

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “**Agreement**”), is entered into by and between Debora Liddell, Blake Liddell, and the Virginia-Highland Civic Association, Inc. (collectively, “**Plaintiffs**”), Jason King and Charles B. Cook (collectively, the “**Defendants**”), and Atain Specialty Insurance Company and Great American Insurance Company (collectively, the “**Insurers**”). The foregoing may each hereinafter be referred to individually as a “**Party**,” or Undcollectively as the “**Parties**.”

### WITNESSETH

WHEREAS: Defendants are owners of that certain parcel of real estate known as 797 Ponce de Leon Terrace, NE, Atlanta, Georgia 30306 (the “Property”). Defendants purchased the Property pursuant to a deed which incorporated, through its legal description, the subdivision plat for the Property recorded in Plat Book 166, Page 95 of the Real Estate Records of Fulton County, Georgia (the “Plat”);

WHEREAS: The Plat contains the notations “5’ Ingress Egress Easement” and “Marker Easement” (collectively, the “Easements”);

WHEREAS: A stone monument, brick wall, and certain other improvements were located on the Property as a memorial to Richard and Martha Todd – two early settlers in the Virginia-Highland area (collectively, the “Monument”);

WHEREAS: Plaintiffs Debora Liddell and Blake Liddell are descendants of Richard and Martha Todd;

WHEREAS: Plaintiff Virginia-Highland Civic Association, Inc. is a neighborhood civic association organized for the benefit of the Virginia-Highland neighborhood;

WHEREAS: Plaintiffs commenced Debora Liddell, Blake Liddell, and Virginia-Highland Civic Association, Inc. v. Jason King and Charles B. Cook, in the Superior Court of Fulton County, Georgia, Civil Action File No. 2016CV279090 (the “Lawsuit”), alleging, *inter alia*, that the removal of the Monument from the Property and the construction of a gate and fence on the Property violated the Easements and violated rights and interests they held in the Property;

WHEREAS: Defendants filed an answer in the Lawsuit and asserted counterclaims against Plaintiffs, and also contested the validity of the Easements and sought to quiet their title to the Property relating to the Easements, Plat, and Monument;

WHEREAS: Plaintiff Virginia-Highland Civic Association, Inc. made claims to the Insurers contending they were owed coverage based upon Defendants’ counterclaims;

WHEREAS: The Parties desire to fully and finally compromise, settle, and resolve the Lawsuit and any and all other claims, disputes, or controversies between the Parties relating to

the Plat, the Easements, and the Monument, whether or not such claims, if any, were asserted in the Lawsuit.

NOW THEREFORE, in consideration of the mutual promises, terms, obligations and agreements set forth herein, and for other good and valuable consideration, the Parties hereby agree to compromise, settle, and resolve the Lawsuit and any and all other claims, disputes, or controversies between the Parties relating to the Easements and the Monument upon the terms, conditions, promises and agreements set forth below:

### **1. Payment of Settlement Funds.**

Within seven (7) days from the full execution of this Agreement, Atain Specialty Insurance Company shall tender a check in the amount of \$2,500.00 to counsel for Plaintiffs, and Great American Insurance Company shall tender a check in the amount of \$2,500.00 to counsel for Plaintiffs. Both checks shall be made out to “Green, Sapp & Moriarty, LLP.”

Within seven (7) days from the full execution of this Agreement, Defendants shall tender a check in the amount of \$25,000.00 to counsel for Plaintiffs, made out to “Green, Sapp, & Moriarty, LLP.” It is acknowledged by the Parties that the above settlement funds may be used by Plaintiffs for, *inter alia*, “re-construction of the Monument on property located off and separate from the Property, reimbursement of Plaintiffs' legal expenses related to the Lawsuit, as well as application for and construction of a Georgia Historical Society historical marker or other sign for the Property as set forth below in Section 3.

### **2. Filing of Joint Motion to Cancel Easements.**

Immediately following the full execution of this Agreement, Plaintiffs shall each individually properly execute their respective quitclaim deed in the form attached hereto as Exhibit A, and such properly executed quitclaim deeds shall be delivered to counsel for Defendants. Counsel for Defendants shall record such properly executed quitclaim deeds in the Real Estate Records of Fulton County, Georgia.

