicial review or appeal, either by reason of affirmance by a court of last resort or by lapse of time or otherwise.

M. “Release” means the Appendix to the Notice of Class Action, Proposed Settlement, Proposed Consent Decree, and Fairness Hearing, which is attached as Exhibit A-1.

II. BACKGROUND FACTS.

A. On behalf of himself and others allegedly similarly situated, Plaintiff Hill claims in the Hill Action that applicants were denied employment at the Georgetowne Place community and that the denials of employment were on the basis of race/color, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, and § 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981.

B. The EEOC has claimed in the EEOC Action that Merrill Gardens had a pattern or practice of refusing to hire non-Caucasians because of their race and/or color, in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-(2)(a); alleged that Merrill Gardens failed, in violation

of § 709(c), 42 U.S.C. § 2000e-(8)(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed; and sought appropriate relief for Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, Elizebeth Worthman, and a class of non-Caucasian individuals who were adversely affected by the alleged unlawful employment practices. Each of these individuals is a part of the proposed class in the Hill Action.

C. Merrill Gardens denies that Plaintiff Hill, Plaintiff Bailey, or any Class Member would have been hired at Georgetowne Place but for his/her race and/or color and that any claim is or would be timely and therefore denies liability to Plaintiff Hill, Plaintiff Bailey, or the Settlement Class for any claims, causes of action, costs, expenses, attorneys' fees, or damages of any kind.

D. The Parties and the EEOC have engaged in substantial investigation to evaluate the merits of the claims of Plaintiff Hill, Plaintiff Bailey, and the Settlement Class and Merrill Gardens' defenses thereto, including, but not limited to, defenses of causation and limitations periods. The Parties have obtained substantial information and have thoroughly analyzed the factual and legal issues surrounding Plaintiff Hill's and Plaintiff Bailey's claims and Merrill Gardens' defenses.

E. The Parties seek certification of a class pursuant to Fed. R. Civ. P. 23 defined as follows:

All African Americans and other minorities who: (1) submitted applications for employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC; (2) between February 17, 1998 and April 18, 2005; (3) for vacant positions; (4) and who were denied employment in such vacant position; (5) where the positions were or may have been given to non-minority candidates.

The parties identify and seek approval of two subclasses:

The “Known Class”: Class Members Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, and Elizebeth Worthman (“Known Class Members”), each of whom participated in the Hill Action and/or the EEOC Action on and/or prior to April 18, 2005. Members of the Known Class are identified as “Known Class Members.”

The “Unknown Class”: Class Members, including Golda Bailey, who are not specifically identified as Known Class Members. These individuals did not actively participate in the Hill Action and/or EEOC Action on or prior to April 18, 2005. Members of the Unknown Class are identified as “Unknown Class Members.”

F. The Court gave preliminary approval to Plaintiff Hill as Class Representative. The Court gave preliminary approval to Class Counsel John T. Menzie and/or Shane C. Mulholland of the law firm Burt, Blee, Dixon, Sutton & Bloom, LLP.

G. Plaintiff Hill, Plaintiff Bailey, and their counsel have concluded that, in light of the costs, risks, and delays inherent in litigation, it is in the best interest of Plaintiff Hill, Plaintiff Bailey, and the Settlement Class to enter into this Settlement to assure a benefit to the Settlement Class and to resolve their individual claims. Class Counsel has determined that the terms of the class action settlement in this case are fair, reasonable, adequate, and in the best interest of Plaintiff Hill, Plaintiff Bailey, and the members of the Settlement Class.

H. Merrill Gardens has concluded that, in order to avoid the costs and risks of ongoing litigation but without admitting the liability asserted by Plaintiff Hill, Plaintiff Bailey, and Class Counsel, a settlement of the claims of Plaintiff Hill, Plaintiff Bailey, and the Settlement Class in this case is appropriate. In this connection, Merrill Gardens agrees that the terms of the class action settlement in this case are fair, reasonable, and adequate.

I. The Parties desire to fully settle and compromise the Hill Action and all related claims that were and/or could have been brought in it.

J. The Parties desire and intend to seek Court approval of this Settlement Agreement, and the Parties intend to seek a Final Order from the Court dismissing with prejudice

all claims of Plaintiff Hill, Plaintiff Bailey, and all members of the Settlement Class made in this Litigation as covered by the Release in Section III.K and in the attached Release. The Parties agree that this Settlement Agreement is final and enforceable only upon Court approval and is contingent upon approval of the Consent Decree in the EEOC Action.

III. AGREEMENT.

In consideration of the agreements, promises, and mutual covenants set forth in this Settlement Agreement, the Release, the entry by the Court of a Final Order dismissing the Hill Action with prejudice and approving the terms and conditions of this Settlement Agreement, and for such other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree that this action shall be settled and compromised under the conditions and terms set forth below. The Parties agree that this Settlement is contingent upon the approval of the proposed Consent Decree in the EEOC Action and that the monetary relief itemized in the proposed and contemporaneously negotiated Consent Decree is identical, and not in addition to, the consideration under this Settlement Agreement.

A. Agreement on The Settlement Class.

1. For settlement purposes only, the Parties agree that the Settlement Class identified above in Section II.E should be certified as an “opt-out” class under Fed. R. Civ. P. 23 (b)(2), (b)(3), and (c)(2).

2. Persons who timely submit requests for exclusion (“opt out”) after notice of the conditional class certification order and preliminary approval by the Court will not be entitled to participate in the Settlement Class or to receive the financial consideration described in this Settlement Agreement or the Consent Decree.

3. Persons who do not opt out of the Settlement Class but who do not timely return executed Releases at least seven (7) days before the Fairness Hearing will be a part of the

Settlement Class but will not be entitled to receive financial consideration described in the Settlement Agreement. The only exception to this deadline for submission of executed Releases will be for those individuals who timely submit objections to the EEOC's preliminary determination that such individuals are not in the Class. If such individuals are determined to be in the Class, their executed Releases are due at the Fairness Hearing. Amounts assigned to Class Members (who do not opt out and who do not timely execute Releases) pursuant to Sections III.B and III.C will be distributed pursuant to this Settlement Agreement and the Consent Decree.

B. Financial Consideration To The Known Class.

1. As consideration for this Settlement Agreement and proposed Consent Decree in the EEOC Action, assuming that each identified individual meets the eligibility requirements set forth in the Settlement Agreement and Consent Decree, Merrill Gardens will, within twenty (20) days after the Effective Date of the Final Order pay the amounts to Class Members which are set forth below:

- a. Merrill Gardens shall pay \$10,000, minus applicable taxes and withholdings, for alleged back pay to each of the Known Class Members, as defined herein and if eligible, or to their heirs or assigns in the event of an individual's death.
- b. Merrill Gardens shall pay \$50,000 for alleged compensatory damages (other than for wages) to Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, and William Hill, if eligible. Merrill Gardens shall pay \$15,000 for alleged compensatory damages (other than for wages) to Elizebeth Worthman, if eligible.

3. Class Counsel, independently or with or through the EEOC, within seven (7) days of the Final Fairness Hearing, will notify the Court and counsel for Merrill Gardens which Known Class Members did not opt out of the Settlement and who timely submitted executed Releases and completed IRS W-4 forms, and are therefore eligible for payment under the Settlement Agreement and Consent Decree, and will cause copies of such documents to be

forwarded to counsel for Merrill Gardens. Within twenty (20) days after the Effective Date, Merrill Gardens shall mail appropriate payments for eligible Known Class Members via certified mail, payable to eligible Known Class Members, or to any appropriate heir or assign in the event of a Known Class Member's death. Absent alternate acceptable instruction, checks will be sent to the following addresses:

Caroline Aduro
3410 Hawkechee Drive
Fort Wayne IN 46815

Samantha Bolden
3917 Bowser Avenue
Fort Wayne IN 46806

Jaela Brownlee
6226 Mayfair Road
Fort Wayne IN 46818

Debra Edwards
5405 Scepter Court
Fort Wayne IN 46835

William Hill
c/o John T. Menzie/Shane C. Mulholland
Burt, Blee, Dixon, Sutton & Bloom, LLP
Suite 1000
200 East Main Street
Fort Wayne, IN 46802

Elizebeth Worthman
c/o John T. Menzie/Shane C. Mulholland
Burt, Blee, Dixon, Sutton & Bloom, LLP
Suite 1000
200 East Main Street
Fort Wayne, IN 46802

Merrill Gardens shall prepare the checks in amounts determined under Paragraph III.B above. Applicable taxes and withholdings shall be subtracted from the back pay amounts under Paragraph III.B.1.a pursuant to the IRS Forms W-4 completed and tendered to Merrill Gardens.

If a Known Class Member fails to submit a completed IRS Form W-4 with his/her executed Release, then Merrill Gardens will make the maximum withholdings as set forth by law. Merrill Gardens will not deduct from any amount the employer's share of any costs, taxes, or social security required by law to be paid by Merrill Gardens. Further, Merrill Gardens will not withhold any amounts from the payments under Section III.B.1.b above. Merrill Gardens offers no tax advice or opinion regarding the tax consequences of the payments under Section III.B.1 to any Class Member.

Merrill Gardens shall promptly mail a copy of the checks and proof of their delivery (signed certified mail receipts) to Class Counsel. Class Counsel, on their own or with or through the EEOC, shall promptly provide Merrill Gardens with original Releases executed by Class Members.

If a Known Class Member does not return an executed Release, the Known Class Member will be ineligible for any payment under this Settlement Agreement and the Consent Decree, and any funds that claimant would have received shall be split equally among the remaining Known Class Members under this Settlement Agreement and the Consent Decree.

C. Financial Consideration To The Unknown Class.

1. Merrill Gardens will pay an additional amount of up to \$325,000 to approved Unknown Class Members, as defined above, who have executed and timely submitted Releases. Merrill Gardens will pay up to \$54,166.67 to each approved, eligible Unknown Class Member, if no more than six Unknown Class Members come forward and meet all eligibility requirements (*i.e.*, Merrill Gardens will pay \$54,166.67 for each Unknown Class Member, \$108,333.33 for two Unknown Class Members, etc. up to a cap of \$325,000). If more than six Unknown Class Members meet the eligibility requirements for payment and are approved by the Court, the

\$325,000 will be divided equally among those Unknown Class Members who satisfy eligibility requirements.

2. If the number of eligible Unknown Class Members allows payments of at least \$10,000 to each eligible Unknown Class Member pursuant to Section 403 above, \$10,000 will be identified as claimed loss wages (back pay). The remainder will be treated as payment for potential compensatory damages (other than back pay).

3. If the number of eligible Unknown Class Members allows for payments to eligible Unknown Class Members in any amount less than \$10,000, such amount will be treated as claimed loss wages (back pay).

4. Unknown Class Members will be notified as set forth in Section I.B and Exhibits C, D-1, and D-2 of the Preliminary Approval Order.

5. If any individual contacts legal counsel for or a manager of Georgetowne Place in response to a notice in the media or based upon some other source, Merrill Gardens will provide the EEOC with contact information as soon as possible and by no later than seven days after receiving the information.

6. The Parties agree that the EEOC shall make a preliminary determination as to which individuals meet the definition of Class Members under the Settlement Agreement and Consent Decree (under which the definitions are identical) and shall ensure that each such preliminarily identified Class Member receives a copy of the Notice that is attached hereto as Appendix A. The EEOC has the resources and expertise to address such matter. Class Counsel, either themselves or with or through the EEOC, shall notify Merrill Gardens of each person recommended by Class Counsel and/or the EEOC to be Class Members and each person who has been issued the Notices attached hereto as Exhibits A-1 and A-2.

7. If the EEOC determines that any individual who comes forward is not eligible to share in class relief, Class Counsel, either themselves or through the EEOC, shall so notify Merrill Gardens by no later than two weeks before the Fairness Hearing. Merrill Gardens may then, within seven (7) days of receiving notice, alert the EEOC in writing to any disagreement with the EEOC's determination. If the parties are unable to resolve the disagreement, Merrill Gardens may lodge an objection with the Court, which the Court will resolve at the Fairness Hearing addressed below.

8. Merrill Gardens will defer to the good faith recommendations of the EEOC and Class Counsel regarding whether individuals meet the definition of Class Members. The Court will, however, issue final approval of such recommendations.

9. Merrill Gardens shall provide appropriate IRS Forms W-4 to the EEOC for timely distribution to Class Members.

D. Opt-Outs.

The Notice of Class Action, Proposed Settlement, Proposed Consent Decree, and Fairness Hearing at Exhibits A-1 and A-2 shall be approved by the Court and shall thereafter be available to Class Members. Each Class Member shall have until ten (10) days before the Final Fairness Hearing to opt out as provided in this Settlement Agreement and the Notice attached hereto at Exhibits A-1 and A-2.

E. Release.

To be entitled to receive payment under this Settlement Agreement, a Class Member shall timely submit his or her executed Release.

F. Preliminary Approval And Notice Of Proposed Settlement.

Class Counsel shall present this Settlement Agreement to the Court along with a Motion for Preliminary Approval of Class Settlement and Approval of Notice to Class Members. In

addition, counsel for the Parties agree to take all appropriate steps to obtain an Order from the Court: (i) preliminarily approving this Settlement Agreement and finding that the Settlement is fair, reasonable and sufficient to allow notice to be disseminated to members of the Settlement Class; (ii) approving notice in the media to Class Members in the forms attached to the Preliminary Approval Order, (iii) approving Mailed Notice in the form attached as Exhibits A-1 and A-2 to be mailed by the EEOC to those who identify themselves as potential class members, (iv) directing that the notice to Class Members be disseminated and published pursuant to the terms of this Settlement Agreement and the Preliminary Order; and (v) scheduling a hearing on final approval of the proposed Settlement (“Fairness Hearing”).

G. Exclusions And Objections.

1. Subject to Court approval, any Class Member may present written objections as to (a) why this Settlement Agreement should not be approved as fair, reasonable, and adequate, (b) why attorneys’ fees and expenses to Class Counsel should not be awarded in the amounts requested, and/or (c) why Class Representative’s or Class Counsel’s appointment should not be finally approved. All objections must (1) be in writing, (2) include the objector’s full name, address and telephone number and, if applicable, the name, address and telephone number of the Class Member’s independently retained attorney, (3) state with specificity the basis for the objection, (4) include any supporting papers, materials, or briefs, and (5) be accompanied by a Notice of Intent to Appear at the Final Approval Hearing if the objector desires to appear personally or by counsel. Such written objections must be filed with the Court and mailed to and received by Class Counsel by no later than seven (7) days before the Fairness Hearing. Class Counsel will immediately provide such objections to counsel for Merrill Gardens.

2. Any Class Member who has filed a written objection may appear at the Final Fairness Hearing and show cause why the Settlement Agreement should not be approved as fair,

reasonable, and adequate. Any Class Member who does not file and serve written objections to the Settlement and notice of his or her intent to appear at the Fairness Hearing in the manner and within the time set forth above shall not be permitted to object to the Settlement at the Fairness Hearing, and shall be barred from seeking review of the Settlement by appeal or otherwise.

H. Final Order and Judgment.

1. At least three (3) business days before the Final Fairness Hearing, Class Counsel shall provide to the Court and to Merrill Gardens a complete proposed accounting of the distributions of the total amount Merrill Gardens has agreed to pay.

2. The Settlement Agreement is subject to and conditional upon the issuance by the Court, following the Final Fairness Hearing, of a Final Order granting final approval to the Settlement Agreement in accordance with Rule 23(e) of the Federal Rules of Civil Procedure. A copy of that Final Order will be provided to each Class Member who has executed a Release, together with the check to be paid to each such Class Member.

3. Subsequent to the Final Fairness Hearing and upon the Court's approval of this Settlement Agreement and Consent Decree, the parties contemplate that a Final Order will be entered by the trial court, essentially in the form attached hereto as Exhibit A-3. The parties understand that the Court retains the right and ability to enter the Order it deems appropriate. However, the Parties agree that they will submit to the Court for entry an Order Granting Final Approval to Class Action Settlement and Entry of Final Judgment essentially in the form attached hereto as Exhibit A-3.

I. Events To Nullify Agreement.

This Settlement Agreement shall be null and void and shall have no further force and effect with respect to any party in this action in the event that (i) the preliminary or final approval of the Settlement described in this Settlement Agreement is not obtained or is reversed on

appeal; (ii) the Effective Date as described in Section I.K above does not occur for any reason; (iii) entry of the Final Order and Judgment described in Section III.H above is finally reversed; (iv) the Final Order and Judgment is substantially modified by the Court or on appeal, and either Merrill Gardens or Plaintiff Hill does not agree with such modification; and/or (v) the Court does not approve the proposed Consent Decree in the EEOC Action. In such event, this Settlement Agreement shall not be offered in evidence or used in this or any other action for any purpose including, but not limited to, the existence, certification or maintenance of any purported class. In the event of nullification of this Settlement Agreement for the reasons set forth in this paragraph, all negotiations, proceedings, documents and statements made in connection with this Settlement Agreement shall be without prejudice to any party and shall not be admissible into evidence, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter or proposition of law, and shall not be used in any manner for any purpose, and all Parties to this action shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court.

