

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DEBORA LIDDELL, BLAKE LIDDELL :
and VIRGINIA-HIGHLAND CIVIC :
ASSOCIATION, INC., :
: FILE NO. 2016CV279090
: _____
Plaintiffs, :
v. :
: :
: :
JASON KING and CHARLES B. COOK, :
JR., :
: :
Defendants, :
: _____
:

**VERIFIED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF, INCLUDING
PRELIMINARY INJUNCTION**

Debora Liddell, Blake Liddell, and Virginia-Highland Civic Association, Inc. file this complaint to restore an historic landmark and family-gravesite memorial on the property of Defendants Jason King and Charles B. Cook, Jr. Defendants' property contains a 10 foot by 10 foot "Marker Easement"—a stone monument enclosed by a low brick wall and gated wrought-iron fence—commemorating the gravesite of Virginia-Highland's first settlers, Richard and Martha Todd ("the Todd Cemetery Memorial"). Although Defendants knew that the Marker Easement protected the landmark—and agreed to allow the public to visit the memorial in a mid-December 2015 settlement agreement—Defendants hired a contractor in late-December 2015 to destroy and remove the monument from their property. Plaintiffs seek a preliminary injunction to preserve any remnants of the memorial, damages to rebuild the memorial, and a permanent injunction protecting the historic landmark for future generations.

PARTIES AND JURISDICTION

1. Virginia-Highland Civic Association, Inc. ("VHCA") is a volunteer-led Georgia non-profit organization tasked with maintaining and improving Atlanta's Virginia-Highland

neighborhood by, among other things, ensuring that the neighborhood's historic landmarks are documented, protected and accessible to the public.

2. Since at least the 1980s, the VHCA has played an active role in ensuring that the Todd Cemetery Memorial is open and accessible to the public, and has educated its members (all Virginia-Highland residents are automatically members) about the historical significance of the memorial. Throughout the years, many VHCA members have visited the Todd Cemetery Memorial.

3. Debora Liddell is a great-great-great granddaughter of Richard and Martha Todd (her grandparents were Richard and Martha Todd's great grandchildren). She is a resident of Iowa City, Iowa. Last year, Ms. Liddell attempted to visit the Todd Memorial, but could not enter Defendants' property because it was blocked by a newly-built fence and gate across the easement.

4. Blake Liddell is a great-great-great-great grandson of Richard and Martha Todd. He is a resident of Acworth, Georgia.

5. Defendants Jason King and Charles Brian Cook, Jr. own and reside at 797 Ponce de Leon Terrace, Atlanta, Fulton County, Georgia.

6. This Court has subject-matter jurisdiction over Plaintiffs' claims for money damages and equitable relief under OCGA § 15-6-8.

7. This Court has personal jurisdiction over Defendants, who are both Fulton County residents.

BACKGROUND

8. Richard and Martha Todd settled in the area now known as Virginia-Highland in 1822, occupying a 202½ acre rectangular tract sandwiched between present-day North Avenue to the south and Adair Avenue to the north.

9. Richard bought the land from William Zachry, who acquired the land formerly occupied by the Creek Indian Nation through Georgia's Land Lottery of 1821.

10. After Richard and Martha died in 1851 and 1896 respectively, the two were buried in the family cemetery located near the rear of their home.

11. The family cemetery was located on Defendants' present-day property.

12. In 1925, the Todds' son John C. Todd established by deed in his will a 55 foot by 110 foot tract containing the graves as a family cemetery.

13. John C. Todd's will further provided that the estate would purchase a marker to identify the graves of his parents, Richard and Martha.

14. In 1932, John's daughter, Emma May Todd Liddell, deeded the cemetery to the City of Atlanta. The City agreed to convert the surrounding area into a park and preserve the cemetery.

15. The entire tract was thereafter known as Todd Park.

16. Against Mrs. Liddell's wishes, the City returned Todd Park to her in 1949.

17. In 1955, the Liddell family deeded Todd Park to A.R. Alley with the understanding that Alley would obtain a disinterment permit from the City of Atlanta to remove and relocate the bodies.

18. Alley is believed to have obtained the permit, but it is unclear whether he ever paid to have the bodies removed. An investigation by Georgia Vault Service in the late-1980s identified 11 potential gravesites, but was unable to determine whether the bodies had been removed, and explained that in any event, because of the primitive methods use to inter bodies at the time the Todds died, "removing" the graves is a legal fiction.

19. No records have been found at any cemetery in the Atlanta area recording the transfer of the remains of Richard or Martha Todd—or any of the other relatives buried in the family cemetery.

20. In 1984, Alley’s sole heir deeded Todd Park to real-estate developer Sam Dickson.

21. In 1989, Dickson petitioned Fulton County Superior Court to “relocate” all graves on the property to a 10 foot by 10 foot parcel located at 797 Ponce de Leon Terrace, and to place the late 1920s marker identifying Richard and Martha Todd on the memorial. (*See* Petition, attached as Exhibit A).

22. Dickson further petitioned for the 10 foot by 10 foot parcel to be surrounded by a brick enclosure and a gated wrought iron fence “to provide access to the site.”

23. Finally, Dickson petitioned for a 5-foot wide “perpetual” easement of ingress and egress, “providing access to family members and the public to the enclosed site.”

24. Based on Dickson’s promise to create the 10 foot by 10 foot memorial easement and accompanying easement of ingress and egress, John C. Todd’s four living grandchildren agreed to Dickson’s petition proposals. (*See* Consent Judgments, attached as Exhibit B).

25. On July 3, 1989, Fulton County Superior Court judge Edward Johnson granted Dickson’s petition. (*See* Order, attached as Exhibit C).

26. After the Order was issued, Dickson divided Todd Park into two tracts: Lot A and Lot B. Lot B became 797 Ponce de Leon Terrace.

