

**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 *RES-GA ENGLISH COLONY, LLC V. CITY OF ATLANTA*, CIVIL ACTION FILE NO. 2011CV205177, PENDING IN FULTON COUNTY SUPERIOR COURT; AND FOR OTHER PURPOSES.**

**WHEREAS**, RES-GA English Colony, LLC (“Plaintiff”) owns certain property, having an address of 3350 Mount Gilead Road, SW, Atlanta, Georgia 30311 (“Property”), which property is developed for use as a multi-family residential apartment complex known as “English Colony Apartments;” and

**WHEREAS**, Plaintiff is the account holder for water and sewer services for the Property, having an account with the City of Atlanta (the “City”), Account No. 11-8342.30 (“Account”); and

**WHEREAS**, Plaintiff filed a civil suit in the Superior Court of Fulton County, Civil Action File No. 2011CV205177 (the “Action”), styled RES-GA English Colony, LLC v. City of Atlanta disputing certain water and sewer charges associated with the Account, which charges were incurred prior to and subsequent to Plaintiff taking ownership of the Property, on or about, April, 2011; and

**WHEREAS**, the prior owner of the Property incurred over \$300,000.00 in outstanding water and sewer charges (“Prior Owner Charges”); and

**WHEREAS**, Plaintiff has accrued over \$270,979.47 in water and sewer charges subsequent to its purchase of the Property, on or about April, 2011; and

**WHEREAS**, the City alleges that Plaintiff owes a total balance on the Property in the amount of approximately \$656,552.41, following a meter reading on November 21, 2012, as evidenced in an invoice dated December 6, 2012 and due December 23, 2012 (“Outstanding Balance”); 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 already made to the Property, and as contemplated in the near future, 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 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, among other things, will make certain adjustments to the Account and waive certain liens associated with the Outstanding Balance, conditioned upon payment by Plaintiff in an amount of \$493,308.39, completion of the rehabilitation of the subject property and for dismissal of all claims against the City of Atlanta, as further described herein.

**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 RES-GA English Colony, LLC v. City of Atlanta to settle all claims related to Civil Action File No. 2011CV205177.

**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 Account in the amount of One Hundred Fifty Four Thousand, Seven Hundred and Forty-Seven and 01/100 Dollars (\$154,747.01), waive certain late fees and penalties, and release all liens associated with the Outstanding Balance on the Account. Such shall be in full consideration of and conditioned upon receipt of payment from Plaintiff in the amount of \$493,308.39, completion of the rehabilitation of the subject property and 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.

## SETTLEMENT AGREEMENT

**THIS SETTLEMENT** (hereinafter "Settlement Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2012 ("Execution Date"), by and between RES-GA English Colony, 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 3350 Mount Gilead Road, SW, Atlanta, Georgia 30311 ("Property"), which property is developed for use as a multi-family residential apartment complex known as "English Colony Apartments."
- B.** Plaintiff is the account holder for water and sewer services for the Property, having an account with the City of Atlanta, Account No. 11-8342.30 ("Account"). The Property is served by a single, master meter associated with the Account.
- C.** Plaintiff filed a civil suit in the Superior Court of Fulton County, Civil Action File No. 2011CV205177 (the "Action"), captioned RES-GA English Colony, LLC v. City of Atlanta disputing certain water and sewer charges associated with the Account, which charges were incurred prior to and subsequent to Plaintiff taking ownership of the Property, on or about, April, 2011.
- D.** The prior owner of the Property incurred over \$300,000.00 in outstanding water and sewer charges ("Prior Owner Charges").
- E.** Plaintiff has accrued over \$270,979.47 in water and sewer charges subsequent to its purchase of the Property, on or about April, 2011.
- F.** The City alleges that Plaintiff owes a total balance on the Property in the amount of approximately \$656,552.41, owing as of a meter reading on November 21, 2012 as evidenced in an invoice dated December 6, 2012, and due December 23, 2012 ("Outstanding Balance").
- G.** 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.
- H.** 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 English Colony Apartment complex consists of 86 units, 58 of which have been completely renovated and are now occupied and/or are able to be occupied and are otherwise rentable units. Moreover, Plaintiff (or its successors) agree to continue to renovate the remaining 28 unrenovated units and associated buildings and obtain City of Atlanta certificates of occupancy for said 28 units within two (2) years of the date of the Mayor approves a resolution authorizing the terms of this Settlement Agreement (the "Resolution").

- I. The City recognizes that the improvements already made to the Property, and as contemplated in the near future, 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.
- J. 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 Account and waive certain liens associated with the Outstanding Balance, as further described herein.

### 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) In recognition of the improvements to the Property, including repairs of various Property leaks and water efficiency improvements, the City shall adjust the Account, reducing the balance owed for the Prior Owner Charges by \$154,747.01 plus late fees in an amount of \$8,497.01;
  - (b) Plaintiff shall pay the amount equal to \$493,308.39 within forty-five (45) days of the approval by the Mayor of a resolution authorizing the settlement provided in this Settlement Agreement (the "Resolution");

- (c) The Plaintiff shall complete renovation of all remaining units and buildings located on the Property at the time of this Agreement, being 28 units, within two (2) years of the approval by the Mayor of the Resolution, which shall include at a minimum:
    - a. Repair of any and all existing Property water leaks, located above and below ground or located within the residential buildings, units and various plumbing fixtures; and
    - b. Obtaining certificates of occupancy for the 28 un-renovated units and associated buildings;
  - (d) The City agrees to release all liens associated with the Outstanding Balance within fifteen (15) days receipt of the payment identified in 2(b); and
  - (e) If Plaintiff fails to comply with the payment and renovation schedules outlined herein, the Outstanding Balance will become immediately due and payable and all liens associated with the Outstanding Balance will be reinstated without further action or notice from the City. 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 account toward the same, including but not limited to, reinstating and enforcing the liens that previously existed on the Property; and
  - (f) Plaintiff further acknowledges and agrees that all water and sewer charges incurred subsequent to November 21, 2012 and invoiced after December 6, 2012 shall be paid in full by the due date noted on the bill; and that failure to make timely payments shall subject the Property to termination of service, the City shall be able to avail itself of all rights and remedies under the law and in equity.
3. The Plaintiff, by signing this Settlement Agreement, represents that it is the accountholder for the Account 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 as of the signing of this instrument and that it shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties and the Property.
  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 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 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. The Plaintiff shall dismiss the Action with prejudice within five (5) days of the approval by the Mayor of the Resolution.
9. This Settlement Agreement 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 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 the approval by the Mayor of the Resolution.

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

**ACKNOWLEDGED AND AGREED:**

**Plaintiff:**

**RES-GA English Colony, LLC, a Georgia limited liability company**

By: Multibank 2009-1 RES-ADC Venture, LLC, a Delaware limited liability company, its Sole Member

By: RL RES 2009-1 Investments, LLC, a Delaware Limited Liability Company, its Manager

By: Rialto Capital Advisors, LLC, a Delaware Limited Liability Company, as its attorney-in-fact

By: \_\_\_\_\_

Name: Mark King

Title: Authorized Signatory

By: \_\_\_\_\_

Name: Michael Guynn

Title: Authorized Signatory

Date: \_\_\_\_\_, 2012

Approved as to form:

\_\_\_\_\_  
Carl E. Westmoreland, Jr.  
Morris, Manning and Martin, LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road, N.E.  
Atlanta, Georgia 30326-1044  
Counsel for Rialto Capital Advisors, LLC

[Signatures continue on next page]

[Signatures continued from previous page]

**City:**  
**City of Atlanta, Georgia**

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2012

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