J. Cooperation For Implementation.

Plaintiff Hill, Plaintiff Bailey, and Merrill Gardens, individually and collectively, together with their respective counsel, agree to take all actions necessary to obtain preliminary approval of this Settlement Agreement and its plan for notice, final approval of this Settlement Agreement, and entry of the Final Order and Judgment dismissing this action with prejudice as to Plaintiff Hill and all Class Members. Plaintiff Hill, Plaintiff Bailey, and Merrill Gardens also agree to take all actions necessary to obtain dismissal of the Hill Action, all pending lawsuits (except for the EEOC Action), and all other subsequent lawsuits that may be filed by any non opting out Class Member between the time that this Settlement Agreement is executed and the

Effective Date, relating to the subject matter of the Hill Action against Merrill Gardens, either individually or collectively, for claims covered by the Release.

K. Release And Dismissal Of Claims; Covenant Not To Pursue Related Claims.

1. Plaintiff Hill, Plaintiff Bailey, and each Class Member (who has not opted out) agree to the form and substance of the Release that is appended to the attached Notice at Exhibits A-1 and A-2

2. Upon the Effective Date, Plaintiff Hill and Plaintiff Bailey shall have, and each Class Member and the Settlement Class shall be deemed to have, covenanted and agreed that he or she shall not, at any time, institute, cause to be instituted, assist in instituting or permit to be instituted on his or her behalf any proceeding in any state or federal court, in or before any administrative agency, or any other proceeding or otherwise allege or assert any of the claims released against the Released Parties, individually or collectively, as described in the Release.

3. Plaintiff Hill and Plaintiff Bailey agree, and each Class Member shall be deemed to have agreed, to the dismissal with prejudice of the Hill Action.

L. Payments to Class Members and Payment of Attorneys' Fees And Expenses.

Merrill Gardens agrees to make a one-time payment of \$100,000 in attorney fees to Class Counsel. This fee will, in part, pay for any services rendered in the Litigation. Class Counsel, to avoid any apparent conflict of interest and as consideration for the agreed-upon fees to them, agrees to refrain from representing any individual, directly or indirectly, in any action against Merrill Gardens in which any allegations are made regarding the Merrill Gardens' purported discriminatory failure to hire during the Application Period.

M. Final Report to the Court.

At the conclusion of delivery of consideration to all eligible Class Members, the Parties will jointly report to the Court that the Settlement has been effected and concluded.

N. Miscellaneous Provisions.

1. **Entire Agreement.** This Settlement Agreement and its attachments shall constitute the entire agreement of the Parties in the Hill Action and shall not be subject to any change, modification, amendment, or addition without the express written consent of counsel on behalf of all Parties to the Settlement Agreement and shall be binding and inure to the benefit of the Parties hereof and their representative heirs, successors, and assigns, except that it should be viewed in conjunction with the proposed Consent Decree in the EEOC Action and the Preliminary Approval Order in both the Hill Action and the EEOC Action.

2. **Illegality Or Unenforceability Of Provisions.** In the event that any provision of this Settlement Agreement shall for any reason be held, in whole or in part, to be invalid, illegal, or unenforceable in any respect, then the Settlement Agreement will be null and void unless Merrill Gardens, the Class Representative, and Class Counsel agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement. If this Settlement Agreement is terminated for any reason prior to issuance by the Court of a Final Order approving the Settlement, or if the Settlement contemplated by this Settlement Agreement is not concluded substantially as described in this Settlement Agreement with an Order of the Court approving the settlement that becomes final after all appeals, then the Settlement Agreement and all other acts taken to effect a settlement shall be void and of no effect and shall not be admissible by or against any Party to this Agreement. The Parties to this Settlement Agreement shall use their best efforts to obtain approval of this Settlement Agreement by the Court.

3. **Agreement Mutually Prepared.** This Settlement Agreement shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them by reason of authorship.

4. **Independent Investigation And Decision.** The Parties hereto understand, acknowledge and agree that they (i) have each performed an independent investigation of the allegations of fact and law made in connection with this action; and (ii) that they each may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of this Settlement Agreement. Nevertheless, it is the Parties' intention to resolve their disputes pursuant to the terms of this Settlement Agreement. In furtherance of their stated intentions, the Settlement Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Settlement Agreement shall not be subject to rescission or modification by reason of any change or difference in facts or law.

5. **Authority To Enter Into Agreement.** The Parties hereby warrant and represent that the persons signing this Settlement Agreement shall have full power and/or authority to bind to all terms of this Settlement Agreement of Class Action Settlement every person included within the definitions of the Settlement Class and Merrill Gardens as set forth in Section II.E above.

6. **No Promise Or Inducement For Release.** The Parties hereto warrant and represent that no promise or inducement has been offered or made for the release in Section III.E, and in the attached Release except as herein or therein set forth, that this Settlement Agreement is executed without reliance on any statements or any representations not contained herein, and this Settlement Agreement and the attached Release reflect the entire agreement among the Parties with respect to the terms of the release. The warranties and representations made herein shall survive the execution and delivering of this Settlement Agreement and shall be binding upon the respective heirs, representatives, successors and assigns of each of the Parties.

7. **Binding Agreement.** Plaintiff Hill, Plaintiff Bailey, and Merrill Gardens, individually and collectively, expressly agree that the terms of this Settlement Agreement and all provisions hereof, including all representations, promises, agreements, covenants, and warranties, are contractual and not a mere recital and shall survive the execution of this Settlement Agreement and entry of the Final Order and Judgment and shall continue in full force and effect thereunder.

8. **Receipt Of Advice Of Counsel.** The Parties acknowledge, agree and specifically warrant to each other that they have fully read this Settlement Agreement and the accompanying Release, received independent legal advice with respect to the advisability of entering into this Settlement Agreement concerning the legal effect of this Settlement Agreement, and fully understand this Settlement Agreement and its effect.

9. **Extensions Of Time.** The Parties may agree, subject to approval of the Court when required, to reasonable extensions of time to carry out the provisions of this Settlement Agreement.

10. **Execution Of Agreement In Counterparts.** This Settlement Agreement may be executed in counterparts by the Parties, and a facsimile signature shall be deemed an original signature for purposes of this Settlement Agreement.

11. **Retention Of Jurisdiction.** The Court shall retain continuing and exclusive jurisdiction over the Parties hereto for the purpose of enforcing, implementing, and interpreting this Settlement Agreement, including jurisdiction over all Class Members, and over the administration and enforcement of the Settlement and the distribution of benefits to Class Members. Any disputes or controversies arising out of or related to the interpretation, enforcement, or implementation of the Settlement shall be made by motion to the Court.

12. **Controlling Law.** For all issues of procedure relating to this Settlement or this Settlement Agreement, the laws of the State of Indiana shall apply.

Dated

By _____
William Anthony Hill
Class Representative

Dated

By _____
Golda Bailey
Class Representative

Dated

By _____
John T. Menzie
Shane C. Mulholland
BURT, BLEE, DIXON, SUTTON
& BLOOM LLP
Suite 1000
200 East Main Street
Fort Wayne, Indiana 46802

Dated

By _____
Title: _____
For Merrill Gardens LLC

EXHIBIT A-1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

WILLIAM ANTHONY HILL,)
ELIZEBETH A. WORTHMAN, and)
GOLDA BAILEY,)
On Behalf of Themselves and Others)
Similarly Situated,)

Plaintiffs,)

v.)

CASE NO. 1:04-cv-248

MERRILL GARDENS, INC.,)
d/b/a GEORGETOWN PLACE,)

Defendant.)

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

CASE NO. 1:05-CV-004-TLS

v.)

**[Notice for Those the EEOC
Determines to be in the Class]**

MERRILL GARDENS, LLC,)

Defendant.)

NOTICE

TO: All African Americans and other minorities who: (1) submitted applications for employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC; (2) between February 17, 1998 and April 18, 2005; and (3) were not hired.

**THIS CLASS NOTICE HAS BEEN PROVIDED TO YOU BY ORDER OF THE COURT.
A PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS. PLEASE READ THE
ENTIRE NOTICE CAREFULLY.**

PART A: WHY YOU HAVE RECEIVED THIS CLASS NOTICE

◆ *Why did I receive this Class Notice?*

You have received this Class Notice because the Court ordered that Notices be sent to those who contacted the Equal Employment Opportunity Commission (“EEOC”) in response to a notice in a newspaper or magazine, heard on the radio, or learned of from some other source and who may meet the definition of Class Members as set forth below.

If you are an African American or other minority and you applied for employment at Georgetowne Place located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC (“Merrill Gardens”) between February 17, 1998 to April 18, 2005 and were denied employment for a vacant position given to a non-minority employee, you may be eligible for certain benefits through the proposed class settlement of this lawsuit. Although the Court has not yet approved the proposed settlement and consent decree, it has directed that the class notice be sent to you as a potential class member.

PART B: DESCRIPTION OF THE CLASS

◆ *Am I a member of the Class?*

In an Order dated June 3, 2005, the United States District Court for the Northern District of Indiana, Fort Wayne Division, conditionally certified the following Class for purposes of settlement:

All African Americans and other minorities who: (1) submitted applications for employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC; (2) between February 17, 1998 and April 18, 2005; (3) for vacant positions; (4) and who were denied employment in such vacant position; (5) where the positions were or may have been given to non-minority candidates.

There are two proposed subclasses. The first consists of:

The “Known Class”: Class Members Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, and Elizebeth Worthman (“Known Class Members”), each of whom participated in the Hill Action and/or the EEOC Action on and/or prior to April 18, 2005. Members of the Known Class are identified as “Known Class Members.”

The “Unknown Class”: Class Members, including Golda Bailey, who are not specifically identified as Known Class Members. These individuals did not actively participate in the Hill Action and/or EEOC Action on or prior to April 18, 2005. Members of the Unknown Class are identified as “Unknown Class Members.”

The Court will make all final determinations on who is a member of the class of individuals entitled to relief and on the amounts that those individuals will be paid. The EEOC is initially making recommendations on who is in the class. You are therefore strongly encouraged to read this notice carefully and to cooperate with the EEOC.

PART C: DESCRIPTION OF THE LAWSUIT AND THE SETTLEMENT NEGOTIATIONS

◆ *What is this Litigation about?*

On June 25, 2004, William Anthony Hill and Elizebeth A. Worthman filed a lawsuit in the United States District Court for the Northern District of Indiana under Cause No. 1:04-cv-248 (the “Hill Action”), claiming that they and putative class members were wrongfully denied employment on the basis of their race at Merrill Gardens’ Fort Wayne Georgetowne Place facility. Plaintiffs indicated an intention to file a motion for class action certification, but a proposed settlement was negotiated before this occurred. Hill, as a proposed Class Representative, has since filed a motion for class certification for purpose of settlement. Golda Bailey thereafter became a named Plaintiff and additional proposed Class Representative.

On January 4, 2005, the EEOC filed the above-captioned suit against Merrill Gardens LLC (the “EEOC Action”) under authority granted by § 2000e-5(f)(1) and (3) and -6 (“Title VII”); and § 102 of Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a). The EEOC’s complaint alleged that Merrill Gardens had a pattern or practice of refusing to hire non-Caucasians because of their race and/or color and that Merrill Gardens failed to make and preserve records (specifically, employment applications) as required by law.¹ The Hill Action and the EEOC Action are collectively referred to as the “Litigation.”

Because the two lawsuits overlapped, settlement negotiations were conducted together. The parties to the lawsuits reached agreement on a proposed resolution of the two lawsuits. A proposed Settlement Agreement in the Hill Action and proposed Consent Decree in the EEOC Action were submitted to the Court. The Court then entered an “Order Conditionally Certifying a Class for Settlement Purposes, Appointing Counsel for the Class, Preliminarily Approving the Class Settlement, Directing the Issuance of a Notice to the Class and Scheduling a Fairness Hearing” on September 9, 2005 at 9:00 a.m.

This Notice has been made available to all potential Class Members in accordance with the Court’s Order.

◆ *How does Merrill Gardens respond to these allegations?*

Merrill Gardens admits that certain employment applications were not handled appropriately but denies allegations that any race played a role in particular decisions or that potential claims would be timely. Merrill Gardens further asserts that minority applicants have been hired at Georgetowne Place and that multiple individuals applied for certain positions at issue in the Litigation, for which only one individual was hired.

◆ *How much did the parties know about the lawsuit when they negotiated the proposed settlement?*

The parties negotiated the proposed settlement with an understanding of the factual and legal issues that would affect the outcome of the Hill Action and the EEOC Action. Prior to and during the course of the Litigation, Hill, through his attorneys, investigated the facts and law relating to the issues in the Litigation. The EEOC, through its investigators, investigated the facts prior to filing the EEOC Action.

The Parties believe the final outcome of the Litigation, if it were to proceed through trial and appeals, is uncertain. Based on their evaluation of the facts and law, Plaintiff Hill, Plaintiff Bailey, Merrill Gardens, the EEOC, and the attorneys for the Parties have determined that this proposed settlement is fair, reasonable, and

¹ Please note that each of these individuals is a part of the proposed class in the Hill Action.

adequate. They have reached this conclusion based upon the substantial benefits the proposed settlement provides Class Members, the risks, uncertainties and costs inherent in this Litigation, and the desirability of avoiding protracted litigation.

The Court has not determined the merits of the claims or defenses in this Litigation, and the Court will not make such a determination if it approves the proposed settlement. The proposed settlement does not suggest that any particular Class Member was subjected to any discrimination by Georgetowne Place or that proposed Class Members would recover if they would proceed to trial.

PART D: SUMMARY OF KEY PROVISIONS REGARDING DISTRIBUTIONS UNDER THE PROPOSED SETTLEMENT

- ◆ Six (6) individuals known to Class Counsel and the EEOC have submitted applications for vacant positions at Georgetowne Place and who participated in the investigation and/or Litigation will, if certain requirements are met, receive \$325,000 to be divided by agreement among them as set forth in the proposed Settlement Agreement in the Hill Action and Consent Decree in the EEOC Action.
- ◆ An additional amount of up to \$325,000 will be paid to others determined by the EEOC to meet the definition of the Class in the Litigation. This \$325,000 shall be divided equally among those who meet the requirements of the Class, if at least six (6) individuals are determined to be Unknown Class Members. If there are fewer than six (6) Unknown Class Members, \$54,166.67 will be paid to each.
- ◆ Court-approved attorney fees will not be subtracted from the above amounts. Appropriate taxes and withholdings will be subtracted from the calculated final payouts.

PART E: DECISIONS YOU MUST MAKE NOW

- ◆ *What do I need to do now?*

You must decide now whether you want to remain in the Class or to exclude yourself (opt out) from the Class.

1. IF YOU DECIDE TO REMAIN IN THE CLASS:

- ◆ If you were specifically identified in the Settlement Agreement as a Known Class Member, and if you execute the form Release that is attached, you will receive the amount set forth in the Settlement Agreement, minus applicable taxes and other withholdings.
- ◆ If the Court finds that you meet the definition of an Unknown Class Member in both of the above-captioned cases, and if you sign a Release (attached hereto as an Appendix), you will receive a check for your share of the settlement proceeds, not to exceed \$54,166.67. The EEOC preliminarily calculates that you will receive \$_____, based on the fact that as of this date the EEOC has now identified you and ____ other individuals who appear to meet the definition of a Class Member. The amount will be finally determined by the Court substantially as follows. The total amount of \$325,000 will be divided equally among the individuals determined to be class members if at least six individuals are determined to be in the Class. If there are fewer than seven in the Class, \$54,166.67 will be paid to each. The actual amount of the checks sent to

class members will be less because, just like paychecks, amounts will be withheld for taxes and other withholdings.

- ◆ You may object to any aspect of the proposed settlement by filing a written objection. The procedures for objecting are described in Part I, below.
- ◆ If you remain in the Class, you will be bound by all Orders and Judgments in this case, whether favorable or unfavorable.
- ◆ As is set forth in the Release annexed as the Appendix to this Notice—which will be binding against you whether or not you sign it and whether or not you receive any money under the Consent Decree or from the Settlement—you will not be able to start, continue, or otherwise participate in any other claim, lawsuit, or other proceeding regarding your application for employment between February 17, 1998, and April 18, 2005, against Merrill Gardens or its past, present, or future parents, subsidiaries, affiliates, predecessors, successors in interest, or assigns, officers, directors, employees, attorneys and representatives, or any of them, including any person or entity acting on behalf of or at the direction of any of them.