27. On April 20, 1990, Dickson recorded the “Marker Easement” and the “Ingress-Egress Easement” on a plat filed in Book 166, Page 95 of the Fulton County plat and survey records. (*See* Plat, attached as Exhibit D). Both easements are located in Lot B, 797 Ponce de Leon Terrace. The Plat reads: “this Plat was made from the actual survey and dedicates to the need of the

public forever all . . . easements and public places thereon shown for the purposes and considerations thereon expressed.”

28. In 1992, Dickson sold 797 Ponce de Leon Terrace to Jane Goodwin, who immediately sold the property to In Town Enterprises, Inc.

29. The warranty deeds from the 1992 sales both identify the property being sold as “Lot B of Todd Park” as per the plat “recorded in Plat Book 166, Page 95, Fulton County, Georgia”—the same plat containing the recorded “Marker Easement” and “Ingress-Egress Easement.” (*See* 1992 Warranty Deeds, attached as Exhibit E and F).

30. In 1993, In Town Enterprises, Inc. sold the property to Holland Construction, Inc.

31. The 1993 Warranty Deed identifies the property being sold as Lot B of Todd Park, as “recorded in Plat Book 166, Page 95, Fulton County, Georgia.” (*See* 1993 Warranty Deed, attached as Exhibit G).

32. In 1994, Holland Construction, Inc. sold the property to Joseph Trachtenberg and Wendy Silver.

33. The 1994 Warranty Deed likewise identifies the property being sold as Lot B in Plat Book 166, Page 95. (*See* 1994 Warranty Deed, attached as Exhibit H).

34. On July 7, 2014, Trachtenberg and Silver sold 797 Ponce de Leon Terrace to the Defendants.

35. The 2014 Limited Warranty Deed once again identifies the land being sold as Lot B of the Todd Park Subdivision, as described in the “plat recorded in Plat Book 166, Page 95, Fulton County.” (*See* 2014 Limited Warranty Deed, attached as Exhibit I).

36. The deed further provides that the plat recorded in Plat Book 166, Page 95 is “incorporated herein by reference and made a part of this description.”

37. Finally, the deed provides that it “is given subject to all easements, restrictions and encumbrances of record.”

38. In addition to the Limited Warranty Deed, Exhibit A to the Security Deed identifies the sold property as “Lot B, Todd Park Subdivision, as per plat recorded in Plat Book 166, Page 95, Fulton County.” (See Exhibit A to the Security Deed, attached as Exhibit J).

39. Both defendants initialed Exhibit A to the Security Deed.

40. At the time Defendants bought the property, a fence separated the Ingress-Egress Easement from the backyard (and the backyard’s swimming pool). The fence ran north to south on the eastern side of the property, and did not impede access to the monument.

41. After buying the property, Defendants removed the existing fence and built a fence and gate running west to east in the entrance of the backyard, which cut off access to the Ingress-Egress Easement.

42. In 2015, Plaintiff Debora Liddell and at least one Virginia-Highland citizen contacted the VHCA about the newly-built fence that cut off access to the easement.

43. Ms. Liddell is among the members of the public who were unable to visit the Todd Cemetery Memorial because of the newly-built fence.

44. Shortly thereafter, VHCA representatives visited Defendants to discuss this concern.

45. At the meeting, Defendants denied that they had any legal obligation to allow public access to the monument.

46. For the remainder of 2015, the VHCA negotiated in good faith with the Defendants in an effort to resolve this dispute without litigation.

47. In mid-December 2015, the VHCA and King orally reached a settlement agreement.

48. On December 17, 2015, the VHCA's attorney sent the following email to King memorializing the terms of the agreement: "We have a deal. The VHCA will not pursue any litigation concerning the easement in your backyard. In return, you will post a sign on your driveway fence identifying the monument, warning the public of your pool, and asking the public to only visit during daylight hours. The VHCA will design the sign at its expense, and will provide a draft of the sign for your approval before it is posted. You will also add the VHCA as an additional insured to your homeowner's policy. The VHCA will need documentation showing that is an additional insured for its records." (See December 2015 emails, attached as Exhibit K).

49. King responded that same day with the following email: "I'm writing to acknowledge receipt of your message." (Exhibit K).

50. In late-December 2015, King and Cook hired a contractor to destroy the monument and remove its remnants from the property.

51. Plaintiffs do not know whether the vault containing soil from the gravesites is still below the monuments.

52. In early-January 2016, King told the VHCA's attorney that vandals had destroyed the memorial in November 2015.

53. Vandals did not destroy the memorial in November 2015—or in December 2015.

54. After learning that Plaintiffs intended to file this lawsuit, King sent the VHCA's attorney a March 30, 2016 letter acknowledging that the parties "had reached an agreement regarding the easement," and cited the above-December 2015 emails as proof of a "written contract." (See March 2016 letter, attached as Exhibit L).

PRELIMINARY & PERMANENT INJUNCTION

55. Plaintiffs seek a preliminary injunction preventing Defendants (A) from removing any remaining parts of the memorial, (B) from altering the land where the memorial rested, and (C) from removing the vault containing soil from the Todd gravesites.

56. If such an injunction is not entered, Plaintiffs may suffer irreparable harm; from the removal of priceless remains of the memorial, from the alteration of the land that would make it impossible to construct a future memorial on the same location, and from the loss of soil from the Todd-family gravesite.

57. This potential harm substantially outweighs any harm to the Defendants. Preventing Defendants from further destroying the memorial or altering the land would be of no cost to Defendants, and since Defendants have never had a private-property interest in the land protected by the easement, they would not have any rights taken away from them. In contrast, the harms to Plaintiffs should Defendants continue to dismantle the memorial are irreversible.

58. As the attached exhibits demonstrate, Plaintiffs are substantially likely to prevail on the merits. Specifically, the exhibits show that Defendants bought 797 Ponce de Leon Terrace with notice of the easements, and agreed to respect the existence of the easement in December 2015. Nonetheless, Defendants' destroyed the memorial protected by the Marker Easement and obstructed the Ingress-Egress Easement.

