

13- R -3202

(Do Not Write Above This Line) # 2160

A RESOLUTION

BY THE PUBLIC SAFETY COMMITTEE AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE SETTLEMENT OF ALL CLAIMS AGAINST THE CITY OF ATLANTA IN THE CASE OF VERGE COURT, LLC V. CITY OF ATLANTA, CIVIL ACTION FILE NO. 2012CV220847, PENDING IN FULTON COUNTY SUPERIOR COURT; AND FOR OTHER PURPOSES.

Approved By:

Eric A. Richardson

Eric A. Richardson
Deputy City Attorney

ADOPTED BY
JUN 03 2013
COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

PSLA Committee

5/28/13 Date

Eric A. Richardson Chair

Action
Fav, Adv, Hold (see rev. side)
Other

Members
[Signatures]

Refer To

Committee _____

Date _____

Chair _____

Action
Fav, Adv, Hold (see rev. side)
Other

Members _____

Refer To _____

Committee _____

Date _____

Chair _____

Action
Fav, Adv, Hold (see rev. side)
Other

Members _____

Refer To _____

Committee _____

Date _____

Chair _____

Action
Fav, Adv, Hold (see rev. side)
Other

Members _____

Refer To _____

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Readings
- Consent
- V Vote
- RC Vote

CERTIFIED

JUN 03 2013

ATLANTA CITY COUNCIL PRESIDENT

[Signature]

CERTIFIED

JUN 03 2013

Ronda Daughin Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

JUN 12 2013

WITHOUT SIGNATURE
BY OPERATION OF LAW



A RESOLUTION

**BY THE PUBLIC SAFETY COMMITTEE AND LEGAL ADMINISTRATION
COMMITTEE**

A RESOLUTION AUTHORIZING THE SETTLEMENT OF ALL CLAIMS AGAINST THE CITY OF ATLANTA IN THE CASE OF *VERGE COURT, LLC V. CITY OF ATLANTA*, CIVIL ACTION FILE NO. 2012CV220847, PENDING IN FULTON COUNTY SUPERIOR COURT; AND FOR OTHER PURPOSES.

WHEREAS, Verge Court, LLC (“Plaintiff”) owns certain property, having an address of 3669 Martin Luther King, Jr. Drive, Atlanta, Georgia 30331 (“Property”), which property is developed for use as a multi-family residential apartment complex known as “Verge Court Apartments;” and

WHEREAS, Plaintiff is the account holder for water and sewer services for the Property, having two accounts with the City of Atlanta (the “City”), Account Nos. 020-6515.300 and 011-7927.304 (“Accounts”); and

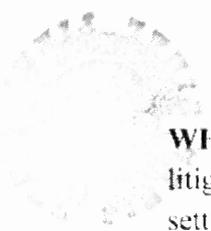
WHEREAS, Plaintiff filed a civil suit in the Superior Court of Fulton County, Civil Action File No. 2012CV220847 (the “Action”), styled Verge Court, LLC v. City of Atlanta disputing certain water and sewer charges associated with the Accounts, which charges were incurred during Plaintiff’s ownership of said Property; and

WHEREAS, the Parties agree that Plaintiff owes a total amount for both accounts of \$92,592.00 (“Outstanding Balance”) for water and sewer charges incurred prior to its sale of the Property on October 15, 2012; and

WHEREAS, Plaintiff has made substantial curative renovations to the Property to repair and replace leaks associated with underground and above ground plumbing, toilets and other plumbing fixtures, which were the cause of substantial water leaks, resulting in large water and sewer charges associated with the water leaks within the Property; and

WHEREAS, the City recognizes that the improvements made to the property constitute substantial improvements to the community and public benefits, including without limitation, the removal of blight, the provision of additional affordable housing, and significant water efficiency improvements so that the water consumption is based upon actual consumption rather than substantial water leaks; and

WHEREAS, the City replaced the water meter servicing the Property in May of 2010, and subsequent readings indicate that it is in active, working condition; and



WHEREAS, the parties hereto desire to resolve their disputes without the necessity of further litigation or expense; and the City Attorney considers it to be in the best interests of the City to settle the disputes between the parties, whereby the City, will adjust the Accounts, reducing the Outstanding Balance by \$27,592.00, leaving a balance due of \$65,000.00; and