2. IF YOU DECIDE TO EXCLUDE YOURSELF FROM THE CLASS:

- ◆ You must submit a written request to exclude yourself from the Class, which must be **RECEIVED** by no later than August 30, 2005. The procedure for doing so is described in Part H below.

If you exclude yourself from the Class:

- ◆ You will not be eligible for any payment from Merrill Gardens under the Settlement Agreement in the Hill Action or the Consent Decree in the EEOC Action.
- ◆ You will not be able to object to the proposed settlement.
- ◆ You will not be bound by any Orders or Judgments entered in this case.

3. IF YOU DO NOT SUBMIT A TIMELY EXCLUSION REQUEST:

- ◆ **you will be eligible for the payments described in this class notice if you execute and timely return the attached release;**
- ◆ **you will remain a member of the class, and you will be bound by the settlement, the attached release, and by all orders and judgments in the Litigation; and**
- ◆ **you will not be able to file, participate in or continue any other lawsuit or proceedings based on or relating to the claims.**

PART F: INCOME TAX CONSEQUENCES

- ~ *Will the payments have tax consequences for me?*

Your receipt of payments under the proposed settlement could have tax consequences for you. Those tax consequences may vary depending on your individual circumstances. Accordingly, the attorneys for the Parties CANNOT advise you about the tax consequences of receiving settlement proceeds. Merrill Gardens will make standard withholdings and deductions based upon an Internal Revenue Service ("IRS") Form W-4 that you submit for amounts attributable as potential lost wages and will report such payment and withholding on an IRS Form W-2 that will be sent to you and the IRS. If you do not timely submit a completed IRS Form W-4, Merrill Gardens will make the maximum standard withholdings and deductions as set forth by law. Compensatory damages other than backpay (lost wages) will be reported on an IRS Form 1099. You should consult your own tax advisor to determine any federal, state, local or foreign tax consequences that could result from accepting or pursuing any form of relief under the proposed settlement.

PART G: RELEASE OF CLASS MEMBERS' CLAIMS AND DISMISSAL OF LAWSUIT

- ◆ *What will happen to any claims I have against Merrill Gardens if I do not request exclusion from the Hill Action Class?*

In exchange for the benefits provided under the proposed Hill Action settlement and the EEOC Consent Decree, you release Merrill Gardens and its parents, predecessors, and subsidiaries, and all others described in the release from liability for known and unknown claims relating to any application for employment between February 17, 1998 and April 18, 2005.

The Release is a critical element of the proposed settlement. For that reason, it has been reprinted word-for-word in the Appendix to this Notice. You should READ THE RELEASE CAREFULLY because it will affect your rights if you remain in the Class. In order for you to receive any payment under the Settlement and Consent Decree you must execute the Release and return it to the EEOC at the address on the Release form so that it is received by September 2, 2005.

PART H: INSTRUCTIONS FOR EXCLUDING YOURSELF FROM THE CLASS

- ◆ *How do I ask to be excluded from the Class?*
 - ◆ If you do not want to participate in the settlement, you must ask to be excluded from the class to avoid being bound by the settlement and consent decree and any judgment in the Hill Action.

To request exclusion from the Class, you must mail a written request to counsel at the following address:

John T. Menzie
Shane C. Mulholland
Burt, Blee, Dixon, Sutton & Bloom, LLP
200 East Main Street, Suite 1000
Fort Wayne, Indiana 46802

Your written request must be received no later than August 30, 2005, and must state the following information:

1. your name, address, and telephone number;
2. a clear statement that you want to be excluded from the Class;
3. your signature; and

4. the case name and number (*Hill v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:04cv248).

Please be sure to write the words "EXCLUSION REQUEST" on the lower left-hand corner of the front of the envelope.

REMEMBER: YOUR REQUEST FOR EXCLUSION MUST BE RECEIVED NO LATER THAN AUGUST 30, 2005, OR YOUR REQUEST WILL BE LATE AND INVALID.

PART I: FAIRNESS HEARING, RIGHT TO OBJECT TO PROPOSED SETTLEMENT, AND THE RIGHT TO APPEAR

◆ *What is a Fairness Hearing?*

The Court (the United States District Court for the Northern District of Indiana, Fort Wayne Division) will conduct a hearing to evaluate the fairness of the proposed settlement and consent decree and to make final determinations, including who is in the Class and the amounts of payments to Class Members.

◆ *When will the court decide whether to approve the proposed settlement?*

On September 9, 2005 at 9:00 a.m., the Court will hold a Fairness Hearing to consider whether to grant final certification to the Hill Action Class for settlement purposes and whether to approve the proposed settlement as fair, reasonable and adequate. The Court also will determine the reasonableness and adequacy of attorneys' fees and expenses requested for Plaintiff's Counsel (Class Counsel) in the Hill Action. The hearing will be held at the federal courthouse in Fort Wayne, which is located at 1300 South Harrison Street, in the Courtroom being used by The Honorable Theresa Springmann. At that same time, the parties will ask the Court to give final approval to the proposed Consent Decree in the EEOC Action.

◆ *How can I object to the proposed settlement?*

You must remain a member of the Class in order to object to any aspect of the proposed settlement, including final certification of a settlement class, the fairness of the proposed settlement, the adequacy of the Hill Action Class representation by Plaintiff Hill, Plaintiff Bailey, and Plaintiffs' Counsel, persons identified or excluded as Class Members, and the award of attorneys' fees and expenses to Plaintiffs' Counsel in the Hill Action. Any objections must be presented in writing.

Your written objection must include:

- (1) your name, address and telephone number;
- (2) a statement of your objection(s), and any supporting evidence you wish to introduce or law which you want to bring to the attention of the Court; and
- (3) the case name and number (*Hill v. Merrill Gardens LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:04cv248).

NO LATER THAN SEPTEMBER 2, 2005, YOU MUST FILE YOUR WRITTEN OBJECTIONS WITH THE CLERK OF THE COURT, which you may do by sending them to the following address:

Clerk, United States District Court
1300 South Harrison Street
Fort Wayne, IN 46802
Re: *Hill v. Merrill Gardens LLC*

YOU ALSO MUST MAIL COPIES OF THOSE MATERIALS TO CLASS COUNSEL SO THAT THEY ARE RECEIVED BY SEPTEMBER 2, 2005 AT THIS ADDRESS:

Class Counsel:

John T. Menzie, Esquire
Shane C. Mulholland, Esquire
Burt, Blee, Dixon, Sutton & Bloom, LLP
Suite 1000
200 East Main Street
Fort Wayne, IN 46802

The Court will not consider any objections RECEIVED after September 2, 2005. Late objections will be deemed to have been given up or waived.

If you file your objections on time and the Court overrules them, you still will be eligible for relief under the settlement and consent decree.

♦ *Can I appear at the Fairness Hearing?*

If you file and serve a timely written objection as described above, you may, but are not required to, attend the Fairness Hearing, either in person or through an attorney paid by you. You or your attorney may appear at the Fairness Hearing to object to any aspect of the proposed settlement as amended, including final certification of a settlement class, the fairness of the proposed settlement, the adequacy of the Class representation by Plaintiff Hill, Plaintiff Bailey, and Plaintiffs' Counsel, and/or the award of attorneys' fees and expenses.

If you or your attorney intend to appear at the Fairness Hearing, you or your attorney must file a Notice of Intention to Appear with the Clerk of the Court, and serve that Notice on Class Counsel, at the addresses listed above. The Court and Class Counsel must receive your Notice of Intention to Appear no later than September 2, 2005.

PART J: HILL ACTION ATTORNEY FEES AND EXPENSES

♦ *Class Counsel*

The Court has designated John T. Menzie, Esquire and/or Shane C. Mulholland at the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, Suite 1000, 200 East Main Street, Fort Wayne, Indiana 46802 as Class Counsel in this Action for purposes of the proposed settlement of this lawsuit.

How will the attorneys representing the Class Members be paid?

At the Fairness Hearing, the law firm of Burt, Blee, Dixon, Sutton & Bloom LLP will ask the Court for an award for attorneys' fees and expenses of \$100,000, to be paid separately from the total agreed amount for Class Members.

PART K: RIGHT TO TERMINATE THE PROPOSED SETTLEMENT

♦ *Can the parties terminate the proposed settlement?*

Under limited circumstances, each of the parties in the Litigation has the right to terminate the proposed settlement. Such circumstances include the decision of the Court or any appellate court to reject, modify, or deny approval of any portion of the proposed settlement or the Court's Orders. If the proposed settlement is terminated, you will not receive any of the settlement benefits, and you will not be affected in any way by the parties' actions in connection with the proposed settlement.

PART L: HOW TO GET ADDITIONAL INFORMATION

♦ *How can I get more information?*

You are encouraged to speak with EEOC representatives at any time. If you have questions about the case or this settlement, you may leave a message for the EEOC at any time by telephone at (317) 226-7226. You may also contact the EEOC trial attorney on this case, Kenneth Bird, by telephone at (317) 226-7204, or through email at Kenneth.Bird@EEOC.gov, or EEOC paralegal Monica Guest at (317) 226-7215, Monica.Guest@EEOC.gov. You may write to the EEOC at the following address:

Kenneth Bird
Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis IN 46204-4203

You may also direct questions regarding the proposed settlement to John T. Menzie and/or Shane C. Mulholland.

John T. Menzie, Esquire
Shane C. Mulholland, Esquire
Burt, Blee, Dixon, Sutton & Bloom, LLP
200 East Main Street, Suite 1000
Fort Wayne, Indiana 46802

This Notice and the accompanying documents are only a summary of the proposed settlement, which is set forth in a more detailed legal document called the "Settlement Agreement." The full Settlement Agreement can be obtained from the office of Burt, Blee, Dixon, Sutton & Bloom, LLP, by e-mail request to them at mulholland@burtblee.com, or by calling their office at (260) 426-1300. Those documents will be made available *by appointment* during regular business hours at the offices of Burt, Blee, Dixon, Sutton & Bloom, LLP, at the address above.

For additional information, you may also review documents and court orders on file in the Clerk's Office, which is in the federal courthouse in Fort Wayne, Indiana, 1300 South Harrison Street. You may inspect these

documents at the Clerk's Office at any time during normal business hours, Monday through Friday, 9:00 a.m. to 3:30 p.m., Central Daylight Savings Time.

NO INQUIRIES SHOULD BE DIRECTED TO THE COURT

Dated: _____

Clerk, United States District Court
1300 South Harrison Street
Fort Wayne, IN 46802

APPENDIX

RELEASE

A. DEFINITIONS. For purposes of this release and waiver (the "Release"), the following terms shall have the meanings set forth below:

1. The "Hill Action" means the lawsuit captioned *Hill, et al. v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:04cv248, and all claims that were brought or that could have been brought by William Anthony Hill, Golda, Bailey, or any Class Member (who did not opt out) in this Court, in any other Indiana state or federal court, or in or before any Indiana administrative agency, or in any other proceeding, whether brought in an individual or representative capacity regarding any application for employment at Georgetowne Place located at 1717 Maplecrest Road, Fort Wayne, Indiana and owned by Merrill Gardens LLC from February 17, 1998 to April 18, 2005. The definition of "Hill Action" does not, however, include the "EEOC Action," as defined below.
2. The "EEOC Action" means the lawsuit captioned *EEOC v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:05-cv-004.
3. The "Litigation" refers to the Hill Action and the EEOC Action collectively.
4. "Settlement Agreement" means the proposed Settlement Agreement filed in the Hill Action, including any subsequent amendments thereto and any exhibits to any such amendments.
5. "Consent Decree" means the proposed Consent Decree filed in the EEOC Action, including all exhibits.
6. "Class" and "Class Members" mean all African American and other minority applicants for employment at Georgetowne Place, operated by Merrill Gardens LLC, who submitted applications for employment, and who were denied employment in vacant positions from February 17, 1998 to April 18, 2005.
7. "Final Order and Judgment" means the order in the Hill Action finally certifying the Class for settlement purposes only and approving the settlement and the Settlement Agreement, and a final judgment is signed pursuant to that order.
8. "Court" means the United States District Court for the Northern District of Indiana, Fort Wayne Division.
9. "Plaintiff Hill" means William Anthony Hill.
10. "Plaintiff Bailey" means Golda Bailey.

11. "Class Counsel" means John T. Menzie, Esquire and/or Shane C. Mulholland at the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, Suite 1000, 200 East Main Street, Fort Wayne, Indiana 46802.
12. "Released Parties" means Merrill Gardens LLC and each of its past, present and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of their respective past, present and future officers, directors, employees, attorneys and representatives, or any of them, including any person or entity acting on behalf of or at the direction of any of them.
13. "Consideration" means the consideration approved by the Court in the Final Order and Judgment and as outlined in the Settlement Agreement. The EEOC has estimated that the undersigned Class Member will receive \$_____, which is subject to approval and adjustment (lower or higher) by the Court, depending, in part, upon the total number of Class Members deemed eligible for payment.

B. RELEASE TERMS.

1. In exchange for the valuable Consideration, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release and forever discharge the Released Parties from any and all claims or causes of action—known or unknown—that were or could have been asserted in the Litigation regarding applications or requests for employment (or any alleged failure to hire) from February 17, 1998 to April 18, 2005 at Merrill Gardens. As part of this Release, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release, acquit and forever discharge Released Parties from, and shall not now or hereafter institute, maintain or assert against the Released Parties, either directly or indirectly, derivatively, on their own behalf, or on behalf of a class or any other person or entity, any and all causes of action, claims, damages, award, equitable, legal and/or administrative relief, interest, demands, or rights, whether based on federal, state, or local law, statute, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiff Hill, Plaintiff Bailey, or any Class Member who has not opted out of the Hill Action Settlement against the Released Parties or any of them in the Litigation or in any other court action or proceeding before any administrative body, tribunal, arbitration, panel, or other adjudicatory body arising out of or related to, in whole or in part, applications or requests for employment (or any alleged failure to hire) at Merrill Gardens or its Georgetowne Place facility between February 17, 1998 and April 18, 2005.
2. Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs or disbursements in connection with or related in any manner to the Litigation, the settlement of the Litigation and/or the administration of such settlement except to the extent otherwise specified in the Settlement Agreement.
3. In connection with this Release, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which

they now know or believe to be true, with respect to the matters released in paragraph 1 above. Nevertheless, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement fully, finally, and forever settle and release all matters released in paragraph 1 above.

4. This Release binds Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement and their respective heirs, executors, administrators, successors in interest and assigns.
5. This Release may be raised as a complete defense to, and will preclude, any action or proceedings encompassed by this Release.
6. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement or Consent Decree, including participation in any of the processes detailed therein.
7. The provisions of this Release, individually and collectively, constitute an essential and material term of the Settlement Agreement.
8. This Release is the result of a compromise of a disputed claim and shall never at any time be used as evidence of any admission of liability by Merrill Gardens.
9. This Release shall be interpreted under the laws of the State of Indiana.

The undersigned expressly agrees that the foregoing Release applies to him or her and that the foregoing Release shall take effect upon Final Order and Judgment.

Signature of Class Member

Printed Name of Class Member

Address of Class Member

Telephone Number of Class Member

Social Security Number of Class Member

Please return executed Release to: Kenneth Bird, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis, Indiana 46204-4203. The executed Release is due by no later than September 2, 2005.

EXHIBIT A-2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

WILLIAM ANTHONY HILL,)
ELIZABETH A. WORTHMAN, and)
GOLDA BAILEY,)
On Behalf of Themselves and Others)
Similarly Situated,)

Plaintiffs,)

CASE NO.: 1:04-CV-248

v.)

MERRILL GARDENS LLC,)

Defendant.)

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

CASE NO.: 1:05-CV-004

v.)

MERRILL GARDENS LLC,)

Defendant.)

**[Notice for Those the EEOC
Determines Not to Be in the
Class]**

NOTICE

TO: Individuals who have contacted the Equal Employment Opportunity Commission in reference to application for employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC.

THIS NOTICE HAS BEEN PROVIDED TO YOU BY ORDER OF THE COURT. A PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS. PLEASE READ THE ENTIRE NOTICE CAREFULLY.

PART A: WHY YOU HAVE RECEIVED THIS NOTICE

◆ *Why did I receive this Notice?*

You have received this Class Notice because the Court ordered that Notices be sent to those who contacted the Equal Employment Opportunity Commission (“EEOC”) regarding application for employment at Georgetowne Place. You have received this Notice because the Equal Employment Opportunity Commission believes that you are **not** a member of the class of individuals entitled to share in relief as part of the settlement of a class lawsuit. You may contest this determination as set forth below.