59. Finally, granting the injunction would not be adverse to the public interest, as it would best preserve the public's right to view this important historical site in the future.

COUNT ONE: BREACH OF SETTLEMENT AGREEMENT

60. Plaintiffs incorporate the preceding paragraphs into Count I.

61. The VHCA and Defendants reached a binding settlement agreement in mid-December 2015 wherein the Defendants agreed to post a sign inviting the public to visit the Todd Cemetery Memorial during daylight hours.

62. Defendants breached the contract by hiring a contractor to destroy and remove the Todd Cemetery Memorial a few weeks later.

63. The VHCA is entitled to damages and specific performance—the reconstruction of the monument on Defendants’ property—for this breach.

COUNT TWO: EQUITABLE RESCISSION OF THE SETTLEMENT AGREEMENT

64. Plaintiffs incorporate the preceding paragraphs into Count II.

65. In the alternative, Defendants’ bad-faith material breach of the settlement agreement entitles the VHCA to an equitable rescission of the settlement agreement.

COUNT THREE: TORTIOUS INTERFERENCE WITH PROPERTY RIGHTS

66. Plaintiffs incorporate the preceding paragraphs into Count III.

67. By building the new fence and gate and later destroying the monument, Defendants willfully and wrongfully interfered with Plaintiffs’ right to use and enjoy the Marker Easement and the Ingress-Egress Easement.

68. Defendants’ interference with Plaintiffs’ property rights damaged Plaintiffs.

COUNT FOUR: BREACH OF EASEMENT AGREEMENT

69. Plaintiffs incorporate the preceding paragraphs into Count IV.

70. Defendants bought 797 Ponce de Leon Terrace with actual and constructive notice of the Marker Easement and the Ingress-Egress Easement.

71. By purchasing the property with notice and knowledge of the easements, Defendants agreed to honor the recorded easements.

72. Defendants' conduct constitutes a continuing interference with the Plaintiffs' rights of access to the Marker Easement. The demolition of the historic marker has resulted in a continuing breach of the Easement Agreement.

73. Plaintiffs' have no adequate remedy at law given the unique nature of the historic marker and access thereto.

74. Plaintiffs are entitled to equitable relief as prayed for below, including a decree compelling the Defendants to restore the marker and the Marker Easement to its original condition, and to the restore the fence along the Ingress-Egress Easement.

COUNT FIVE: ATTORNEY'S FEES

75. Plaintiffs incorporate the preceding paragraphs into Count V.

76. If Plaintiffs succeed on either their tortious interference with property rights claim or their breach of contract claims, they are entitled to reasonable attorney's fees upon a showing of bad faith.

COUNT SIX: PUNITIVE DAMAGES

77. Plaintiffs incorporate the preceding paragraphs into Count VI.

78. If Plaintiffs succeed on their tortious interference with property rights claim, they are entitled to punitive damages upon a showing by clear and convincing evidence that Defendants' misconduct was willful.

PERMANENT INJUNCTION

79. Finally, at the conclusion of this case, Plaintiffs seek a permanent injunction compelling the restoration of the Todd Cemetery Memorial in the material form and location of the original monument, the restoration of the fence that separated the monument from the swimming

pool, and the removal of all obstructions—including the gate blocking the driveway—to access the monument.

80. A permanent injunction is warranted because Defendants’ conduct has consistently demonstrated an intent to interfere with Plaintiffs’ rights to access and enjoy the monument, and Plaintiffs have no adequate remedy at law. The monument and the location of the monument are unique, with both historical significance to the community and personal significance to the Todd Family, including the Liddell Plaintiffs.

WHEREFORE, Plaintiffs prays that the Court:

- (a) Enter an interlocutory injunction preventing Defendants (A) from removing any remaining parts of the memorial, (B) from altering the land where the memorial rested, and (C) from removing the vault containing soil from the Todd gravesites;
- (b) Find that Defendants’ breached the settlement agreement, award money damages, and enter a decree compelling Defendants to restore the monument and the Marker Easement to its original condition;
- (c) In the alternative, equitably rescind the settlement agreement, enter judgment against Defendants on the tortious interference with property rights claim and breach of the easement agreement claim—as well as Plaintiffs’ claims for punitive damages and attorney’s fees—and enter a decree compelling Defendants to restore the monument and the Marker Easement to its original condition, and to restore the fence along the Ingress-Egress Easement;
- (d) Enter a permanent injunction compelling the restoration of the monument in material form and location of the original monument, and prohibiting Defendants from interfering with access to the Ingress-Egress Easement and the Marker Easement;

- (e) Hold a trial by twelve-member jury to determine money damages, including punitive damages;
- (f) Hold a trial by twelve-member jury to determine liability, if needed;
- (g) Award Plaintiffs' reasonable attorney's fees;
- (h) Grant such other and further relief that this Court deems just and proper.

Respectfully submitted, this 18 day of August, 2016.

GREEN, SAPP & MORIARTY, LLP


DANIEL J. MORIARTY
Georgia Bar No. 689867
Attorney for Plaintiffs

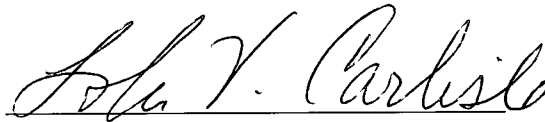
750 Hammond Drive
Building 8, Suite 200
Atlanta, Georgia 30328
770-690-8001 (Telephone)
770-690-8206 (Facsimile)
dmoriarty@greensapp.com

VERIFICATION

STATE OF GEORGIA

COUNTY OF FULTON

Personally appeared before the undersigned officer, duly authorized to administer oaths, **Lola Carlisle, a board member of Virginia-Highland Civic Association, Inc.**, who, after being duly sworn, states that the facts contained in the *Verified Complaint for Damages and Equitable Relief, Including Preliminary Injunction* are true and correct to the best of her knowledge, information and belief.