WHEREAS, Plaintiff shall pay the remaining balance of \$65,000.00 by first making a lump sum payment of \$55,000.00 within fifteen (15) days of the approval by the Mayor of a resolution authorizing the settlement provided in this Settlement Agreement, and by paying the remaining \$10,000.00 in twenty-four (24) monthly installment payments of \$416.00, starting on the 15th day of the month following the month the lump sum payment is made; and

WHEREAS, if Plaintiff fails to comply with the payments outlined herein, any remaining portion of the Outstanding Balance will become immediately due and payable and will become a lien on the Property. Furthermore, the City specifically reserves all rights and remedies at law and equity to collect the total amount of Outstanding Balance, less any payments made on the Accounts toward the same, including but not limited to, reinstating and enforcing the liens that previously existing on the Property.

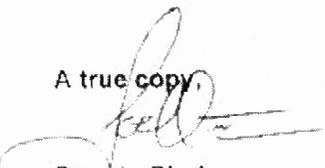
THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA hereby resolves as follows:

BE IT RESOLVED that the City Attorney is hereby authorized to settle and execute all documents in the case of Verge Court, LLC v. City of Atlanta to settle all claims related to Civil Action File No. 2012CV220847.

BE IT FURTHER RESOLVED that a Settlement Agreement substantially in the form attached hereto as Exhibit A is authorized to be executed by the proper parties.

BE IT FINALLY RESOLVED that the Commissioner of the Department of Watershed Management is authorized to adjust Plaintiff's Accounts in the amount of Twenty Seven Thousand Five Hundred and Ninety-two and 00/100 Dollars (\$27,592.00), and release all liens associated with the Outstanding Balance on the Account. Such shall be in full consideration of and conditioned upon of receipt of payment from Plaintiff in the total amount of \$65,000.00, for dismissal of all claims against the City of Atlanta and its current and former officers and employees, as more fully set forth in the attached Settlement Agreement.

A true copy,



Deputy Clerk

ADOPTED by the Atlanta City Council
APPROVED as per City Charter Section 2-403

JUN 03, 2013
JUN 12, 2013



SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT (hereinafter “Settlement Agreement and Release”) is made as of this _____ day of _____, 2013 (“Execution Date”), by and between Verge Court, LLC (hereinafter “Plaintiff”) and the City of Atlanta, Georgia (hereinafter “City”). Collectively, Plaintiff and the City are referred to herein as the “Parties.”

RECITALS

- A.** Plaintiff owns certain property, having an address of 3669 Martin Luther King Jr. Boulevard, Atlanta, Georgia (“Property”), which property is developed for use as a multi-family residential apartment complex known as “Verge Court Apartments.”
- B.** Plaintiff is the account holder for water and sewer services for the Property, having accounts with the City of Atlanta, Account Nos. 020-6515.300 and 011-7927.304 (“Accounts”).
- C.** Plaintiff filed a civil suit in the Superior Court of Fulton County on August 31, 2012, Civil Action File No. 2012CV220847 (the “Action”), captioned Verge Court, LLC v. City of Atlanta disputing certain water and sewer charges associated with the Accounts.
- D.** Plaintiff sold the Property to the current owner on October 15, 2012.
- E.** Plaintiff accrued \$92,592.00 (“Outstanding Balance”) in water and sewer charges prior to the sale of the Property on October 15, 2012.
- F.** Plaintiff alleges that it has made substantial renovations to the Property to repair and replace leaks associated with underground and above ground plumbing, toilets and other plumbing fixtures, which were the cause of substantial water leaks, resulting in large water and sewer charges associated with the water leaks within the Property.
- G.** Plaintiff has further made substantial renovations to the Property in order to rehabilitate the Property and create habitable and rentable space, whereas prior to such renovations, the Property was largely dilapidated and uninhabitable, creating a blight within the community. Specifically, the Verge Court Apartment complex consists of 28 units, which have been completely renovated and are now occupied and/or are able to be occupied and are otherwise rentable units.



- H. The City recognizes that the improvements made to the Property constitute substantial improvements to the community and public benefits, including without limitation, the removal of blight, the provision of additional affordable housing, and significant water efficiency improvements so that the water consumption is based upon actual consumption rather than substantial water leaks.
- I. The Parties hereto desire to resolve their disputes without the necessity of further litigation or expense and have reached an agreement whereby the City, among other things, will make certain adjustments to the Accounts.