PART B: DESCRIPTION OF THE CLASS

◆ *Am I a member of the Class?*

In an Order dated May 20, 2005, the United States District Court for the Northern District of Indiana, Fort Wayne Division, conditionally certified the following Class for purposes of settlement:

All African Americans and other minorities who: (1) submitted applications for employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC; (2) between February 17, 1998, and April 18, 2005; (3) for vacant positions; (4) and who were denied employment in such vacant position; (5) where the positions were or may have been given to non-minority candidates.

There are two proposed subclasses. The first consists of:

The “Known Class”: Class Members Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, and Elizebeth Worthman (“Known Class Members”), each of whom participated in the Hill Action and/or the EEOC Action on and/or prior to April 18, 2005. Members of the Known Class are identified as “Known Class Members.”

The “Unknown Class”: Class Members, including Golda Bailey, who are not specifically identified as Known Class Members. These individuals did not actively participate in the Hill Action and/or EEOC Action on or prior to April 18, 2005. Members of the Unknown Class are identified as “Unknown Class Members.”

The Court will make all final determinations on who is a member of the class of individuals entitled to relief and on the amounts that those individuals will be paid. The EEOC is initially making recommendations on who is in the class. You are therefore strongly encouraged to read this notice carefully and to cooperate with the EEOC.

PART C: DESCRIPTION OF THE LAWSUIT AND THE SETTLEMENT NEGOTIATIONS

◆ *What is this Litigation about?*

On June 25, 2004, William Anthony Hill and Elizabeth A. Worthman filed a lawsuit in the United States District Court for the Northern District of Indiana under Cause No. 1:04-CV-248, claiming that they and putative class members were wrongfully denied employment on the basis of their race at Merrill Gardens’ Fort Wayne Georgetowne Place facility. Hill and Worthman indicated an intent to ask for class-action certification

(to include a class of aggrieved individuals in their lawsuit), but a proposed settlement was negotiated before this occurred. Hill, as a proposed Class Representative, has since filed a motion for class certification for purpose of settlement. Golda Bailey thereafter became a named Plaintiff and additional proposed Class Representative.

On January 4, 2005, the EEOC filed a suit against Merrill Gardens LLC under Cause No. 1:05-CV-004. The EEOC alleged that Merrill Gardens had a pattern or practice of refusing to hire non-Caucasians because of their race and/or color and that Merrill Gardens failed to make and preserve records (specifically, employment applications) as required by law.

Because the two lawsuits overlapped, settlement negotiations were conducted together. The parties, Hill, Worthman, the EEOC, and Merrill Gardens, reached agreement on a proposed resolution of the two lawsuits. A proposed Settlement Agreement in the Hill Action and proposed Consent Decree in the EEOC Action were submitted to the Court. The Court entered an “Order Conditionally Certifying a Class for Settlement Purposes, Appointing Counsel for the Class, Preliminarily Approving the Class Settlement, Directing the Issuance of a Notice to the Class and Scheduling a Fairness Hearing” on September 9, 2005 at 9:00 a.m.

This Notice has, in accordance with the Court’s Order, been made available to all individuals who contacted the EEOC but whom the EEOC determined were not Class Members.

◆ *How does Merrill Gardens respond to these allegations?*

Merrill Gardens admits that certain employment applications were not handled appropriately but denies allegations that any race played a role in particular decisions or that potential claims would be timely. Merrill Gardens further asserts that minority applicants have been hired at Georgetowne Place and that multiple individuals applied for certain positions at issue in the Litigation, for which only one individual was hired.

PART D: SUMMARY OF KEY PROVISIONS REGARDING DISTRIBUTIONS UNDER THE PROPOSED SETTLEMENT

- ◆ Six (6) individuals known to Class Counsel and the EEOC have submitted applications for vacant positions at Georgetowne Place and who participated in the investigation and/or litigation will, if certain requirements are met, receive \$325,000 to be divided by agreement among them as set forth in the proposed Settlement Agreement in the Hill Action and Consent Decree in the EEOC Action.
- ◆ An additional amount of up to \$325,000 will be paid to others determined by the EEOC to meet the definition of the Class in the Litigation. This \$325,000 shall be divided equally among those who meet the requirements of the Class, if at least six (6) individuals are determined to be Unknown Class Members. If there are fewer than six (6) Unknown Class Members, \$54,166.67 will be paid to each.
- ◆ Court-approved attorney fees will not be subtracted from the above amounts. Appropriate taxes and withholdings will be subtracted from the calculated final payouts.

PART E: YOUR OPTIONS NOW

What should I do if I believe that the EEOC has erroneously determined that I am not a Class Member?

If you believe that you meet the definition of a class member (Part B above), you may file a written objection with the Court (the United States District Court for the Northern District of Indiana, Fort Wayne Division) as set forth below. The Court will make all final decisions on who will share in relief under the settlement and in what amounts. If the Court determines that you meet the definition of the Class, and if you sign and submit the attached Release at or before the Fairness Hearing (attached Appendix), you will receive your settlement benefit as determined by the Court.

♦ *What is a Fairness Hearing?*

The Court will conduct a hearing to evaluate the fairness of the proposed settlement and to make final determinations, including who is in the class and the amounts of payments to each.

♦ *When will the Court decide whether to approve the proposed settlement?*

On September 9, 2005 at 9:00 a.m., the Court will hold a Fairness Hearing to consider whether to grant final certification to the Hill Action Class for settlement purposes and whether to approve the proposed settlement as fair, reasonable, and adequate. The Court also will determine the reasonableness and adequacy of attorneys' fees and expenses requested for Hill's Counsel. The hearing will be held at the federal courthouse in Fort Wayne, Indiana, which is located at 1300 South Harrison Street, in the courtroom being used by The Honorable Theresa Springmann. At that same time, the parties expect to ask the Court to give final approval to the proposed Consent Decree in the EEOC Action.

♦ *How can I object to the proposed settlement?*

Members of the Class may object to any aspect of the proposed settlement, including final certification of a settlement class, the fairness of the proposed settlement, the adequacy of the Hill Action Class representation by Plaintiff Hill, Plaintiff Bailey, and Plaintiffs' Counsel, persons identified or excluded as Class Members, and the award of attorneys' fees and expenses to Plaintiffs' Counsel in the Hill Action. Any objections must be presented in writing.

You must present any objections in writing. Your written objection must include:

- (1) your name, address, and telephone number;
- (2) a statement of your objection, and any supporting evidence you wish to introduce or law which you want to bring to the attention of the Court; and
- (3) the case name and number (*Hill v. Merrill Gardens LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:04cv248).

NO LATER THAN SEPTEMBER 2, 2005, YOU MUST FILE YOUR WRITTEN OBJECTION WITH THE CLERK OF THE COURT, which you may do by sending it to the following address:

Clerk, United States District Court
1300 South Harrison Street
Fort Wayne, IN 46802

Re: *Hill v. Merrill Gardens, LLC*

YOU ALSO MUST MAIL COPIES OF THOSE MATERIALS TO CLASS COUNSEL SO THAT THEY ARE RECEIVED BY SEPTEMBER 2, 2005 AT THE FOLLOWING ADDRESS:

John T. Menzie, Esquire
Shane C. Mulholland, Esquire
Burt, Blee, Dixon, Sutton & Bloom, LLP
Suite 1000
200 East Main Street
Fort Wayne IN 46802

The Court will not consider any objections RECEIVED after September 2, 2005. Late objections will be deemed to have been given up or waived.

♦ *Can I appear at the Fairness Hearing?*

If you file and serve a timely written objection as described above, you may attend the Fairness Hearing, either in person or through an attorney paid by you. You or your attorney may appear at the Fairness Hearing to object to any aspect of the proposed settlement as amended, including final certification of a settlement class, the fairness of the proposed settlement, the adequacy of the Class representation by Plaintiffs and Plaintiffs' Counsel, and/or the award of attorneys' fees and expenses.

If you or your attorney intends to appear at the Fairness Hearing, you or your attorney must file a Notice of Intention to Appear with the Clerk of the Court, and serve that Notice on Class Counsel, at the addresses listed above. The Court and Class Counsel must receive your Notice of Intention to Appear no later than September 2, 2005.

PART F: HOW TO GET ADDITIONAL INFORMATION

♦ *How can I get more information?*

You are encouraged to speak with EEOC representatives at any time. If you have questions about the case or this settlement, you may leave a message for the EEOC by telephone at (317) 226-7226. You may also contact the EEOC trial attorney on this case, Kenneth Bird, by telephone at (317) 226-7204, or through email at Kenneth.Bird@EEOC.gov, or EEOC paralegal Monica Guest at (317) 226-7215, Monica.Guest@EEOC.gov. You may write to the EEOC at the following address:

Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis IN 46204-4203

You may also direct questions regarding the proposed settlement to John T. Menzie, Esquire and/or Shane C. Mulholland at the following address:

Burt, Blee, Dixon, Sutton & Bloom, LLP
200 East Main Street, Suite 1000
Fort Wayne, Indiana 46802

This Notice and the accompanying document are only a summary of the proposed settlement, which is set forth in a more detailed legal document called the "Settlement Agreement." The full Settlement Agreement can be obtained from the office of Burt, Blee, Dixon, Sutton & Bloom, LLP, by e-mail request to them at mulholland@burtblee.com, or by calling their office at (260) 426-1300. Those documents will be made available *by appointment* during regular business hours at the offices of Burt, Blee, Dixon, Sutton & Bloom, LLP, at the address above.

For additional information, you may also review documents and court orders on file in the Clerk's Office, which is in the federal courthouse in Fort Wayne, Indiana, 1300 South Harrison Street. You may inspect these documents at the Clerk's Office at any time during normal business hours, Monday through Friday, 9:00 a.m. to 4:30 p.m., Central Daylight Savings Time.

NO INQUIRIES SHOULD BE DIRECTED TO THE COURT

APPENDIX

RELEASE

A. DEFINITIONS. For purposes of this release and waiver (the "Release"), the following terms shall have the meanings set forth below:

1. The "Hill Action" means the lawsuit captioned *Hill, et al. v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:04cv248, and all claims that were brought or that could have been brought by William Anthony Hill, Golda, Bailey, or any Class Member (who did not opt out) in this Court, in any other Indiana state or federal court, or in or before any Indiana administrative agency, or in any other proceeding, whether brought in an individual or representative capacity regarding any application for employment at Georgetowne Place located at 1717 Maplecrest Road, Fort Wayne, Indiana and owned by Merrill Gardens LLC from February 17, 1998 to April 18, 2005. The definition of "Hill Action" does not, however, include the "EEOC Action," as defined below.
2. The "EEOC Action" means the lawsuit captioned *EEOC v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:05-cv-004.
3. The "Litigation" refers to the Hill Action and the EEOC Action collectively.
4. "Settlement Agreement" means the proposed Settlement Agreement filed in the Hill Action, including any subsequent amendments thereto and any exhibits to any such amendments.
5. "Consent Decree" means the proposed Consent Decree filed in the EEOC Action, including all exhibits.
6. "Class" and "Class Members" mean all African American and other minority applicants for employment at Georgetowne Place, operated by Merrill Gardens LLC, who submitted applications for employment, and who were denied employment in vacant positions from February 17, 1998 to April 18, 2005.
7. "Final Order and Judgment" means the order in the Hill Action finally certifying the Class for settlement purposes only and approving the settlement and the Settlement Agreement, and a final judgment is signed pursuant to that order.
8. "Court" means the United States District Court for the Northern District of Indiana, Fort Wayne Division.
9. "Plaintiff Hill" means William Anthony Hill.
10. "Plaintiff Bailey" means Golda Bailey.

11. “Class Counsel” means John T. Menzie, Esquire and/or Shane C. Mulholland at the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, Suite 1000, 200 East Main Street, Fort Wayne, Indiana 46802.
12. “Released Parties” means Merrill Gardens LLC and each of its past, present and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of their respective past, present and future officers, directors, employees, attorneys and representatives, or any of them, including any person or entity acting on behalf of or at the direction of any of them.
13. “Consideration” means the consideration approved by the Court in the Final Order and Judgment and as outlined in the Settlement Agreement. The EEOC has estimated that the undersigned Class Member will receive \$ _____, which is subject to approval and adjustment (lower or higher) by the Court, depending, in part, upon the total number of Class Members deemed eligible for payment.

B. RELEASE TERMS.

1. In exchange for the valuable Consideration, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release and forever discharge the Released Parties from any and all claims or causes of action—known or unknown—that were or could have been asserted in the Litigation regarding applications or requests for employment (or any alleged failure to hire) from February 17, 1998 to April 18, 2005 at Merrill Gardens. As part of this Release, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release, acquit and forever discharge Released Parties from, and shall not now or hereafter institute, maintain or assert against the Released Parties, either directly or indirectly, derivatively, on their own behalf, or on behalf of a class or any other person or entity, any and all causes of action, claims, damages, award, equitable, legal and/or administrative relief, interest, demands, or rights, whether based on federal, state, or local law, statute, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiff Hill, Plaintiff Bailey, or any Class Member who has not opted out of the Hill Action Settlement against the Released Parties or any of them in the Litigation or in any other court action or proceeding before any administrative body, tribunal, arbitration, panel, or other adjudicatory body arising out of or related to, in whole or in part, applications or requests for employment (or any alleged failure to hire) at Merrill Gardens or its Georgetowne Place facility between February 17, 1998 and April 18, 2005.
2. Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs or disbursements in connection with or related in any manner to the Litigation, the settlement of the Litigation and/or the administration of such settlement except to the extent otherwise specified in the Settlement Agreement.
3. In connection with this Release, Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or

believe to be true, with respect to the matters released in paragraph 1 above. Nevertheless, Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement fully, finally, and forever settle and release all matters released in paragraph 1 above.

4. This Release binds Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement and their respective heirs, executors, administrators, successors in interest and assigns.
5. This Release may be raised as a complete defense to, and will preclude, any action or proceedings encompassed by this Release.
6. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement or Consent Decree, including participation in any of the processes detailed therein.
7. The provisions of this Release, individually and collectively, constitute an essential and material term of the Settlement Agreement.
8. This Release is the result of a compromise of a disputed claim and shall never at any time be used as evidence of any admission of liability by Merrill Gardens.
9. This Release shall be interpreted under the laws of the State of Indiana.

The undersigned expressly agrees that the foregoing Release applies to him or her and that the foregoing Release shall take effect upon Final Order and Judgment.

Signature of Class Member

Printed Name of Class Member

Address of Class Member

Telephone Number of Class Member

Social Security Number of Class Member

Please return executed Release to: Kenneth Bird, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis, Indiana 46204-4203. The executed Release is due by no later than September 2, 2005.

EXHIBIT A-3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

WILLIAM ANTHONY HILL,)
ELIZABETH A. WORTHMAN, and)
GOLDA BAILEY,)
On Behalf of Themselves and Others)
Similarly Situated,)

Plaintiff,)

v.)

CASE NO.: 1:04-cv-248

MERRILL GARDENS LLC,)

Defendant.)

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

CASE NO.: 1:05-cv-004

MERRILL GARDENS LLC,)

Defendant.)

PROPOSED
ORDER GRANTING FINAL APPROVAL TO CLASS ACTION
SETTLEMENT, ENTRY OF FINAL JUDGMENT, AND
ENTERING CONSENT DECREE

The Final Approval to Class Action Settlement and Entry of Final Judgment is for purposes of the above-referenced action, *Hill v. Merrill Gardens LLC* (the “Hill Action”). The Entry of Consent Decree is for purposes of the above-referenced action, *Equal Employment Opportunity Commission v. Merrill Gardens LLC* (the “EEOC Action”).

Plaintiff William Anthony Hill (“Plaintiff Hill”) and Plaintiff Golda Bailey (“Plaintiff Bailey”), on behalf of themselves and a putative class, and Defendant Merrill Gardens LLC (“Merrill Gardens”) have entered into a settlement agreement (the “Settlement Agreement”). The parties previously submitted the Settlement Agreement in the Hill Action and a proposed Consent Decree to this Court for preliminary approval. On June __, 2005, this Court entered an Order Granting Preliminary Approval to Class Action Settlement, Conditional Class Certification, and Proposed Consent Decree (“Preliminary Approval Order”). On _____, 2005, Class Counsel filed a declaration confirming the timely dissemination in the media of the Notices of Class Action, Proposed Settlement, and Hearing (“Class Notice”) required by the Preliminary Approval Order. Now, the matter having come before the Court for hearing on September 9, 2005, on the parties’ request for the entry of an Order Granting Final Approval to the Proposed Class Action Settlement and for entry of Final Judgment in the Hill Action and for entry of an Agreed Consent Decree in the EEOC Action, the Court finds and concludes that it has jurisdiction over the parties and the subject matter, and FINDS, CONCLUDES, ORDERS, AND ADJUDGES as follows:

I. Final Order Confirming Class Certification and Approving Notice to Members of the Settlement Class

A. Class Certification

In the Preliminary Approval Order, this Court granted conditional class certification to the following settlement class and subclasses:

All African-American and other minorities who: (1) submitted applications for employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC; (2) between February 17, 1998 and April 18, 2005; (3) for vacant positions; (4) and who were denied employment in such vacant position; (5) where the positions were or may have been given to non-minority candidates.