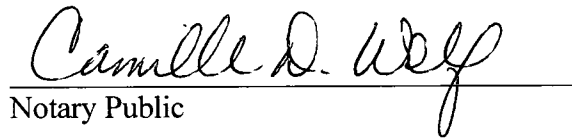


Lola Carlisle

On behalf of Virginia-Highland Civic Association, Inc.

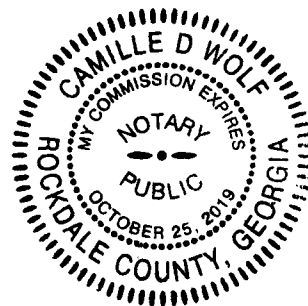
Sworn to and subscribed before me,

this 18th day of August, 2016.



Notary Public

My Commission Expires:



4/19/89

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SAM G. DICKSON,

Plaintiff,

vs.

TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,

Defendants.

CIVIL ACTION FILE

NUMBER D-64781
516-591

FILED IN OFFICE
APR 18 1989
[Signature]
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

PETITION FOR PERMIT TO REMOVE AND REINTER POSSIBLE GRAVES

COMES NOW SAM G. DICKSON, Petitioner in the above matter and
files this his petition, showing the Court as follows:

1.

This petition is brought under the provisions of Section 36-60-6 of
the Official Code of Georgia seeking a permit for the relocation of possible
gravesites located on property belonging to plaintiff and more fully
described in legal description attached hereto as Exhibit A. Jurisdiction
of this matter is vested in this Court by virtue of the provisions of
Section 36-60-6 of the Official Code of Georgia giving jurisdiction over
such action to the Superior Court of the county in which such burial
place is located.

Blumberg No. 5119
EXHIBIT
A

10018 218



2.

The defendants herein Todd Liddell, Drew Liddell, Jane Morgan Burke and Mrs. L. C. Rogers are great-grandchildren of the late John C. Todd and are believed to be the descendants of persons whose gravesites were formerly located on the property of petitioner and which may possibly still be located thereon.

3.

In addition to the named defendants above, service of this petition should be had by publication on any person unknown who is a descendant of any person unknown who was previously buried or is buried on the property of the petitioner.

4.

The late John C. Todd, who died a resident of Fulton County, Georgia in 1925, created by deed and under his will a family cemetery measuring 55 by 110 feet located on the southeast portion property belonging to the petitioner.

5.

The will of John C. Todd further provided that the estate should purchase a monument to mark the graves of his parents Richard and Martha Todd who at that time were already buried on the property along with the testator's four sisters, brother and several other relatives and friends.

6.

In 1956 the graves located on the property were relocated to Eastview Cemetery. Permits for the relocation of the only two marked graves (the graves of Richard and Martha Todd) were issued and the oldest living family member by marriage (not blood kin to anyone buried or previously buried on the premises) has given an affidavit stating that all graves on the property were moved and that there are no more graves located on the property. A copy of the affidavit is attached as Exhibit B.

7.

Petitioner has had the land probed by the Georgia Vault Service, a company specializing in the location of possible gravesites.

8.

The Georgia Vault Service has indicated that it found approximately eleven spots which could possibly have been or be graves, all of said sites being located on the portion of the property originally described as constituting the family cemetery of the Todd family.

9.

The Georgia Vault Service is unable to determine if all of the gravesites have been moved or if any of the potential gravesites discovered were previously excavated in the previous movings which took place in 1956.

10.

Petitioner believes that there are no graves located at this time on the property.

11.

The Georgia Vault Service has stated to petitioner that the removal of a grave or graves of the antiquity of those previously located or possibly still located on the property is a legal fiction, due to the method of interment used in graves of this antiquity.

12.

However, due to allegations made by persons resident in the neighborhood that there are gravesites or former gravesites which have not been moved, out of an abundance of caution before developing the property petitioner has chosen to bring this petition to the Court seeking the Court's permission to excavate any possible gravesites and to remove any such graves as may be uncovered to the locations set out herein.

13.

In accordance with requirements of Section 36-60-6 of the Official Code of Georgia petitioner has made suitable arrangements for interment pursuant to an adequate plan to ensure proper reinterment as shown below.

14.

Petitioner proposes to erect a low brick wall enclosing a ten foot by ten foot parcel of land in the southeast corner of his property. A wrought iron fence shall be erected around the top of the brick enclosure with a gate to provide access to the site. A marker which previously marked the graves of Richard and Martha Todd prior to their removal to Eastview Cemetery will be relocated back onto the ten foot by ten foot enclosure. The marker is presently located neither at the new graves of Richard and Martha Todd nor on the property and is available to be relocated on the property. Any and all graves or possible graves located on the property will be placed on a concrete vault which will be buried beneath the relocated marker bearing the names of Richard and Martha Todd. A marker will also be erected on the property identifying the remains or possible remains contained in the concrete vault as being members of the Todd family, a pioneer family of Atlanta, and possibly those of persons unknown. The marker shall identify the five great-grandchildren who were born descended from John Todd and shall also recognize those individuals who have evidenced an interest in maintaining a memory of the significance of the site.

15.

The interment of the concrete vault will be accompanied by an appropriate memorial service to be conducted either by the clergyman serving Rock Springs Presbyterian Church or Sardis Methodist Church, two churches associated with the memory of the Todd family, with the

descendants of John Todd to be allowed to determine which of the clergymen they desire to be allowed to conduct the service. The living members of the Todd family will be invited to attend the service which will also be open to interested members of the public. Petitioner will dedicate a five foot wide perpetual easement of ingress and egress running along the east boundary of the property providing access to family members and the public to the enclosed site.

16.

A copy of this suit after its filing is being sent by petitioner to the four living great-grandchildren of John C. Todd. The fifth great-grandchild, William Morgan, died without children in 1988. Petitioner is asking the four living great-grandchildren to consent to the plan for the disinterment and re-interment of any possible graves or gravesites located on the property. Petitioner is also asking the four great-grandchildren of John Todd to acknowledge service of this suit. If and when the consents, and/or acknowledgements of service are received, petitioner will file them with the Court. If acknowledgements of service are not received within ten days of the mailing of the petition to the great-grandchildren, petitioner will make arrangements to have them served as provided by law.