SETTLEMENT AGREEMENT

NOW, THEREFORE, with the intent to be bound legally hereby, and for and in consideration of the execution of this Settlement Agreement, the promises, obligations, monetary payments, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, hereby agree, without admission of any liability whatsoever, as follows:

1. The foregoing recitals are hereby confirmed by the Parties, incorporated by reference as if fully set forth herein, and made a substantive part of this Settlement Agreement.
2. Settlement of Claims. In consideration for the releases described below and subject to the further terms and conditions set forth herein, the Parties agree that:
 - (a) Plaintiff accrued \$92,592.00 ("Outstanding Balance") in water and sewer charges prior to the sale of the Property on October 15, 2012.
 - (b) In recognition of the improvements to the Property, including repairs of various Property leaks and water efficiency improvements, the City shall adjust the Accounts, reducing the Outstanding Balance by \$27,592.00, leaving a balance due of \$65,000.00;
 - (c) Plaintiff shall pay the remaining balance of \$65,000.00 in a one-time lump sum payment of \$55,000.00 within fifteen (15) days of the approval by the Mayor of a resolution authorizing the settlement provided in this Settlement Agreement and the remaining \$10,000.00 shall be paid in twenty-four (24) monthly installment payments of \$416.00, starting on the 15th day of the month following the month the lump sum payment is made;
 - (d) If Plaintiff fails to comply with the payments outlined herein, any remaining portion of the Outstanding Balance will become immediately due and payable and will become a lien on the Property. Furthermore, the City specifically reserves all rights and remedies at law and equity to collect the total amount of



Outstanding Balance, less any payments made on the Accounts toward the same, including but not limited to, reinstating and enforcing the liens that previously existing on the Property; and

3. The Plaintiff, by signing this Settlement Agreement, represents that it is the accountholder for the Accounts and that it has the legal authority to contract with the City.
4. The Parties agree that signing this Settlement Agreement, represents that this is the full and final settlement of all water and sewer bills that accrued up to Plaintiff's sale of the subject property on October 15, 2012 and that it shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.
5. The Parties understand and agree that this is a full and final expression of their Settlement Agreement. Each Party has been represented by legal counsel of the Party's choice. No representation, promise, or inducement not included in this Settlement Agreement and Release shall be binding upon the Parties. The Parties represent that each signature appearing below is authorized, genuine, and freely and voluntarily given and is not influenced by any sort of duress or coercion. All prior negotiations, agreements, statements, negotiations, representations, and warranties are expressly merged herein.
6. This Settlement Agreement and Release may not be modified except in a writing signed by the party to be charged. Should any provision of this Settlement Agreement require interpretation or construction, it is agreed by the Parties that the court or entity interpreting or construing this Settlement Agreement shall not apply a presumption that the provisions hereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who prepared this Settlement Agreement, it being agreed that all Parties have participated equally in the preparation of all provisions of this Settlement Agreement.
7. The Parties agree that they shall each execute any such document(s) or make any such performance as they shall be reasonably requested to do in order to cooperate in fulfilling the letter and spirit of the terms and conditions of this Settlement Agreement.
8. Plaintiff hereby agrees that within five (5) days of the approval by the Mayor of the Resolution it will consent to and obtain an Order to dismiss with prejudice or voluntary dismissal with prejudice the Lawsuit by requesting the Judge sign said Order and/or directing the Clerk to enter said Order showing said action to be dismissed with prejudice, with all liability denied by the parties and to further consent to the entry of an Order whereby the Court specifically declines to award costs or attorneys' fees.



9. This Settlement Agreement and Release shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.
10. Should any subparagraph, paragraph or other portion of this Settlement Agreement and Release be held for any reason to be unconstitutional or otherwise void, the remaining portions of this Settlement Agreement shall not be affected thereby, but shall continue in full force and effect.
11. Notwithstanding the Execution Date, the Parties acknowledge and agree that this Settlement Agreement shall not be effective until final approval by the City of Atlanta City Council and the Mayor of the Resolution authorizing this Settlement.