The parties identify and seek approval of two subclasses:

The “Known Class”: Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, and Elizebeth Worthman (“Known Class Members”), each of whom participated in the Hill Action and/or the EEOC Action prior to April 18, 2005.

The “Unknown Class”: Class Members, including Golda Bailey, who are not specifically identified as Known Class Members. These individuals did not actively participate in the Hill Action and/or EEOC Action on or prior to April 18, 2005. Members of the Unknown Class are identified as “Unknown Class Members.”

(“Settlement Class.”) The Court found and concluded that the Settlement Class satisfied all the requirements of Fed. R. Civ. P. 23(a) and (b)(2) and (b)(3); appointed Plaintiff Hill as Class Representative of the Known Class and Plaintiff Bailey as Class Representative of the Unknown Class; and appointed Plaintiff Hill’s counsel, John T. Menzie and/or Shane C. Mulholland of the Burt, Blee, Dixon, Sutton & Bloom law firm, as class counsel for the Settlement Class (“Class Counsel”). Having considered all submissions timely filed with the Court pursuant to the Preliminary Approval Order and the Settlement Agreement, the Court now finds and concludes that the provisions of the Preliminary Approval Order conditionally certifying the Settlement Class, appointing Plaintiff Hill and Plaintiff Bailey as the Representatives of the Settlement Class, and appointing Class Counsel should be, and hereby are, confirmed in all respects as a Final Class Certification Order under Fed. R. Civ. P. 23(a) and (b)(2) and (b)(3) for the purposes of implementing the Class Action Settlement provided for in the Settlement Agreement and entering Final Judgment in the Hill Action. The Court further gives final approval to the proposed Consent Decree in the EEOC Action.

B. Notice

The Preliminary Approval Order approved the form and content of the Notices to be circulated via print media and the radio pursuant to the schedule attached to this Court’s Preliminary Approval Order as Exhibit “C” and the text and narrative attached as Exhibit “D”

(the “Notices”). The Notices provided sufficient information and were disseminated with sufficient frequency to inform members of the Hill Action Settlement Class and EEOC Action Class of the essential terms of the Settlement Agreement and the Consent Decree, appropriate means for obtaining additional information about the Settlement Agreement and Consent Decree, appropriate information about the procedures for becoming eligible for a payment under the Hill Action Settlement and the EEOC Consent Decree, and appropriate information about their right, and the procedures, to object to the terms of the Settlement Agreement or exclude themselves from the Hill Action Settlement, if they should wish to do so. The Notices also fairly and adequately informed members of the Hill Action Settlement Class that failing to obtain, execute, and return the Release (that was available from the EEOC and which was attached to this Court’s Preliminary Approval Order as Exhibit “E”) would result in their ineligibility for payment under the Settlement Agreement and proposed Consent Decree.

Counsel for Merrill Gardens has filed a declaration that the Notices have been published in the manner and frequency required by and specified in the Preliminary Approval Order.

Based on the foregoing, the Court hereby finds and concludes that members of the Hill Action Settlement Class have been provided the best notice practicable of the Hill Action Settlement and that such notice satisfies all requirements of due process and Fed. R. Civ. P. 23.

C. Persons Excluded from the Settlement Class

The parties have received, from certain members of the Hill Action Settlement Class, requests for exclusion from the Hill Action Settlement Class and have filed with the Court a list of those persons who have timely elected to be excluded. All persons named in the list on file with the Court dated _____, 2005, as having filed timely exclusions are hereby excluded from the Hill Action Settlement Class, will not be bound by the terms of the Hill Action Settlement, and will not be eligible for payment under the Consent Decree.

II. Final Approval of the Class Action Settlement

In the Preliminary Approval Order, the Court found that the Settlement Agreement appeared to be fair, reasonable, and adequate and clearly fell within the appropriate range of possible approval. In essence, the Hill Action Settlement provides for each member of the Hill Action Settlement Class and EEOC Consent Decree Class who timely submits an executed Release to receive an amount calculated pursuant to the fair and reasonable formula set forth in the attached Settlement Agreement and proposed Consent Decree.

Therefore, taking into account the consideration set forth in the Settlement Agreement, the defenses asserted by Merrill Gardens (particularly defenses of causation, statute of limitations, and qualifications) and the risks of further litigation, the Settlement Agreement is fair, reasonable, and adequate. Moreover, the parties have reached the Settlement after an extended investigation and negotiation process. [If necessary: In addition, the Court has considered all objections that were filed in the time and manner prescribed in the Preliminary Approval Order. The Court overrules/grants such objections.]

Accordingly, having considered the foregoing, the number of class members who have requested to be excluded from the Settlement, the level of opposition to the Settlement, the strength and weaknesses of the claims that have been and could be asserted on behalf of the members of the Settlement Class, the strengths and weaknesses of the defenses that have been and could be asserted by Merrill Gardens, the damages that have been and could be claimed on behalf of the members of the Settlement Class, the value of the Settlement, and the complexity, length, expense, and uncertain outcome of continued litigation, and there being no suggestion of improper collusion among the parties, the Court finds that the Settlement is fair, reasonable, and adequate to members of the Settlement Class, and the Court hereby grants final approval of the Settlement Agreement and enters this Judgment implementing its terms. The Court hereby

adopts and incorporates the terms of the Settlement Agreement for the purposes of this Order and Judgment, including the Definitions set forth in the Settlement Agreement.

III. Payments Under the Settlement Agreement

The Preliminary Approval Order anticipated payments by Merrill Gardens of an amount for known class members in the amount of \$325,000, and payment of up to \$325,000 for class members not known at the time the Settlement Agreement was negotiated.

This Court approved Class Counsel's petition for an award of \$100,000 in attorneys' fees and expenses, as negotiated by the parties. Such amount does not come from the amounts negotiated to be paid to known and unknown Class Members.

Now, for the purposes of consummating the administration of the Settlement, the Court orders as follows:

1. If, after 30 days from the entry by this Court of this Order and Judgment, no notice of appeal of this Judgment or any Order in this case has been filed, so that any right to take an appeal from this Judgment or from any such Order has been waived, or if each such appeal has been finally adjudicated and this Order and Judgment have been upheld in all respects by that final adjudication, Merrill Gardens shall make payments pursuant to the identical formula set forth in the approved Settlement Agreement and the approved Consent Decree which are attached hereto as Exhibits "A" and "B".

2. If any notice of an appeal from this Order and Judgment is timely filed by any party, objector, claimant, or other person, the Settlement Agreement and Consent Decree will not be or become final or effective, and no payment pursuant to the Settlement Agreement and/or Consent Decree shall be made to any eligible Class Member or Class Counsel, unless and until each such appeal has been finally adjudicated and this Order and Judgment have been upheld in

all respects by that final adjudication; or if modified, accepted in writing, by the Class Representatives, Merrill Gardens, and the EEOC, as appropriate.

IV. Releases, Covenant Not to Sue, and Effect of Settlement Agreement

A. Releases by Settlement Class Members

In consideration of the terms of the Settlement Agreement, all members of the Hill Action Settlement Class, including Plaintiff Hill and Plaintiff Bailey, who did not opt out of the Hill Action Settlement are hereby found, deemed, and adjudged to have fully, finally, and forever released and discharged all of the following claims they have or may have against Merrill Gardens and each of its past, present and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of their respective past, present and future officers, directors, employees, attorneys and representatives, or any of them, including any person or entity acting on behalf of or at the direction of any of them (“Released Parties”) as set forth in the Release set forth in the Court’s Preliminary Order and as set forth below:

In exchange for the valuable Consideration, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release and forever discharge the Released Parties from any and all claims or causes of action—known or unknown—that were or could have been asserted in the Litigation regarding applications or requests for employment (or any alleged failure to hire) from February 17, 1998 to April 18, 2005 at Merrill Gardens. As part of this Release, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release, acquit and forever discharge Released Parties from, and shall not now or hereafter institute, maintain or assert against the Released Parties, either directly or indirectly, derivatively, on their own behalf, or on behalf of a class or any other person or entity, any and all causes of action, claims, damages, award, equitable, legal and/or administrative relief, interest, demands, or rights, whether based on federal, state, or local law, statute, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiff Hill, Plaintiff Bailey, or any Class Member who has not opted out of the Hill Action Settlement against the Released Parties or any of them in the Litigation or in any other court action or proceeding before any administrative body, tribunal, arbitration, panel, or other adjudicatory body arising out of or related to, in whole

or in part, applications or requests for employment (or any alleged failure to hire) at Merrill Gardens or its Georgetowne Place facility between February 17, 1998 and April 18, 2005.

B. Covenant Not to Sue

In consideration of the terms of the Settlement Agreement, all members of the Hill Action Settlement Class, including Plaintiff Hill and Plaintiff Bailey, who did not opt out of the settlement are hereby found, deemed, and adjudged to have (1) covenanted and agreed that neither Plaintiff Hill, Plaintiff Bailey, nor any of the Hill Action Settlement Class Members, nor anyone authorized to act on behalf of any of them, will hereafter commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in the Settlement Agreement and/or Consent Decree, against the Released Parties, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or injury allegedly caused by the Released Parties, or any of them, in connection with any application of employment at Merrill Gardens from February 17, 1998 to April 18, 2005; (2) waived any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by them or on their behalf, other than as expressly provided for in the Settlement Agreement and/or Consent Decree; and (3) agreed that the Hill Action Settlement Agreement shall be a complete bar to any such action.

C. Effect of a Final Judicial Determination of Invalidity or Unenforceability

If, after the entry by this Court of this Judgment, a notice of appeal of this Judgment is timely filed by any party, objector, claimant, or other person or entity, and if an appellate court makes a final determination that this Judgment is in any respect invalid, contrary to law, or unenforceable, the Hill Action Settlement Agreement (including Merrill Garden's stipulation to the Hill Action Settlement Class provided for in the Settlement Agreement or to the entry of the

Consent Decree in the EEOC Action) shall be null and void, and the Parties shall return to their respective positions in the Litigation as those positions existed immediately before the execution of the Hill Action Settlement Agreement and proposed Consent Decree, unless all Parties agree in writing to abide by the judgment as modified.

V. No Admission of Liability

Nothing contained in the Preliminary Approval Order, this Order, or the documents referenced therein and herein, shall be construed, deemed, or offered as an admission by any of the Parties for any purpose in any action or proceeding of any kind.

VI. Entry of Final Judgment and Consent Decree

The Court hereby orders the entry of, and enters a Final Judgment or Dismissal With Prejudice, incorporating the provisions of this Order, including the releases and covenant not to sue, on all claims, counts, and causes of action alleged in this action by Plaintiff Hill and Plaintiff Bailey, on behalf of themselves and the Settlement Class, relating to applications for employment at Georgetowne Place. The Court expressly retains jurisdiction over all matters relating to the administration and consummation of the Settlement Agreement and Consent Decree, including, but not limited to, final disposition of the financial consideration identified in the Settlement Agreement and Consent Decree.

Dated: _____, 2005

Theresa Springmann
Judge, United States District Court
Northern District of Indiana

BACKGROUND

The first case, *Hill v. Merrill Gardens LLC*, 1:04-CV-248 (the “Hill Action”), was filed on June 25, 2004. In the Hill Action, the Plaintiffs brought action on behalf of themselves and others allegedly similarly situated. Specifically, they claimed that they and others allegedly similarly situated were denied employment at the Georgetowne Place community located at 1717 Maplecrest Road, Fort Wayne, Indiana, owned by Merrill Gardens LLC (“Merrill Gardens”), and that the denial of employment was on the basis of race/color, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, and § 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981.

The second case, *EEOC v. Merrill Gardens LLC*, 1:05-CV-004 the “EEOC Action”), was filed on January 4, 2005. In the EEOC Action, the Equal Employment Opportunity Commission filed suit against Merrill Gardens (the “EEOC Action”) under authority granted by Sections 706(f)(1) and (3) and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) and -6 (“Title VII”); and § 102 of Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a). The EEOC’s Complaint and Amended Complaint allege that Merrill Gardens had a pattern or practice of refusing to hire non-Caucasians because of their race and/or color, in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-(2)(a); alleged that Merrill Gardens failed, in violation of § 709(c), 42 U.S.C. § 2000e-(8)(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed; and sought appropriate relief for Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, Elizebeth Worthman, and a class of non-Caucasian individuals who were adversely affected by the alleged unlawful employment practices.¹

¹ Each of these individuals is a part of the proposed class in the Hill Action.

As these two lawsuits overlap, the Parties in the Litigation have negotiated a proposed resolution of the cases together. The Parties request that the lawsuits be consolidated solely for the purposes of approving the requested class relief in the Hill Action and entry of a proposed Consent Decree in the EEOC Action.

The Stipulation requests that the Court grant preliminary approval of the requested class relief in the Hill Action and a proposed Consent Decree in the EEOC Action. The Parties agree that the payments proposed under the negotiated resolution for class members is one and the same, despite the fact that it is memorialized in both the Hill Action proposed Settlement Action and the EEOC Action proposed Consent Decree.

The Parties submit the Settlement Agreement attached as Exhibit “A” (hereinafter referred to as the “Settlement Agreement”) in the Hill Action and the Consent Decree attached as Exhibit “B” (hereinafter referred to as the “Consent Decree”) in the EEOC Action to this Court for preliminary approval. In tendering these proposed agreements together, the Parties have agreed that the resolution proposed in either requires approval by the Court of the other.

TERMS OF THE STIPULATION

Having carefully reviewed the Parties submissions and finding them in good order, the Court GRANTS Preliminary Approval to Proposed Class Action Settlement, GRANTS the Proposed Consent Decree (“Preliminary Approval Order”) and FINDS, CONCLUDES, ORDERS, AND ADJUDGES as follows:

I. Preliminary Order Confirming Class Certification and Approving Notice to Members of the Settlement Class

A. Class Certification

The Court grants conditional class certification to the following settlement class in the Hill Action and for the purpose of the proposed Consent Decree in the EEOC Action:

All African Americans and other minorities who: (1) submitted applications for employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC; (2) between February 17, 1998 and April 18, 2005; (3) for vacant positions; (4) and who were denied employment in such vacant position; (5) where the positions were or may have been given to non-minority candidates.

This class consists of two subclasses:

1) The “Known Class”: Class Members Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, and Elizebeth Worthman (“Known Class Members”), each of whom participated in the Hill Action and/or the EEOC Action on and/or prior to April 18, 2005. Members of the Known Class are identified as “Known Class Members.”

2) The “Unknown Class”: Class Members, including Golda Bailey, who are not specifically identified as Known Class Members. These individuals did not actively participate in the Hill Action and/or EEOC Action on or prior to April 18, 2005. Members of the Unknown Class are identified as “Unknown Class Members.”

These two subclasses shall together be referred to as the “Settlement Class.” The Court finds that the Settlement Class appears to satisfy all requirements of Fed. R. Civ. P. 23(a) and (b)(2) and (b)(3).

The Court preliminarily appoints Plaintiff William Anthony Hill (“Plaintiff Hill”) as Class Representative of the Known Class and Golda Bailey (“Plaintiff Bailey”) as

Class Representative of the Unknown Class.² The Court conditionally appoints Plaintiff Hill's counsel, John T. Menzie and/or Shane C. Mulholland of the Burt, Blee, Dixon, Sutton & Bloom law firm, as class counsel for the Settlement Class ("Class Counsel"). The Class Counsel represents the interests of the Class with respect to the Hill Action.

The EEOC represents the interests of the Settlement Class with respect to the EEOC Action.

B. Notice

For purposes of both lawsuits, the Court approves the form and content of the Notices to be circulated via print media and the radio at Merrill Gardens' expense during a 30-day period beginning in June 2005 (the "Official Notice Period") pursuant to the schedule attached as Exhibit "C" and the text and narrative attached as Exhibit "D" (the "Notices").