17.

All costs for the relocation of the possible gravesites as set out above shall be borne by the petitioner.

WHEREFORE, petitioner prays this Court as follows:

(a) That this Court authorize service by publication upon any persons unknown descended from persons unknown buried or previously buried on the property;

(b) That the Court issue a rule nisi setting a time and date certain for the hearing of this petition;

(c) That the Court issue an order permitting petitioner to have the property probed and any gravesites or possible gravesites excavated and relocated pursuant to the plan set out in the petition.

This ^{18th} ~~3rd~~ day of ^{April} ~~March~~, 1989.


SAM G. DICKSON, Attorney at Law

805 Church Street
Decatur, Georgia 30030
404/377-7335
Bar Number 221500

1989

Consent

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SAM G. DICKSON,
Plaintiff,

vs.

TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,

Defendants.

CIVIL ACTION FILE

NUMBER D-64781

MAY - 6 1989
[Signature]


CONSENT JUDGEMENT AS TO DEFENDANT DREW LIDDELL

The following shall be the consent judgment in the above styled
action with respect to the plaintiff and the defendant Drew Liddell:

1.

Defendant consents to the Court issuing an order permitting the
plaintiff to have the property that is the subject of this action probed
and any gravesites or potential gravesites excavated and relocated
pursuant to the plan set out fully in the petition of plaintiff.

This 24th day of APRIL, 1989.

[Signature: Drew Liddell]
DREW LIDDELL, "Defendant"


Blumberg No. 6119
EXHIBIT
B

10043 - 500

[Handwritten signature]
APR 00 1989

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

SAM G. DICKSON,

Plaintiff,

vs.

TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,

Defendants.

CIVIL ACTION FILE

NUMBER D-64781

[Handwritten signature]
APR - 0 1989


CONSENT JUDGEMENT AS TO DEFENDANT BETTIE BRINSON ROGERS

The following shall be the consent judgment in the above styled action with respect to the plaintiff and the defendant Bettie Brinson Rogers:

1.

Defendant consents to the Court issuing an order permitting the plaintiff to have the property that is the subject of this action probed and any gravesites or potential gravesites excavated and relocated pursuant to the plan set out fully in the petition of plaintiff.

This 26 day of April, 1989.

Bettie Brinson Rogers
BETTIE BRINSON ROGERS, "Defendant"
10043


Sharon...

Handwritten notes in the top left corner.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SAM G. DICKSON,
Plaintiff,

vs.

TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,

Defendants.

CIVIL ACTION FILE

NUMBER

D-64781

Handwritten signature and date stamp: APR - 8 1989

CONSENT JUDGEMENT AS TO DEFENDANT TODD LIDDELL

The following shall be the consent judgment in the above styled
action with respect to the plaintiff and the defendant Todd Liddell:

1.

Defendant consents to the Court issuing an order permitting the
plaintiff to have the property that is the subject of this action probed
and any gravesites or potential gravesites excavated and relocated
pursuant to the plan set out fully in the petition of plaintiff.

This 26th day of April, 1989.

BOOK 1835 PAGE 140

Todd Liddell
TODD LIDDELL, Defendant



1989

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

SAM G. DICKSON,

Plaintiff,

vs.

TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,

Defendants.

CIVIL ACTION FILE

NUMBER D-64781

APR 28 1989
JMB

CONSENT JUDGEMENT AS TO DEFENDANT JANE MORGAN BURKE

The following shall be the consent judgment in the above styled
action with respect to the plaintiff and the defendant Jane Morgan Burke:

1.

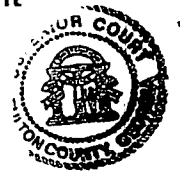
Defendant consents to the Court issuing an order permitting the
plaintiff to have the property that is the subject of this action probed
and any gravesites or potential gravesites excavated and relocated
pursuant to the plan set out fully in the petition of plaintiff.

This 27th day of April, 1989.

BOOK 1885 PAGE 141

Jane Morgan Burke
JANE MORGAN BURKE, "Defendant"

Christopher



AM
1989

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SAM G. DICKSON, :
Plaintiff :
vs. :
TODD, LIDDELL, DREW LIDDELL, :
JANE MORGAN BURKE and :
BETTIE BRINSON ROGERS :
and all unknown persons who :
are descended from any :
deceased person interred :
in the Todd family cemetery, :
located or previously :
located in Land Lot 17 of :
the 14th District of Fulton :
County, Georgia, :
Defendants :

CIVIL ACTION FILE
NUMBER D-64781

ED IN JE
JUN 25 1989
DEPUTY CLERK
FULTON COUNTY

ORDER

The foregoing petition came on for hearing before the Court on the 26th day of June, 1989.

It appearing that the named defendants, being the descendants of the Todd family, have consented to the granting of the petition and that no person unknown descended from any person previously or presently interred on the premises has objected to the granting of the petition, the petition is hereby granted.

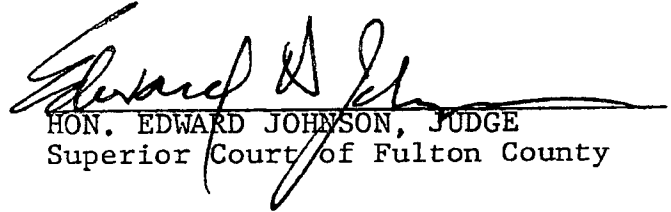
Permission is hereby granted to petitioner to have the property probed and any graves or possible graves removed and reinterred according to the plan set out in the petition.

Blumberg No. 5119
EXHIBIT
C

BOOK 1820



SO ORDERED this ^{3d} ~~26th~~ day of ^{July} ~~June~~, 1989.