RELEASE

1. For and in consideration of an adjustment to its water and sewer accounts in the amount of \$27,592.00, the sufficiency of which is hereby acknowledged, and for other good and valuable consideration, the undersigned Plaintiff hereby acknowledges full accord, satisfaction and settlement of and hereby release any and all actions, causes of action, damages or claims for damages, demands, claims and rights of whatsoever kind and nature which are claimed against the City in the Lawsuit, pending in the Superior court of Fulton County, Georgia. By entering into this Agreement, Plaintiff hereby releases the City and its former and present agents, servants, heirs, successors, administrators, officers, employees, directors, personal representatives and assigns for any and all other state and federal claims which have been or could have been asserted or which in any way relate to or arise out of or could have related to or arisen from the above-cited action for which it could have been claimed that the City is legally liable.
2. This Release is intended to and does completely bar and foreclose any and all claims that Plaintiff may now have or ever had against the City, which arises out of or in any way relates to the facts or issues raised in the Lawsuit.
3. In further consideration of the adjustment hereunder, Plaintiff agrees to treat this Settlement and Release Agreement as confidential and not to discuss or to comment on this Settlement and Release Agreement or the litigation, except to say that the matter was settled between the parties without reference to the amount paid and that the case was voluntarily dismissed by Plaintiff. This provision is subject to disclosure requirements under state and federal law such as the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*



WITNESS, the Parties having set their hand and seal to this Settlement Agreement and Release as of the dates provided below their signatures.

ACKNOWLEDGED AND AGREED:

Plaintiff:

Verge Court, LLC, a Georgia limited liability company

By: _____

Name: Adam Gaslowitz

Title: Authorized Signatory

Date: _____, 2013

Approved as to form:

Matthew C. Klase

Webb, Klase & Lemond, LLC

1900 The Exchange SE

Suite 480

Atlanta, Georgia 30339



City:

City of Atlanta, Georgia

By: _____

Name:

Title:

Date: _____, 2013

Approved as to form:

Renee Shepherd, Senior Assistant City Attorney
City of Atlanta Department of Law
Suite 4100 City Hall Tower
68 Mitchell Street, S.W.
Atlanta, Georgia 30303
Counsel for City of Atlanta

RCS# 2758
6/03/13
3:17 PM

Atlanta City Council

CONSENT I

CONSENT SECTION I; ALL ITEMS EXCEPT
13-O-0514
ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Bond
NV Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	NV Sheperd	NV Mitchell

CONSENT I

RCS# 2771
6/03/13
4:42 PM

Atlanta City Council

CONSENT I

CONSENT SECTION I; ALL ITEMS EXCEPT
13-O-0514
RECONSIDER

YEAS: 12
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 4
EXCUSED: 0
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	NV Wan	NV Martin	NV Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

RCS# 2772
6/03/13
4:43 PM

Atlanta City Council

CONSENT I

CONSENT SECTION I; ALL ITEMS EXCEPT
13-O-0514 AND 13-R-3203
ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	NV Wan	Y Martin	NV Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

†

		06-03-13
ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	
1. 13-O-1050	39. 13-R-3176	
2. 13-O-1047	40. 13-R-3177	
3. 13-O-1035	41. 13-R-3178	
4. 13-O-1023	42. 13-R-3179	
5. 13-R-3157	43. 13-R-3180	
6. 13-R-3158	44. 13-R-3181	
7. 13-R-3159	45. 13-R-3182	
8. 13-R-3111	46. 13-R-3183	
9. 13-R-3155	47. 13-R-3184	
10. 13-R-3200	48. 13-R-3185	
11. 13-R-3201	49. 13-R-3186	
12. 13-R-3202	50. 13-R-3187	
13. 13-R-3204	51. 13-R-3188	
14. 13-R-3152	52. 13-R-3189	
15. 13-R-3153	53. 13-R-3190	
16. 13-R-3160	54. 13-R-3191	
17. 13-R-3161	55. 13-R-3192	
18. 13-R-3162	56. 13-R-3193	
19. 13-R-3215	57. 13-R-3194	
20. 13-R-3207	58. 13-R-3195	
21. 13-R-3208	59. 13-R-3196	
22. 13-R-3209	60. 13-R-3197	
23. 13-R-3211	61. 13-R-3198	
24. 13-R-3212	62. 13-R-3199	
25. 13-R-3213		
26. 13-R-3214		
27. 13-R-3164		
28. 13-R-3165		
29. 13-R-3166		
30. 13-R-3167		
31. 13-R-3168		
32. 13-R-3169		
33. 13-R-3170		
34. 13-R-3171		
35. 13-R-3172		
36. 13-R-3173		
37. 13-R-3174		
38. 13-R-3175		