When potential Class Members timely contact the EEOC within the Official Notice Period and/or within 14 days thereafter, the EEOC shall send them the appropriate written Notice set forth as Exhibits "A-1 and A-2" (the "Mailed Notices"). The Notice and Mailed Notices provide sufficient information to inform members of the Hill Action Settlement Class and EEOC Action Class of the essential terms of the Settlement Agreement and the Consent Decree, appropriate means for obtaining additional information about the Settlement Agreement and Consent Decree, appropriate information about the procedures for becoming eligible for a payment under the Hill Action Settlement and the EEOC Consent Decree, and appropriate information about

² Plaintiff Elizebeth Worthman is not being proposed as Class Representative.

their right, and the procedures, to object to the terms of the Settlement Agreement or exclude themselves from the Hill Action Settlement, if they should wish to do so. The Notice will also fairly and adequately inform members of the Hill Action Settlement Class that failing to timely obtain, execute, and return the Release attached to this Order as Exhibit “E” (the “Release”) will result in them becoming ineligible for payment under the proposed Settlement Agreement and proposed Consent Decree.

If any potential Class Member contacts legal counsel for Merrill Gardens or a manager of Georgetowne Place in response to a notice in the media or based upon some other source, Merrill Gardens will provide the EEOC with contact information as soon as possible but by no later than seven (7) days after receiving the information.

Upon the expiration of the Official Notice Period, counsel for Merrill Gardens shall file a declaration that the Notices have been published in the manner and frequency required by and specified by this Preliminary Approval Order.

The Court hereby finds and concludes that members of the Hill Action Settlement Class will be provided the best notice practicable of the Hill Action Settlement and that such notice satisfies all requirements of due process and Fed. R. Civ. P. 23.

C. Persons Excluded from the Settlement Class

The Parties may receive requests for exclusion from the Hill Action Settlement Class and will, within seven (7) days of the Fairness Hearing addressed below, file with the Court a list of those persons who have timely elected to be excluded. All persons named in the list filed with the Court as having filed timely exclusions will be excluded from the Hill Action Settlement Class, will not be bound by the terms of the Hill Action Settlement, and will not be eligible for payment under the Consent Decree.

II. Preliminary Approval of the Class Action Settlement

The Settlement Agreement appears to be fair, reasonable, and adequate and falls within the appropriate range of possible approval. In essence, the Hill Action Settlement provides that each member of the Hill Action Settlement Class and EEOC Consent Decree Class who timely submits an executed Release will receive an amount calculated pursuant to the fair and reasonable formula set forth in the attached Settlement Agreement and proposed Consent Decree.

III. Releases, Covenant Not to Sue, and Effect of Settlement Agreement

A. Releases by Settlement Class Members

The Court preliminarily finds that in consideration of the terms of the Settlement Agreement, all members of the Hill Action Settlement Class, including Plaintiff Hill and Plaintiff Bailey, who do not opt out of the Hill Action Settlement will be found, deemed, and adjudged to have fully, finally, and forever released and discharged all of the following claims they have or may have against Merrill Gardens and each of its past, present and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of their respective past, present and future

officers, directors, employees, attorneys and representatives, or any of them, including any person or entity acting on behalf of or at the direction of any of them (“Released Parties”) as set forth in the Release and as set forth below:

In exchange for the valuable Consideration, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release and forever discharge the Released Parties from any and all claims or causes of action—known or unknown—that were or could have been asserted in the Litigation regarding applications or requests for employment (or any alleged failure to hire) from February 17, 1998 to April 18, 2005 at Merrill Gardens. As part of this Release, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release, acquit and forever discharge Released Parties from, and shall not now or hereafter institute, maintain or assert against the Released Parties, either directly or indirectly, derivatively, on their own behalf, or on behalf of a class or any other person or entity, any and all causes of action, claims, damages, award, equitable, legal and/or administrative relief, interest, demands, or rights, whether based on federal, state, or local law, statute, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiff Hill, Plaintiff Bailey, or any Class Member who has not opted out of the Hill Action Settlement against the Released Parties or any of them in the Litigation or in any other court action or proceeding before any administrative body, tribunal, arbitration, panel, or other adjudicatory body arising out of or related to, in whole or in part, applications or requests for employment (or any alleged failure to hire) at Merrill Gardens or its Georgetowne Place facility between February 17, 1998 and April 18, 2005.

B. Covenant Not to Sue

The Court preliminarily finds that in consideration of the terms of the Settlement Agreement, all members of the Hill Action Settlement Class, including Plaintiff Hill and Plaintiff Bailey, who do not opt out of the Settlement will be found, deemed, and adjudged to have (1) covenanted and agreed that neither Plaintiff Hill, Plaintiff Bailey, nor any of the Hill Action Settlement Class Members, nor anyone authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in the Settlement Agreement and/or Consent Decree, against the Released Parties, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or injury allegedly caused by the Released Parties, or any of them, in connection with any application for employment at Merrill Gardens from February 17, 1998, to April 18, 2005; (2) waived any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by them or on their behalf, other than as expressly provided for in the Settlement Agreement and/or Consent Decree; and (3) agreed that the Hill Action Settlement Agreement shall be a complete bar to any such action.

C. Effect of a Final Judicial Determination of Invalidity or Unenforceability

If, after the entry by this Court of Judgment, a notice of appeal of Judgment is timely filed by any party, objector, claimant, or other person or entity, and if an appellate court makes a final determination that Judgment is in any respect invalid, contrary to law, or unenforceable, the Hill Action Settlement Agreement (including Merrill Garden's stipulation to the Hill Action Settlement Class provided for in the Settlement Agreement

or to the entry of the proposed Consent Decree in the EEOC Action) shall be null and void, and the parties shall return to their respective positions in the Litigation as those positions existed immediately before the execution of the Hill Action Settlement Agreement and tender of the proposed Consent Decree unless all parties agree in writing to abide by the judgment as modified.

D. No Admission of Liability

In entering into this agreement or the agreements referenced herein, Merrill Gardens does not admit that any class member in the Litigation would have been hired but for his/her race and/or color or that he/she was discriminated against on the basis of his/her race and/or color or that any claims are or would be timely. Merrill Gardens entered into this Stipulation and the agreements referenced herein to avoid further litigation.

CONCLUSION

For the reasons and in the manner stated above, the Court GRANTS the Stipulated Order Granting Preliminary Approval to Class Action settlement, Conditional Class Certification, and Proposed Consent Decree (“Stipulation”) proposed by the Defendant, Merrill Gardens, LLC, as Docket Entry 50 in 1:04-CV-248 and Docket Entry 30 in 1:05-CV-4.

SO ORDERED on June 16, 2005.

S/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT

**EXHIBIT B
TO STIPULATED ORDER**

[CONSENT DECREE]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

| | | |
|------------------------------|---|------------------|
| EQUAL EMPLOYMENT OPPORTUNITY |) | |
| COMMISSION, |) | CIVIL ACTION NO. |
| |) | 1:05-CV-004-TLS |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| MERRILL GARDENS, LLC, |) | |
| |) | |
| Defendant. |) | |

CONSENT DECREE

PART ONE: GENERAL PROVISIONS

SECTION 101 Introduction

The Equal Employment Opportunity Commission (the “Commission” or the “EEOC”) instituted this action, Civil Action No. 1:05-CV-004 (the “EEOC Action”), under the authority granted by Sections 706(f)(1) and (3) and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) and -6 (“Title VII”); and Section 102 of Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The EEOC’s action was brought to correct alleged unlawful employment practices on the basis of race. The EEOC’s Complaint and Amended Complaint allege that Merrill Gardens LLC (“Merrill Gardens”) had a pattern or practice of refusing to hire non-Caucasians because of their race and/or color, in violation of Sections 703(a) of Title VII, 42 U.S.C. § 2000e-2(a); alleged that Merrill Gardens failed, in violation of Section 709(c), 42 U.S.C. § 2000e-8(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed; and sought

appropriate relief for Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, Elizebeth Worthman, and a class of non-Caucasian individuals who were adversely affected by the alleged unlawful employment practices.

Two of the individuals on whose behalf the EEOC brought this action, William Anthony Hill and Elizebeth Worthman, previously filed a class-action complaint in Civil Action No. 1:04-CV-248 (the “Hill Action”) on behalf of themselves and others allegedly similarly situated. Specifically, they brought that action on behalf of individuals who were allegedly denied employment with Merrill Gardens because of their race/color, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981.

This Consent Decree and a Class Action Settlement in the Hill Action were negotiated together and are designed, in part, to provide final and preclusive effect to the race claims that were raised in Civil Action Nos. 1:05-CV-004 and 1:04-CV-248 (collectively the “Litigation”). The Consent Decree and Class Action Settlement were preliminarily approved by the Court on May 20, 2005. A Class Action Settlement in the Hill Action has now been approved contemporaneously with the final submission of this Consent Decree.

SECTION 102 Jurisdiction

The Parties hereby stipulate to the jurisdiction of the Court over the Parties and the subject matter now and for the duration of this Agreement (including any extensions thereof), that venue is proper, and that all administrative prerequisites have been met. The Court finds, based on the pleadings and the record as a whole, that the Court has jurisdiction over the Parties and the subject matter of this action, that venue is proper, and that all administrative prerequisites have been met.

SECTION 103**The Effective Date and Duration of the Consent Decree**

A. “Effective Date” of the Consent Decree shall mean the day on which the Order finally approving this Consent Decree becomes final. The Parties have submitted a proposed form of order (Order Granting Final Approval to Class Action Settlement, Entry of Final Judgment, and Entry of Consent Decree). For purposes of this Consent Decree, Agreement, the Final Order shall be deemed to become final on the later of (a) the day following the date on which the Final Order is no longer subject to review by appeal if no notice of appeal, motion to correct errors, or similar motion or notice is filed; or (b) if any such notices or motion is filed, the day following the date on which the Final Order is not subject to further judicial review or appeal, either by reason of affirmance by a court of last resort or by lapse of time or otherwise.

B. Unless extended by the Court for good cause, the Consent Decree shall continue in force and effect for a period of forty-two (42) months from the Court’s issuance of the Stipulated Order Granting Preliminary Approval to Consent Decree, Class Action Settlement, and Conditional Class Certification (“Preliminary Approval Order”). Prior to the expiration of the Consent Decree, either party may move the Court for an extension of the obligations of any part of the Consent Decree that such party contends have not been complied with or completed, and the Consent Decree shall remain in effect only as to such provisions until the Court rules on the motion or otherwise orders.

C. The Court will retain jurisdiction of this cause throughout the period of this Consent Decree, and any extensions thereof, for purposes of monitoring compliance with the Consent Decree and entry of such further orders or modifications as may be necessary or appropriate.

PART TWO: RELIEF

SECTION 201 Notice of Non-Discrimination

Merrill Gardens affirms that, commencing within seven (7) calendar days following the Preliminary Approval Order, Merrill Gardens posted in conspicuous locations visible to applicants and employees throughout its Fort Wayne facility a Notice of Non-Discrimination, attached as Attachment A. Said notices shall remain posted throughout the term of this Consent Decree.

SECTION 202 Notice of Non-Discrimination in Hiring

Merrill Gardens affirms that, within seven (7) calendar days following the Preliminary Approval Order, Merrill Gardens distributed to each of its General Managers, Regional Directors, Regional Vice Presidents, and all other employees with supervisory authority over a facility or multiple facilities a Notice of Non-Discrimination in Hiring, attached as Attachment B. Merrill Gardens shall also distribute this Notice to all General Managers, Regional Directors, Regional Vice Presidents, and all other employees with supervisory authority over a facility or multiple facilities who are hired during the duration of this Consent Decree.

SECTION 203 EEO Training

Within ninety (90) days of the Effective Date of this Agreement, Merrill Gardens will provide Equal Employment Opportunity training to all employees at the Fort Wayne facility. This training will cover, at a minimum, non-discrimination in hiring, procedures to report known or observed discrimination in the workplace, and the non-retaliation provisions of Title VII. Merrill Gardens will provide like training for new hires throughout the term of this Consent Decree.

Thirty (30) days before the training, Merrill Gardens shall provide notice to the Commission of the date, time, and place of the training; and shall send to the Commission a copy of the training program and all written materials, if any, to be used. The Commission may provide reasonable input on the content of the training but shall do so no later than ten (10) days prior to the training.

SECTION 204 EEO Training

Within ninety (90) days of the Effective Date of this Consent Decree, Merrill Gardens agrees to provide Equal Employment Opportunity training to all managers, supervisors, and any other employees who are responsible for any portion of the employment selection or hiring process at the Fort Wayne facility. This training will cover, at a minimum, record retention, non-discrimination in hiring and job assignment, procedures to correct and report known or observed discrimination in the workplace, and the non-retaliations provisions of Title VII. Merrill Gardens will provide like training for all managers and supervisors who are hired for the Fort Wayne facility during the duration of this Consent Decree.

Thirty (30) days before the training, Merrill Gardens shall provide notice to the Commission of the date, time, and place of the training; and shall send to the Commission a copy of the training program and all written materials, if any, to be used. The EEOC may provide reasonable input on the content of the training but shall do so no later than ten (10) days prior to the training.

SECTION 205 EEO Training

Within ninety (90) days of the Effective Date of this Agreement, Merrill Gardens agrees to provide Equal Employment Opportunity training to the General Manager of its Fort Wayne

facility, the Regional Dining Services Director (Southeast) and the Vice President of Operations of its MidAtlantic Region. This training will cover, at a minimum, non-discrimination in hiring, procedures to report known or observed discrimination in the workplace, and managerial obligations to oversee the workplace. Merrill Gardens will provide like training for individuals hired into these positions during the duration of this Consent Decree.

Thirty (30) days before the training, Merrill Gardens shall provide notice to the Commission of the date, time, and place of the training; and shall send to the Commission a copy of the training program and all written materials, if any, to be used. The EEOC may provide reasonable input on the content of the training but shall do so no later than ten days prior to the training.

SECTION 206 Policy of Non-Discrimination

Merrill Gardens will not discriminate against any individual on the basis of race and/or color and will maintain a work environment for all employees that is free from racial discrimination.

Merrill Gardens will not retaliate or discriminate against any of its employees, former employees, or applicants for employment because the individual (a) has made a charge or opposed an unlawful employment practice under Title VII or any of the laws enforced by the EEOC or (b) has assisted or participated in any manner in an investigation, proceeding, or hearing under Title VII or any of the laws enforced by the EEOC.

Within twenty (20) days of the Preliminary Approval Order, Merrill Gardens had in place or adopted a policy of non-discrimination consistent with Title VII. The policy prohibits discrimination based on race or color and explains how individuals may lodge a complaint of discrimination, designating and identifying at least one person outside the Fort Wayne facility as

an individual responsible to hear and address complaints of discrimination. As part of the training under Sections 203, 204, and 205 above, Merrill Gardens will educate all trainees on the provisions of this non-discrimination policy and will provide a copy of the policy to all trainees. Merrill Gardens will make copies of the policy readily available to anyone desiring to read or copy the policy.

SECTION 207 Application and Hiring Procedures

The following hiring procedures have been followed at Merrill Gardens' Georgetowne Place community since the Preliminary Approval Order and will be followed during the term of the Consent Decree:

A. At the time an applicant submits an application at Georgetowne Place, the applicant will sign in on an applicant log sheet, indicating name, address, position(s) applied for, and the date and time. Applicants may also—on a voluntary basis—indicate their race.

B. Applicant log sheets shall be maintained as confidential employee records. When an applicant signs in on a sheet, the applicant will not be able to read information recorded on the sheet by prior applicants. Further, the applicant log sheets shall not in any way be associated with, or considered in conjunction with, any application for employment.

C. Applications will be reviewed/processed and positions filled, in accordance with the normal business practices of Merrill Gardens except as provided below for Georgetowne Place:

- (i) If an applicant is not offered an interview, the deciding official will note the reason(s) for no interview on the applicant log sheet.
- (ii) If the applicant is interviewed but not offered employment, the deciding official will note the reason(s) for rejection on a comments page to be attached to the application. This information will also be noted on the applicant log sheet.

- (iii) If the applicant is offered employment, the deciding official will note the job offered on the applicant log sheet. If the job offered is different than the job sought (as per the applicant log sheet), the deciding official will note the reason(s) therefor.

D. Merrill Gardens will retain all applications to Georgetowne Place throughout the duration of this Consent Decree. While retained, the applications will be filed in chronological order.

E. Within sixty (60) days of the Effective Date of this Consent Decree, Merrill Gardens will advise all recruiting sources for its Fort Wayne facility of Georgetowne Place's active Equal Employment Opportunity policy, and specifically will state that the company hires without regard to race and/or color.

F. When it advertises employment opportunities at Georgetowne Place, Merrill Gardens will clearly indicate that the facility is an Equal Employment Opportunity employer and does not discriminate on the basis of race and/or color for any position.