HON. EDWARD JOHNSON, JUDGE
Superior Court of Fulton County

NOTE: THIS PROPERTY IS NOT LOCATED INSIDE A DESIGNATED E.I.A. BLOOD HAZARD AREA.

Engineers or surveyors acknowledge: "It is hereby certified that this plat is true and correct and was prepared from an actual survey of the property made under my supervision. By David J. Gaddy Registered C.E. No. 1304 Registered Georgia Land Surveyor's No. 1304 Date: April 9, 1990

Owner's Acknowledgments: "State of Georgia (City of Atlanta) The owner of the land shown on this plat and whose name is subscribed therein, and in person or through a duly authorized agent, acknowledges that this plat was made from an actual survey and dedicates to the use of the public forever, all streets, parks, drains, easements and public places thereon shown for the purposes and considerations therein stated this 6th day of April, 1990. Owner: Sam G. Dickson

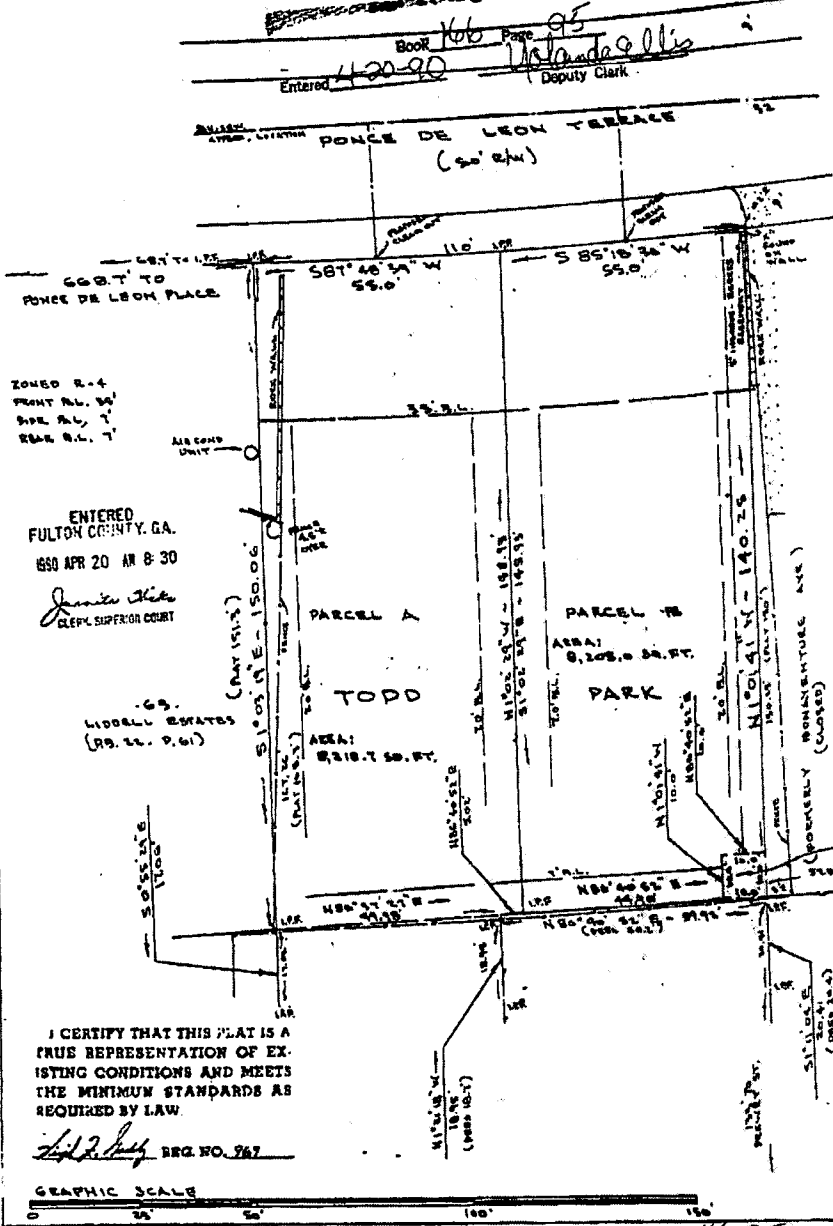
Drainage Statement: Storm drains shown on this plan is necessary for proper drainage of the subdivision. The City of Atlanta will not be held responsible for erosion or overflow caused by the storm drain or natural drainage unless they are responsible for extensions of storm drains.

NOTE: 62' LOT FRONTAGE AND LOT AREA REDUCTION APPROVED 11-3-89 V-89-185

This subdivision development plan is approved subject to the owner and/or developer providing the following improvements approved by the Commissioner of Public Works:
1. Sanitary Sewer
2. Street Improvements including curb, gutter, and paving.
3. Drainage and storm water sewers, catch basins, and other drainage facilities deemed necessary.
4. Sidewalks
These conditions are a part of the approval of this development. This is the 18th day of April, 1990. David J. Gaddy Commissioner of Public Works

BUREAU OF PLANNING Approved by William J. Kennedy April 19, 1990

SURVEY FOR SAM G. DICKSON LAND LOT 17 - 14TH. DISTRICT FULTON COUNTY, GEORGIA CITY OF ATLANTA SENSE: UPPATE: APRIL 6, 1990 DATE: APRIL 18, 1990 SCALE: 1" = 20' JOB NO. 840440 PLAN BEARING OF COURSE 117.1481 SURVEYED BY VIRGIL F. GADDY & ASSOCIATES 1544 CLAIRBROOK AVE. DECATUR, GA. 30030 678-6284



ENTERED FULTON COUNTY, GA. 1990 APR 20 AM 8:30 Janice Hicks CLERK SUPERIOR COURT

69. LIDDELL ESTATES (RS. 22. P. 61)

I CERTIFY THAT THIS PLAT IS A TRUE REPRESENTATION OF EXISTING CONDITIONS AND MEETS THE MINIMUM STANDARDS AS REQUIRED BY LAW.