Immediately following the full execution of this Agreement, Plaintiffs and Defendants shall each individually properly execute the Historical Sign Easement (attached hereto as Exhibit B) establishing Plaintiffs’ right to permanently place a sign on the Property as set forth below in Section 3. Counsel for Defendants shall record such properly executed Historical Sign Easement at the same time it files the above-referenced quitclaim deeds in the Real Estate Records of Fulton County, Georgia.

Following the receipt of the properly executed quitclaim deeds and Historical Sign Easement, Plaintiffs and Defendants shall jointly file the *Consent Motion to Cancel Easements pursuant to O.C.G.A. § 23-3-40* in the form attached hereto as Exhibit C.

The Plaintiffs and Defendants acknowledge that the purpose and intent of the foregoing paragraphs is to fully cancel and extinguish the Easements as set forth in the Plat and any other easements or interests in the Property associated with the Monument or related to Plaintiffs’ claims and allegations regarding the Property as set forth in the Lawsuit, except for the Historical Sign Easement. Plaintiffs and Defendants agree to fully cooperate in achieving such cancellation

and to undertake any and all further and future actions reasonably necessary to achieve such cancellation.

In executing this Agreement, Plaintiffs hereby expressly warrant that they have not transferred or assigned any right, interest, or purported right or interest in the Property or the Easements to any other individual or entity.

### **3. Application for Georgia Historical Society Marker.**

Plaintiffs and Defendants agree that Plaintiffs may apply to the Georgia Historical Society for the installation of a Georgia historical marker on the Property relating to the Todd family heritage, provided that: 1) the historical marker's sole reference to a cemetery or burial ground shall be "The family cemetery was located near this area, while the original home stood near what became Greenwood Avenue."; 2) except for the preceding language in subpart 1, in no event shall the historical marker state or imply that a cemetery, bodies, graves, or human remains currently exist on the Property; and 3) the historical marker shall be located in the northeast corner of the Property, not more than 3 and ½ feet from the presently existing curb, or from any sidewalk that is built in front of the Property in the future. Plaintiffs and Defendants agree to fully cooperate in applying for the Georgia historical marker from the Georgia Historical Society and to undertake any and all further actions reasonably necessary for such application. Plaintiffs and Defendants agree that Plaintiff Virginia-Highland Civic Association shall be the co-sponsor or sponsor of such an application.

Plaintiffs and Defendants agree that if the marker application is denied by the Georgia Historical Society, Plaintiffs may apply for the installation of a substantially similar sign, subject to the foregoing conditions and language and location restrictions, through the City of Atlanta.

### **4. Dismissals with Prejudice.**

Following entry of the order granting the *Consent Motion to Cancel Easements pursuant to O.C.G.A. § 23-3-40* set forth in Paragraph 2 above, Plaintiffs and Defendants shall file a joint dismissal with prejudice to dismiss their claims and counterclaims in the Lawsuit.

### **5. Mutual Release.**

Effective upon the full execution of this Agreement, Defendants, on behalf of themselves and their heirs, agents, past and present officers and directors, representatives, attorneys and assigns hereby irrevocably and unconditionally release, remise, acquit, satisfy, and forever discharge Plaintiffs, the Insurers, and each of their respective heirs, agents, past and present officers and directors, representatives, attorneys and assigns from any and all complaints, claims, counterclaims, controversies, damages, actions, causes of action, suits, rights, liens, demands, charges, costs, losses, debts, sums of money, and expenses (including attorneys' fees and costs incurred) and liabilities, obligations, promises, covenants, and agreements whatsoever, in law or in equity, through the date of this Agreement, whether such claims are known or unknown, suspected or unsuspected, asserted or unasserted, direct or indirect.

Effective upon the full execution of this Agreement, Plaintiffs, on behalf of themselves and their heirs, agents, past and present officers and directors, representatives, attorneys and assigns hereby irrevocably and unconditionally release, remise, acquit, satisfy, and forever discharge Defendants, the Insurers, and each of their respective heirs, agents, past and present officers and directors, representatives, attorneys and assigns from any and all complaints, claims, counterclaims, controversies, damages, actions, causes of action, suits, rights, liens, demands, charges, costs, losses, debts, sums of money, and expenses (including attorneys' fees and costs incurred) and liabilities, obligations, promises, covenants, and agreements whatsoever, in law or in equity, through the date of this Agreement, whether such claims are known or unknown, suspected or unsuspected, asserted or unasserted, direct or indirect.