PART THREE: KNOWN CLASS MEMBERS

As partial consideration for this Consent Decree and the Settlement Agreement in the Hill Action, Merrill Gardens will pay Class Members and Class Counsel as provided in this Part, Part Four, and Part Seven.

SECTION 301 Designated Back Pay

Merrill Gardens shall pay \$10,000, minus applicable taxes and withholdings, which will be identified as claimed back pay to each of the following known class members who signed Releases (Attachment C): Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards,

William Anthony Hill, and Elizebeth Worthman (hereinafter referred to as “Known Class Members”), or to their heirs or assigns in the event of an individual’s death.

Within thirty (30) days of the Preliminary Approval Order, Merrill Gardens provided appropriate IRS Forms W-4 to the EEOC for distribution to the Known Class Members.

SECTION 302 Designated Compensatory Damages

Merrill Gardens shall pay \$50,000, which will be identified as claimed compensatory damages (other than for back pay) to Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, and William Hill. Merrill Gardens shall pay \$15,000 for claimed compensatory damages (other than for wages) to Elizebeth Worthman. To be eligible for payment under this Section, a Known Class Member must sign a Release (Attachment C).

SECTION 303 Releases

Within seven (7) days of issuance of the Preliminary Approval Order, the EEOC sent to Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, and Elizebeth Worthman the Release form attached here to Attachment C, with instructions regarding the return of executed Releases by no later than seven (7) days before the Fairness Hearing. Each of these individuals was provided the opportunity to discuss, without charge, the release of claims with attorneys John T. Menzie and/or Shane C. Mulholland of the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, 200 East Main Street, Suite 1000, Fort Wayne, Indiana.

SECTION 304 Procedures Regarding Known Class Members

The EEOC shall notify counsel for Merrill Gardens which Known Class Members submitted executed Releases and completed IRS Forms W-4 and will cause copies of such documents to be forwarded to counsel for Merrill Gardens. Within fourteen (14) days after the

Effective Date of the Final Order, Merrill Gardens shall mail appropriate payments for Known Class Members who have executed Releases via certified mail, payable to eligible Known Class Members, or to any appropriate heir or assign in the event of a Known Class Member's death.

Absent alternate acceptable instruction, checks will be sent to the following addresses:

Caroline Aduro
3410 Hawkechee Drive
Fort Wayne IN 46815

Samantha Bolden
3917 Bowser Avenue
Fort Wayne IN 46806

Jaela Brownlee
6226 Mayfair Road
Fort Wayne IN 46818

Debra Edwards
5405 Scepter Court
Fort Wayne IN 46835

William Hill
c/o Shane C. Mulholland/John T. Menzie
Burt, Blee, Dixon, Sutton & Bloom, LLP
Suite 1000
200 East Main Street
Fort Wayne, IN 46802

Elizebeth Worthman
c/o Shane C. Mulholland/John T. Menzie
Burt, Blee, Dixon, Sutton & Bloom, LLP
Suite 1000
200 East Main Street
Fort Wayne, IN 46802

Merrill Gardens shall prepare the checks in amounts determined under Section 301 and 302 above. Applicable taxes and withholdings shall be subtracted from the back pay amounts pursuant to IRS Forms W-4 completed and tendered to Merrill Gardens, and will be reported on appropriate IRS Forms W-2. If a Known Class Member fails to submit a completed IRS Form

W-4 with his/her executed Release, then Merrill Gardens will make the maximum tax withholdings as set forth by law. Merrill Gardens will not deduct from any amount the employer's share of any costs, taxes, or social security required by law to be paid by Merrill Gardens. Further, Merrill Gardens will not withhold any amounts from the payments under Section 302 above and shall provide each Class Member at the appropriate time with the appropriate tax-reporting documentation for tax-filing purposes (IRS Forms 1099).

Merrill Gardens offers no tax advice or opinion regarding the tax consequences of the payments to any Class Member.

Merrill Gardens shall promptly mail a copy of the checks and proof of their delivery (signed certified mail receipts) to EEOC and Class Counsel. The EEOC shall promptly provide Merrill Gardens with original Releases executed by Class Members.

If a Known Class Member did not return an executed Release within seven (7) days before the Fairness Hearing, that individual is ineligible for any payment under this Consent Decree, and any funds that such Class Member would have received shall be split equally among the remaining Known Class Members under this Consent Decree and under the Hill Settlement Agreement.

PART FOUR: UNKNOWN CLASS MEMBERS

SECTION 401 Identification of Class Members

The parties agreed to a thirty (30)-day period of notices in publications and on the radio to identify individuals who may claim that they would have been hired at Georgetowne Place, but for their race and/or color. In particular, the parties agreed to the media campaign that is set forth as Exhibit "C" to the Court's Preliminary Approval Order, Section I.B. Merrill Gardens will pay for all advertising costs incurred under this section, up to a cap of \$70,000. If charges for such

notices exceed \$70,000, the parties will work to employ an alternate effective campaign in the media designed to reach a wide non-Caucasian applicant audience.

SECTION 402 Report to EEOC

For any individual who has come forward to Merrill Gardens in response to a notice in the media, Merrill Gardens will provide the EEOC with contact information as soon as possible and by no later than seven (7) days after receiving the information.

SECTION 403 Determination of Unknown Class Members

Unknown Class Members are individuals other than those identified in Part Three who meet the following definition:

All African Americans and other minorities who: (1) submitted applications for employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC; (2) between February 17, 1998 and April 18, 2005; (3) for vacant positions; (4) and who were denied employment in such vacant position; (5) where the positions were or may have been given to non-minority candidates.

The EEOC made the initial determination as to which individuals appear to meet the definition of Unknown Class Members under this Consent Decree and under the Hill Action Settlement Agreement and has ensured that such individuals received a copy of the Notice that is attached hereto as Attachment E. The EEOC notified Merrill Gardens of each person identified by the EEOC to be Class Members and each person who was issued the Notice attached hereto as Attachment E.

If the EEOC determined that any individual who came forward is not eligible to share in class relief, the EEOC so notified Merrill Gardens at least two (2) weeks before the Fairness Hearing (Section 408). Merrill Gardens then, within seven (7) days of receiving notice, had the option of alerting the EEOC to any disagreement with the EEOC's determination. Merrill

Gardens had the opportunity to lodge an objection with the Court at the Fairness Hearing (Section 408).

SECTION 404 W-4 Forms

Merrill Gardens provided appropriate IRS Forms W-4 to the EEOC for timely distribution to the class members who were not known at the time this Consent Decree was negotiated (“Unknown Class Members”). Applicable taxes and withholdings shall be subtracted from the back pay amounts pursuant to IRS Forms W-4 completed and tendered to Merrill Gardens, and if a Unknown Class Member fails to submit an IRS Form W-4, then Merrill Gardens will make the maximum tax withholdings as set forth by law.

SECTION 405 Monetary Relief to Unknown Class Members

Merrill Gardens will pay, as directed by the Court after the Fairness Hearing (Section 408), an additional amount of up to \$325,000 to Unknown Class Members as approved in this action and the Hill Action. Merrill Gardens will pay \$54,166.67 to each Court-approved Unknown Class Member who executes a release (Attachment C), if there are no more than six Unknown Class Members. If there are more than six Unknown Class Members, the \$325,000 will be divided equally among those Unknown Class Members who execute releases (Attachment C).

Unknown Class Members will be notified as set forth in Paragraphs I.B and Exhibits “C”, “D-1,” and “D-2” of the Preliminary Approval Order.

SECTION 406 Computation of Payments to Unknown Class Members

A. If the number of eligible Unknown Class Members allows payments of at least \$10,000 to each Unknown Class Member who executes a Release, \$10,000 will be identified as

claimed back pay. The remainder will be identified as claimed compensatory damages (other than back pay).

B. If the number of Unknown Class Members who executes a Release allows for payments to eligible Unknown Class Members in any amount less than \$10,000, such amount will be treated as claimed loss wages (back pay).

SECTION 407 Notice

Within twenty-one (21) days of completion of the media campaign pursuant to Section 401 above, the EEOC shall provide to the Court and Merrill Gardens a list of the individuals whom the EEOC has determined should share in class relief. At the same time, the EEOC will send (1) notices to the putative class members, stating that the EEOC has identified them as class members and estimating the amount to which they will be entitled under Section 406 above and (2) notices to claimants the EEOC has determined are not eligible for class relief. The notices to all individuals will tell them that the Court will conduct a Fairness Hearing and if they disagree as to their class status or proposed award, they should send a letter to the Court stating their objection and the reasons therefor within seven (7) days of receipt of the notice.

SECTION 408 Fairness Hearing for Class Members

At the same time as the Fairness Hearing on the related proposed Class Action Settlement in the Hill Action, the Court conducted a Fairness Hearing to hear and decide any objection from Merrill Gardens under Section 403 and to hear and decide any objection from an individual under Section 407. The Court has made or will make all final decisions regarding Class Members and amounts of any payments to them.

SECTION 409 Distributions

At least thirty (30) days before the Fairness Hearing, the EEOC will send each individual who may be entitled to monetary relief a Release (Attachment C) and an IRS Form W-4. Each of these individuals was provided the opportunity to discuss the release of claims with attorneys John T. Menzie and/or Shane C. Mulholland of the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, 200 East Main Street, Suite 1000, Fort Wayne, Indiana.

The EEOC notified counsel for Merrill Gardens when it received executed Releases and forwarded copies of them to counsel. If an Unknown Class Member did not return an executed Release at least seven (7) days before the Fairness Hearing, he/she is not eligible for any payment under this Consent Decree.

Within twenty (20) days after the Effective Date of the Final Order, Merrill Gardens shall mail checks, payable to the individuals, or to their heirs or assigns in the event of an individual's death, by certified mail to individuals who have executed Releases. Merrill Gardens shall prepare the checks in amounts calculated under Section 406 above, with any modifications ordered by the Court. Applicable taxes and withholdings shall be subtracted from back pay amounts, for which appropriate IRS Forms W-2 will be issued. Merrill Gardens will not deduct from any amount the employer's share of any costs, taxes, or social security required by law to be paid by Merrill Gardens. Further, Merrill Gardens will not withhold any amounts from payments for claimed compensatory damages other than back pay, and will issue appropriate IRS Forms 1099 for such claimed compensatory damages.

Merrill Gardens shall promptly mail a copy of the checks and proof of their delivery (signed certified mail receipts) to the Commission. The EEOC shall promptly provide Merrill Gardens with original Releases executed by Class Members.

PART FIVE: RETENTION OF RECORDS

SECTION 501 Retention of Records

Merrill Gardens agrees to maintain all employment records at Georgetowne Place as required by Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), and regulations implementing Section 709(c), 29 C.F.R. Part 1602.

SECTION 502 Review of Records

Merrill Gardens will maintain for the duration of this Consent Decree applications as specified in Section 207 above. From time to time, the Commission may request the opportunity to review all, or a specified portion of, these records or any records maintained at Merrill Gardens' Fort Wayne facility in compliance with Section 501 above. Within two (2) weeks of such a request, Merrill Gardens will make records available to the Commission at Merrill Garden's Fort Wayne facility.

SECTION 503 Section 709(c) Payment

For failure to retain records in accordance with Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), and 29 C.F.R. § 1602.14, Merrill Gardens shall pay \$10,000 to the general fund of the United States Treasury within sixty (60) days of the Effective Date of this Consent Decree.

PART SIX: REPORTING REQUIREMENTS

SECTION 601 Compliance with Decree

In addition to the proofs of payment provided in Sections 304 and 409 above and the reports required by Section 402 above, Merrill Gardens will submit a report to the EEOC detailing compliance with this Consent Decree on or before January 21, 2006. Specifically, Merrill Gardens will:

- (i) certify to the EEOC's Regional Attorney that it has complied with Sections 201 and 202 of this Consent Decree, specifying where the notices are posted and to whom they were distributed;
- (ii) notify the EEOC of training, as required by Sections 203, 204, 205, and 206; and
- (iii) provide the EEOC with a copy of the policy adopted and implemented pursuant to Section 206.

All reports shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis IN 46204-4203.

SECTION 602 Annual Reporting

Merrill Gardens shall submit three (3) annual reports. The first, due January 21, 2006, may be combined with the report under Section 601. In each report, Merrill Gardens shall include the following information:

- (i) the dates and topics of all training programs offered pursuant to this Consent Decree and provided in the previous period;
- (ii) a copy of all written materials relied on or disseminated at the training programs pursuant to this Consent Decree in the previous period;
- (iii) the name and position of all employees who attended the training programs pursuant to this Consent Decree in the previous period; and
- (iv) all employees hired or promoted at the Fort Wayne facility in the previous period, identified by name, position, date of hire or promotion, and race.

All reports shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis IN 46204-4203.

With each annual report identified above, Merrill Gardens will forward to the EEOC all applicant logs constructed in the previous period. Merrill Gardens will send the original logs to

the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis IN 46204-4203.

PART SEVEN: ADMINISTRATION OF THE CONSENT DECREE

SECTION 701 Breach of Decree

The EEOC may review compliance with this Consent Decree. As part of such review at Merrill Gardens' Fort Wayne facility, the EEOC may inspect the Fort Wayne premises, interview employees at the Fort Wayne premises, and examine and copy documents at the Fort Wayne premises.

In the event that the EEOC alleges that a violation of this Consent Decree has occurred, the EEOC shall give notice in writing specifically identifying the alleged violation to Merrill Gardens. Merrill Gardens will have ten (10) business days in which to investigate and respond to the allegation.

If the Commission elects to seek judicial enforcement, such enforcement action shall be filed in the United States District Court for the Northern District of Indiana, Fort Wayne Division. In any proceeding which seeks enforcement of any provision of the Consent Decree, the remedies shall be limited to enforcement of only those terms or provisions of this Consent Decree then in effect which the Court may find to have been violated, and recovery of court costs.

SECTION 702 Expenses/Labor

A. Merrill Gardens agrees to pay all expenses, up to \$70,000, associated with the advertising detailed in Section 401 above.

B. Each party agrees to provide the necessary labor and to pay for all expenses as needed to fulfill their respective obligations under this Consent Decree.

C. Merrill Gardens has agreed to pay \$100,000 in attorney fees to Burt, Blee, Dixon, Sutton & Bloom, LLP, 200 East Main Street, Suite 1000, Fort Wayne, Indiana, in the Hill Action. This fee will, in part, pay for any services rendered pursuant to Sections 303 and 409 above.

SECTION 703 Dispute Resolution Procedure

In the event that any dispute arises between the Parties regarding the interpretation or application of this Consent Decree or any provision thereof and the Consent Decree does not provide for its unilateral resolution by one of the parties, the party claiming a dispute (hereinafter “Aggrieved Party”) shall notify the other party (hereinafter “Respondent”) in writing of the nature of the disputed matter, the provision(s) of the Consent Decree to which it relates, and the factual details forming the basis of such dispute. The Respondent shall have ten (10) business days from receipt of the written notice to investigate, correct, or refute the position of the Aggrieved Party; to cure the alleged breach; or to accept the interpretation or contention of the Aggrieved Party. If the Aggrieved Party is not satisfied with the cure, prior to the commencement of a court action for breach of this Consent Decree, the parties shall meet and confer in a joint effort to resolve the dispute. In the event a party does not make itself available for a meeting within ten (10) business days of notice that a satisfactory cure has not been offered, the meeting requirement is waived. All such meetings shall be scheduled at a date and time chosen by mutual agreement of the Parties.

Resort to any of these procedures will not justify the suspension of any other obligation under this Consent Decree. With respect to a dispute, if the Respondent or the Aggrieved Party

determines that, for practical or other reasons, it is more expedient to comply with the other party's position but nevertheless wishes to obtain a judicial determination with respect to the disputed issue, such party may notify the other party that it will accept the other party's position "under protest" and that such party intends to seek judicial relief pursuant to the terms of this Consent Decree. The Court, in its discretion, may award either party some or all of its reasonable costs incurred in seeking enforcement of this Consent Decree.

SECTION 704 Ownership and Control

Sections 202 through 207, 502, and 601-602 of the Consent Decree will be in full force and effect and will apply to Merrill Gardens for the duration of the Consent Decree or as long as Merrill Gardens owns the Georgetowne Place community, whichever period is shorter.

SECTION 705 Retention of Jurisdiction

As stated in Section 104(C) above, the Court will retain jurisdiction of this cause throughout the period of this Consent Decree, and any extensions thereof, for purposes of monitoring compliance with the Consent Decree and entry of such further orders or modifications as may be necessary or appropriate.

SO ORDERED.