David J. Gaddy REG. NO. 1304



Blumberg No. 5119 EXHIBIT D



Lawyers Title Insurance Corporation

DECATUR BRANCH OFFICE

WARRANTY DEED

STATE OF GEORGIA COUNTY OF COBB

THIS INDENTURE, Made the _____ day of November, in the year one thousand nine hundred ninety-two, between

SAM G. DICKSON

of the County of Fulton, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and

JANE F. GOODWIN A/K/A JANE FEMMICK GOODWIN as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of Ten dollars and other good and valuable consideration \$10.00 et al) DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

and exchange of property

All that tract or parcel of land lying and being in Land Lot 17 of the 14th District of Fulton County, Georgia, fronting on the south side of Ponce de Leon Terrace and being known as Lot B of Todd Park as per plat of survey for Sam G. Dickson by Virgil Gaddy and Associates, Surveyors, dated April 28, 1984, revised April 6, 1990, recorded in Plat Book 166, Page 95, Fulton County, Georgia, Records to which reference is made for a full description of said property, the same being a vacant lot.

Fulton County, Georgia
Real Estate Transfer Tax
Paid \$ 6.00
Date 11-17-92
JUANITA WICKS
Clerk, Superior Court
By: [Signature] Deputy Clerk

GEORGIA, FULTON COUNTY
FILED AND RECORDED
92 NOV 17 AM 8:30
JUANITA WICKS
CLERK, SUPERIOR COURT

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered in presence of:

[Signature] (Seal)
[Signature] (Seal)
SAM G. DICKSON (Seal)
Notary Public, Cobb County, Georgia
My Commission Expires March 2, 1993
Form 1593 (Rev. 10/88)
038-9-01C-0800



BOOK 15993 PAGE 251





Lawyers Title Insurance Corporation

DECATUR BRANCH OFFICE

WARRANTY DEED

STATE OF GEORGIA COUNTY OF COBB

THIS INDENTURE, Made the _____ day of November, in the year one thousand nine hundred ninety-two, between _____,

JANE F. GOODWIN A/K/A JANE FENWICK GOODWIN of the County of Fulton, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and

IN TOWN ENTERPRISES, INC.

as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of Ten dollars and other good and valuable consideration \$10.00 (at a) DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

All that tract or parcel of land lying and being in Land Lot 17 of the 14th District of Fulton County, Georgia, fronting on the south side of Ponce de Leon Terrace and being known as Lot B of Todd Park as per plat of survey for Sam G. Dickson by Virgil Gaddy and Associates, Surveyors, dated April 28, 1984, revised April 6, 1990, recorded in Plat Book 166, Page 95, Fulton County, Georgia, Records to which reference is made for a full description of said property, the same being a vacant lot.

Fulton County, Georgia
Real Estate Transfer Tax
Paid \$ 6.77
No. 11-17-91
JUANITA HICKS
Clerk, Superior Court
by: [Signature]
Deputy Clerk

GEORGIA, FULTON COUNTY
FILED AND RECORDED
92 NOV 17 AM 8:30
JUANITA HICKS
CLERK, SUPERIOR COURT

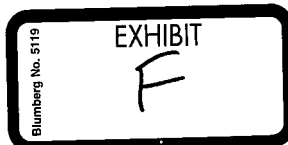
TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.
AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered in presence of:
[Signature] (Seal)
[Signature] (Seal)
[Signature] (Seal)

Form 108 (Rev. 10/85) Notary Public, Cobb County, Georgia
038 0 010 0000 My Commission Expires March 3, 1996

BOOK 15993 PAGE 252



GEORGIA, FULTON COUNTY
FILED AND RECORDED

WARRANTY DEED

93 OCT 16 AM 9:30

STATE OF Georgia
Gwinnett COUNTY CLERK, SUPERIOR COURT

THIS INDENTURE, made the 8th day of October, 1993, between

In Town Enterprises, Inc.,
hereinafter called "Grantor/s", and
Holland Construction Co., Inc.,
hereinafter called "Grantee/s" (the

words "Grantor/s" and "Grantee/s" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH: That Grantor/s, for and in consideration of The sum of Ten Dollars and no/100 (\$10.00) and other valuable considerations receipt of which is hereby acknowledged has/have granted, sold, transferred and conveyed, and by these presents does/do grant, sell, transfer and convey unto Grantee/s,

All that tract and parcel of land lying and being in Land Lot 17 of the 14th District of Fulton County, Georgia, fronting on the south side of Ponce de Leon Terrace and being know as Lot B of Todd Park as per plat of survey for Sam C. Dickson by Virgil Gaddy and Associates, Surveyors, dated April 28, 1984, revised April 6, 1990, recorded in Plat Book 166, Page 95 Fulton County, Georgia records to which reference is made for a full description of said property, the same being a vacant lot.

This conveyance is made subject to all covenants, easements and restrictions of record.

Filed in County, Georgia
Book 166 Page 95
Date: 10/14/93
PLAT BOOK 166
Page 95
Notary Public
By: [Signature]
Deputy Clerk

TO HAVE AND TO HOLD, in fee simple. And Grantor/s will warrant and forever defend the right and title to said premises unto Grantee/s against the lawful claims of all persons whomsoever.



IN WITNESS WHEREOF, Grantor/s' hand and seal have been hereunto affixed, the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]
Town Enterprises, Inc.
Title

(SEAL) Affix Corporate Seal

WITNESS
[Signature]
NOTARY PUBLIC

Notary Public, Gwinnett County, Georgia
My Commission Expires July 19, 1995



No: 2-6 / 78

BMV 173368025



WARRANTY DEED (FORM 36A)

STATE OF GEORGIA

DEKALB

County

THIS INDENTURE, made the 15th day of April, in the year one thousand nine hundred NINETY FOUR, between Holland Construction Co., Inc.

of the County of Fulton, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and Joseph S. Trachtenberg and Wendy I. Silver

as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH: That Grantor for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid at and before the sealing and delivery of these presents, the receipts whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

All that tract or parcel of land lying and being in Land Lot 17, 14th District, Fulton County, Georgia, being Lot B, Todd Park, as per plat recorded in Flat Book 166, Page 95, Fulton County Records, which plat is hereby referred to and made a part of this description, being property known as 797 Ronce De Leon Trace according to the present system of numbering houses in said county, as more particularly shown on that certain plat of survey prepared by Georgia Land Surveying Co., Inc., dated April 8, 1994.