Effective upon the full execution of this Agreement, Great American Insurance Company, on behalf of themselves and their heirs, agents, past and present officers and directors, representatives, attorneys and assigns hereby irrevocably and unconditionally release, remise, acquit, satisfy, and forever discharge Defendants, Plaintiffs, Atain Specialty Insurance Company, and each of their respective heirs, agents, past and present officers and directors, representatives, attorneys and assigns from any and all complaints, claims, counterclaims, controversies, damages, actions, causes of action, suits, rights, liens, demands, charges, costs, losses, debts, sums of money, and expenses (including attorneys' fees and costs incurred) and liabilities, obligations, promises, covenants, and agreements whatsoever, in law or in equity, through the date of this Agreement, and which arise out of and/or are related to the Plat, Easements, Monuments, and/or Lawsuit, whether such claims are known or unknown, suspected or unsuspected, asserted or unasserted, direct or indirect.

Effective upon the full execution of this Agreement, Atain Specialty Insurance Company, on behalf of themselves and their heirs, agents, past and present officers and directors, representatives, attorneys and assigns hereby irrevocably and unconditionally release, remise, acquit, satisfy, and forever discharge Defendants, Plaintiffs, Great American Insurance Company, and each of their respective heirs, agents, past and present officers and directors, representatives, attorneys and assigns from any and all complaints, claims, counterclaims, controversies, damages, actions, causes of action, suits, rights, liens, demands, charges, costs, losses, debts, sums of money, and expenses (including attorneys' fees and costs incurred) and liabilities, obligations, promises, covenants, and agreements whatsoever, in law or in equity, through the date of this Agreement, and which arise out of and/or are related to the Plat, Easements, Monuments, and/or Lawsuit, whether such claims are known or unknown, suspected or unsuspected, asserted or unasserted, direct or indirect.

The foregoing releases shall not prejudice or affect the ability of the Parties to enforce this Agreement or any obligation or duty arising out of this Agreement.

## **6. Non-disparagement.**

Plaintiffs and Defendants expressly agree and covenant that they will not at any time following the execution of this Agreement make any verbal, written, or electronic derogatory, disparaging, or damaging statements or communication to any third party (including, but not limited to, a government entity or representative, or a representative of the media) which relate to

or which are injurious to the other Party; provided, however, that nothing herein shall be construed to prohibit any Party from providing truthful responses in any proceeding in which it is required to do so by law.

## **7. No Admission of Liability.**

The Parties acknowledge that this Agreement is being entered into as a compromise and final settlement of disputed claims, and is not to be construed as an admission of liability or wrongful activity by any Party.

## **8. Miscellaneous.**

a. Reliance. Each of the Parties represents and acknowledges that in executing this Agreement such Party does not rely and has not relied upon any representation or statement not set forth herein with regard to the subject matter, basis, or effect of this Agreement.

b. Successors and Assigns. This Agreement shall be binding upon the Parties and their respective personnel and legal representatives, agents, employees, transferees, owners, partners, officers and directors, assistants, attorneys, agents, affiliates, successors, and assigns.

c. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall, nevertheless, continue in full force without being impaired or invalidated in any way.

d. Waiver of Breach. Failure or delay of any Party herein to insist upon compliance with any provision hereof shall not operate as, and is not to be construed as, a waiver or amendment of such provision or the right of the aggrieved Party to insist upon compliance with such provision or to take remedial steps to recover damages or other relief for noncompliance. Any express waiver of any provision of this Agreement shall not operate, and is not to be construed as, a waiver of any subsequent breach, whether occurring under similar or dissimilar circumstances.

e. Entire Agreement. This Agreement supersedes all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements between the Parties with respect to the claims hereunder. Each Party herein acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party herein, or by anyone acting on behalf of any such Party, that are not embodied in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, and signed by each Party.

f. Governing Law. This Agreement, and any other claim or cause of action arising out of the relationship between the Parties (including, but not limited to, causes of action sounding in tort), shall be governed, enforced, and construed in accordance with the laws of the State of Georgia.

g. Presumption. This Agreement or any section thereof shall not be construed against any Party due to the fact that said Agreement or any section thereof was drafted by such Party.

h. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument. The Parties further agree that faxed signatures and signatures transmitted via email are acceptable as original signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal.

*<SIX SIGNATURE PAGES FOLLOW>*