Date: _____

HONORABLE THERESA L. SPRINGMANN
District Judge

Copies to:

Kenneth L. Bird
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
101 West Ohio Street, Suite 1900
Indianapolis IN 46204-4203

Kathleen M. Anderson
Tiffany L. Gooden
BARNES & THORNBURG LLP
600 One Summit Square
Fort Wayne IN 46802

John T. Menzie
Shane C. Mulholland
Burt, Blee, Dixon, Sutton & Bloom, LLP
200 East Main Street, Suite 1000
Fort Wayne IN 46802

NOTICE TO EMPLOYEES AND APPLICANTS

Posted Pursuant to an Agreement Resolving a Charge of Employment Discrimination filed with the U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Indianapolis District Office

This Notice is being distributed and posted by agreement between Merrill Gardens, LLC, and the United States Equal Employment Opportunity Commission, resolving Civil Action No. 1:05-CV-0004 in the United States District Court for the Northern District of Indiana.

Federal law prohibits discrimination against any employee, former employee, or job applicant because of the individual's sex, race, color, religion, national origin, disability, or age (over 40).

Federal law also prohibits retaliation of any kind against any person who has opposed any practice made unlawful under federal law or because an individual has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

Merrill Gardens supports and will comply with federal law in all respects and will not take any actions against employees or applicants because they have exercised their rights under the law. Specifically, Merrill Gardens will not refuse to hire or promote individuals because of their race and/or color. Merrill Gardens agrees to adopt and implement a policy of non-discrimination, will conduct training programs on Title VII, and will not retaliate against any individual who files a charge of discrimination.

If you have any complaints of discrimination, you may contact the EEOC at the address or telephone number given below. An employee or applicant has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee or applicant may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis, Indiana 46204-4203
Telephone: (317) 226-7212
TTY (317) 226-5162

THIS IS AN OFFICIAL NOTICE AND SHALL NOT BE DEFACED BY ANYONE

ATTACHMENT A

NOTICE TO MANAGERS, DIRECTORS, AND VICE PRESIDENTS

Distributed Pursuant to an Agreement Resolving a Charge of Employment Discrimination filed with the U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Indianapolis District Office

This Notice is being distributed by agreement between Merrill Gardens, LLC, and the United States Equal Employment Opportunity Commission, resolving Civil Action No. 1:05-CV-0004 in the United States District Court for the Northern District of Indiana.

Federal law prohibits discrimination against any employee, former employee, or job applicant because of the individual's sex, race, color, religion, national origin, disability, or age (over 40).

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Questions concerning this notice may be addressed to:

Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis, Indiana 46204-4203
Telephone: (317) 226-7212
TTY (317) 226-5162

ATTACHMENT B

RELEASE

A. DEFINITIONS. For purposes of this release and waiver (the "Release"), the following terms shall have the meanings set forth below:

1. The "Hill Action" means the lawsuit captioned *Hill, et al. v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:04cv248, and all claims that were brought or that could have been brought by William Anthony Hill, Golda, Bailey, or any Class Member (who did not opt out) in this Court, in any other Indiana state or federal court, or in or before any Indiana administrative agency, or in any other proceeding, whether brought in an individual or representative capacity regarding any application for employment at Georgetowne Place located at 1717 Maplecrest Road, Fort Wayne, Indiana and owned by Merrill Gardens LLC from February 17, 1998 to April 18, 2005. The definition of "Hill Action" does not, however, include the "EEOC Action," as defined below.
2. The "EEOC Action" means the lawsuit captioned *EEOC v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:05-cv-004.
3. The "Litigation" refers to the Hill Action and the EEOC Action collectively.
4. "Settlement Agreement" means the proposed Settlement Agreement filed in the Hill Action, including any subsequent amendments thereto and any exhibits to any such amendments.
5. "Consent Decree" means the proposed Consent Decree filed in the EEOC Action, including all exhibits.
6. "Class" and "Class Members" mean all African American and other minority applicants for employment at Georgetowne Place, operated by Merrill Gardens LLC, who submitted applications for employment, and who were denied employment in vacant positions from February 17, 1998 to April 18, 2005.
7. "Final Order and Judgment" means the order in the Hill Action finally certifying the Class for settlement purposes only and approving the settlement and the Settlement Agreement, and a final judgment is signed pursuant to that order.
8. "Court" means the United States District Court for the Northern District of Indiana, Fort Wayne Division.
9. "Plaintiff Hill" means William Anthony Hill.
10. "Plaintiff Bailey" means Golda Bailey.
11. "Class Counsel" means John T. Menzie, Esquire and/or Shane C. Mulholland at the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, Suite 1000, 200 East Main Street, Fort Wayne, Indiana 46802.

12. "Released Parties" means Merrill Gardens LLC and each of its past, present and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of their respective past, present and future officers, directors, employees, attorneys and representatives, or any of them, including any person or entity acting on behalf of or at the direction of any of them.
13. "Consideration" means the consideration approved by the Court in the Final Order and Judgment and as outlined in the Settlement Agreement. The EEOC has estimated that the undersigned Class Member will receive \$_____, which is subject to approval and adjustment (lower or higher) by the Court, depending, in part, upon the total number of Class Members deemed eligible for payment.

B. RELEASE TERMS.

1. In exchange for the valuable Consideration, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release and forever discharge the Released Parties from any and all claims or causes of action—known or unknown—that were or could have been asserted in the Litigation regarding applications or requests for employment (or any alleged failure to hire) from February 17, 1998 to April 18, 2005 at Merrill Gardens. As part of this Release, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release, acquit and forever discharge Released Parties from, and shall not now or hereafter institute, maintain or assert against the Released Parties, either directly or indirectly, derivatively, on their own behalf, or on behalf of a class or any other person or entity, any and all causes of action, claims, damages, award, equitable, legal and/or administrative relief, interest, demands, or rights, whether based on federal, state, or local law, statute, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiff Hill, Plaintiff Bailey, or any Class Member who has not opted out of the Hill Action Settlement against the Released Parties or any of them in the Litigation or in any other court action or proceeding before any administrative body, tribunal, arbitration, panel, or other adjudicatory body arising out of or related to, in whole or in part, applications or requests for employment (or any alleged failure to hire) at Merrill Gardens or its Georgetowne Place facility between February 17, 1998 and April 18, 2005.
2. Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs or disbursements in connection with or related in any manner to the Litigation, the settlement of the Litigation and/or the administration of such settlement except to the extent otherwise specified in the Settlement Agreement.
3. In connection with this Release, Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the matters released in paragraph 1 above. Nevertheless, Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement fully, finally, and forever settle and release all matters released in paragraph 1 above.

4. This Release binds Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement and their respective heirs, executors, administrators, successors in interest and assigns.
5. This Release may be raised as a complete defense to, and will preclude, any action or proceedings encompassed by this Release.
6. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement or Consent Decree, including participation in any of the processes detailed therein.
7. The provisions of this Release, individually and collectively, constitute an essential and material term of the Settlement Agreement.
8. This Release is the result of a compromise of a disputed claim and shall never at any time be used as evidence of any admission of liability by Merrill Gardens.
9. This Release shall be interpreted under the laws of the State of Indiana.

The undersigned expressly agrees that the foregoing Release applies to him or her and that the foregoing Release shall take effect upon Final Order and Judgment.

Signature of Class Member

Printed Name of Class Member

Address of Class Member

Telephone Number of Class Member

Social Security Number of Class Member

Please return executed Release to: Kenneth Bird, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis, Indiana 46204-4203. The executed Release is due by no later than September 2, 2005.

EXHIBIT C
TO STIPULATED ORDER

[SCHEDULE OF MEDIA NOTICES]

EXHIBIT "C"

Merrill Gardens LLC will schedule and pay for the following media notices and/or announcements beginning June 2005.

I. RADIO

Assuming the radio stations' advertising schedules permit such frequency,* Merrill Gardens will cause each of the following radio stations to broadcast an announcement in substantially the same format as Exhibit "D-1" at least an average of eight (8) times daily for three (3) weeks on each of the following radio stations:

WJFX (107.9 FM)

WBYR The Bear (98.9 FM)

*Note: If a radio station cannot satisfy the frequency requirement of eight (8) times per day, the announcements will run the maximum number of times per day as allowed by the radio station, and the EEOC and Merrill Gardens LLC may extend the time period of announcements additional time in order to have the radio announcement run an average of eight (8) times per day for three (3) weeks. Further, if one or both of the above radio stations indicates an inability or unwillingness to broadcast the agreed-upon broadcast, then Merrill Gardens and the EEOC will agree upon an alternate radio station or alternate radio stations.

II. NEWSPAPERS OF GENERAL CIRCULATION

Merrill Gardens will cause to be published a ¼ page (5 columns x 11") notice with substantially the same format and substance as set forth in Exhibit "D-2." The Notice shall appear on 14 days over a 30-day period in each of the following newspapers:

The Fort Wayne Journal-Gazette

The Fort Wayne News-Sentinel

III. FROST ILLUSTRATED, INK, EL MEXICANO NEWSPAPER

Merrill Gardens will cause to be published in the following publications with substantially the same format and substance as set forth in Exhibit "D-2" a one-half (1/2) page notice as many times in four (4) weeks as publishing schedules allow:

Frost Illustrated

Ink

El Mexicano Newspaper

If the cost to Merrill Gardens of the above-referenced notices exceed \$70,000, then the EEOC and Merrill Gardens will confer and will propose an alternate media notice plan to the Court for approval.

EXHIBITS D-1 and D-2
TO STIPULATED ORDER

[MEDIA NOTICES]

EXHIBIT "D-1"

RADIO ANNOUNCEMENT

This is a public announcement:

Georgetowne Place is a senior residential community located at 1717 Maplecrest Road, Fort Wayne, Indiana, and is owned by Merrill Gardens LLC. If you are African-American or other minority and applied for employment at Georgetowne Place any time from February 17, 1998 to April 18, 2005 and were not hired for a vacant position, you may be entitled to receive money under a proposed class action settlement and proposed consent decree. To learn more about the proposed settlement and proposed consent decree, you may contact the Equal Employment Opportunity Commission at (317) 226-7226. If you have any questions, you are encouraged to call the EEOC at (317) 226-7226.

EXHIBIT “D-2”

NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT, PROPOSED CONSENT DECREE, AND HEARING

Georgetowne Place is a senior residential community located at 1717 Maplecrest Road, Fort Wayne, Indiana, that is owned by Merrill Gardens LLC. If you are African-American or other minority and applied for employment at Georgetowne Place anytime from February 17, 1998 to April 18, 2005 and were not hired in a vacant position, you may be entitled to receive money under a proposed class action settlement and proposed consent decree.

What is this About?

A settlement and consent decree have been proposed in lawsuits brought against Merrill Gardens LLC by the Equal Employment Opportunity Commission (“EEOC”) and by William Anthony Hill (“Plaintiff Hill”) and others on behalf of minorities who applied for employment at Georgetowne Place. The two lawsuits pending in the United States District Court for the Northern District of Indiana are: (1) *EEOC v. Merrill Gardens LLC* (Cause No. 1:05cv004); and (2) *Hill v. Merrill Gardens, Inc. d/b/a/ Georgetowne Place* (Cause No. 1:04cv248).

Who is Included and What Does the Settlement Provide?

The settlement and proposed consent decree will provide up to \$650,000 in total payments to class members who come forward, who are determined by the EEOC to be eligible for payment, and who sign a release and waiver of claims. Class members are individuals who (1) are African-American or other minority, (2) applied to work at Georgetowne Place from February 17, 1998, to April 18, 2005, (3) were not hired for a vacant position, and (4) the position for which the individual applied was given to a non-minority applicant. On September 9, 2005 at 9:00 a.m., the Court will hold a Fairness Hearing to decide whether to approve the settlement and consent decree, including attorneys’ fees and costs for proposed class counsel.

What are Your Options?

If you applied for employment at Georgetowne Place anytime from February 17, 1998, to April 18, 2005, and were not hired, you must contact the EEOC or proposed class counsel at the address or telephone number below to be considered for money in this case.

If you fit the class definition and do not want to be legally bound by the class action settlement proposed in the lawsuit filed by Plaintiff Hill, you must exclude yourself by August 30, 2005. If you do not exclude yourself, any claims you might have related to applications for employment at Georgetowne Place between February 17, 1998 and April 18, 2005 will be released.

To obtain the detailed legal notice and to learn more about the proposed settlement and proposed consent decree, you may contact: EEOC, Suite 1900, 101 West Ohio Street, Indianapolis, Indiana 46204-4203, (317) 226-7226; or proposed class counsel John T. Menzie and/or Shane C. Mulholland at Burt, Blee, Dixon, Sutton & Bloom, LLP, Suite 1000, 200 East Main Street, Fort Wayne, Indiana 46802, (260) 426-1300.

EXHIBIT E
TO STIPULATED ORDER

[RELEASE]

RELEASE

A. DEFINITIONS. For purposes of this release and waiver (the "Release"), the following terms shall have the meanings set forth below:

1. The "Hill Action" means the lawsuit captioned *Hill, et al. v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:04cv248, and all claims that were brought or that could have been brought by William Anthony Hill, Golda, Bailey, or any Class Member (who did not opt out) in this Court, in any other Indiana state or federal court, or in or before any Indiana administrative agency, or in any other proceeding, whether brought in an individual or representative capacity regarding any application for employment at Georgetowne Place located at 1717 Maplecrest Road, Fort Wayne, Indiana and owned by Merrill Gardens LLC from February 17, 1998 to April 18, 2005. The definition of "Hill Action" does not, however, include the "EEOC Action," as defined below.
2. The "EEOC Action" means the lawsuit captioned *EEOC v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:05-cv-004.
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8. "Court" means the United States District Court for the Northern District of Indiana, Fort Wayne Division.
9. "Plaintiff Hill" means William Anthony Hill.
10. "Plaintiff Bailey" means Golda Bailey.
11. "Class Counsel" means John T. Menzie, Esquire and/or Shane C. Mulholland at the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, Suite 1000, 200 East Main Street, Fort Wayne, Indiana 46802.

12. "Released Parties" means Merrill Gardens LLC and each of its past, present and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of their respective past, present and future officers, directors, employees, attorneys and representatives, or any of them, including any person or entity acting on behalf of or at the direction of any of them.
13. "Consideration" means the consideration approved by the Court in the Final Order and Judgment and as outlined in the Settlement Agreement. The EEOC has estimated that the undersigned Class Member will receive \$_____, which is subject to approval and adjustment (lower or higher) by the Court, depending, in part, upon the total number of Class Members deemed eligible for payment.

B. RELEASE TERMS.

1. In exchange for the valuable Consideration, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release and forever discharge the Released Parties from any and all claims or causes of action—known or unknown—that were or could have been asserted in the Litigation regarding applications or requests for employment (or any alleged failure to hire) from February 17, 1998 to April 18, 2005 at Merrill Gardens. As part of this Release, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release, acquit and forever discharge Released Parties from, and shall not now or hereafter institute, maintain or assert against the Released Parties, either directly or indirectly, derivatively, on their own behalf, or on behalf of a class or any other person or entity, any and all causes of action, claims, damages, award, equitable, legal and/or administrative relief, interest, demands, or rights, whether based on federal, state, or local law, statute, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiff Hill, Plaintiff Bailey, or any Class Member who has not opted out of the Hill Action Settlement against the Released Parties or any of them in the Litigation or in any other court action or proceeding before any administrative body, tribunal, arbitration, panel, or other adjudicatory body arising out of or related to, in whole or in part, applications or requests for employment (or any alleged failure to hire) at Merrill Gardens or its Georgetowne Place facility between February 17, 1998 and April 18, 2005.
2. Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs or disbursements in connection with or related in any manner to the Litigation, the settlement of the Litigation and/or the administration of such settlement except to the extent otherwise specified in the Settlement Agreement.
3. In connection with this Release, Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the matters released in paragraph 1 above. Nevertheless, Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement fully, finally, and forever settle and release all matters released in paragraph 1 above.

4. This Release binds Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement and their respective heirs, executors, administrators, successors in interest and assigns.
5. This Release may be raised as a complete defense to, and will preclude, any action or proceedings encompassed by this Release.
6. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement or Consent Decree, including participation in any of the processes detailed therein.
7. The provisions of this Release, individually and collectively, constitute an essential and material term of the Settlement Agreement.
8. This Release is the result of a compromise of a disputed claim and shall never at any time be used as evidence of any admission of liability by Merrill Gardens.
9. This Release shall be interpreted under the laws of the State of Indiana.

The undersigned expressly agrees that the foregoing Release applies to him or her and that the foregoing Release shall take effect upon Final Order and Judgment.

Signature of Class Member

Printed Name of Class Member

Address of Class Member

Telephone Number of Class Member

Social Security Number of Class Member

Please return executed Release to: Kenneth Bird, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis, Indiana 46204-4203. The executed Release is due by no later than September 2, 2005.