Fulton County, Georgia
Kodak Super 8mm 135
Roll # 24510
Date 8-2-94
KIANITA HICKS
Clerk, Superior Court
By: [Signature]
Deputy Clerk

GEORGIA, FULTON COUNTY
FILED AND RECORDED
94 MAY -2 AM 8:30
JUANITA HICKS
CLERK, SUPERIOR COURT

THIS CONVEYANCE is made subject to all zoning ordinances, easements and restrictions of record affecting said described property.

TO HAVE AND TO HOLD the said described property, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the said described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered in the presence of:

BOOK 18260 PAGE 124

CORP. SEAL

[Signature]
Witness
[Signature]
Notary Public
My commission expires:

Holland Construction Co., Inc. (Seal)
By: [Signature] (Seal)

Blumberg No. 5119
EXHIBIT
H

Deed Book 53984 Pg 302
Filed and Recorded Jul-11-2014 08:30am
2014-0211604
Real Estate Transfer Tax \$824.00
Cathlene Robinson
Clerk of Superior Court
Fulton County, Georgia

Return to:
NEEL ROBINSON & STAFFORD, LLC
5555 GLENRIDGE CONNECTOR, SUITE 400
ATLANTA, GA 30342

File No.: 1405810B

STATE OF GEORGIA
COUNTY OF FULTON

LIMITED WARRANTY DEED

THIS INDENTURE, made on 7th day of July, 2014, between
JOSEPH S. TRACHTENBERG and WENDY I. SILVER

(hereinafter referred to as "Grantors") and

CHARLES B. COOK, JR. and JASON A. KING

AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP

(hereinafter referred to as "Grantees"), the words "Grantors" and "Grantees" to include the heirs, executors, legal representatives, successors and assigns of said parties where the context requires or permits;

WITNESSETH:

THAT Grantors, for and in consideration of the sum of TEN DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATIONS, in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged by Grantors, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto Grantees,

All that tract or parcel of land lying and being in Land Lot 17 of the 14th District, Fulton County, Georgia, being Lot B, Todd Park Subdivision, as per plat recorded in Plat Book 166, Page 95, Fulton County, Georgia Records, which plat is incorporated herein by reference and made a part of this description. Said property being known as 797 PONCE DE LEON TERRACE, NE according to the present system of numbering property in Fulton County, Georgia.

This Deed is given subject to all easements, restrictions and encumbrances of record.

TOGETHER WITH all and singular the rights, members and appurtenances thereto, to the same being, belonging, or in anywise appertaining (hereinafter collectively referred to as the "Premises").

TO HAVE AND TO HOLD the Premises, to the only proper use, benefit and behoof of Grantee, forever, in FEE SIMPLE, and Grantor will warrant and forever defend the right and title to the Premises unto Grantee against the claims of all person claiming by, through or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed this instrument under seal.

Signed, sealed and delivered in the presence of:

Unofficial Witness [Signature]
Notary Public [Signature]
JOSEPH S. TRACHTENBERG (Seal)
WENDY I. SILVER (Seal)

My Commission expires:

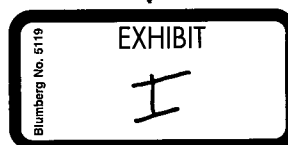
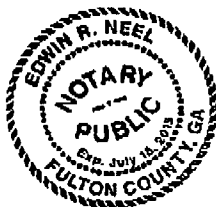
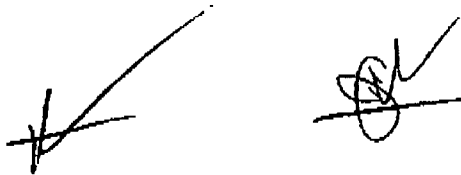


EXHIBIT "A"

LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 17 of the 14th District, Fulton County, Georgia, being Lot B, Todd Park Subdivision, as per plat recorded in Plat Book 166, Page 95, Fulton County, Georgia Records, which plat is incorporated herein by reference and made a part of this description. Said property being known as 797 PONCE DE LEON TERRACE, NE according to the present system of numbering property in Fulton County, Georgia.

Two handwritten signatures or initials in black ink, one on the left and one on the right, positioned below the legal description.

Daniel Moriarty

From: Jason King <jking575@gmail.com>
Sent: Thursday, December 17, 2015 9:26 PM
To: Daniel Moriarty
Subject: Re: Agreement

Daniel,

I'm writing to acknowledge receipt of your message.

Jason King
Sent from my iPhone

> On Dec 16, 2015, at 3:35 PM, Daniel Moriarty <dmoriarty@greensapp.com> wrote:

>

> Jason,

>

> We have a deal. The VHCA will not pursue any litigation concerning the easement in your backyard. In return, you will post a sign on your driveway fence identifying the monument, warning the public of your pool, and asking the public to only visit during daylight hours. The VHCA will design the sign at its expense, and will provide a draft of the sign for your approval before it is posted. You will also add the VHCA as an additional insured to your homeowner's policy. The VHCA will need documentation showing that is an additional insured for its records.

>

> I'm glad we were able to resolve this without litigation. Let me know if you have questions. I'll be in touch after the holidays with a rough draft of the sign.

>

> Best regards,

> Dan



Jason A. King
797 Ponce de Leon Terrace
Atlanta, Georgia 30306
Telephone: (678) 641-6204
Email: jking575@gmail.com

March 30, 2016

Daniel J. Moriarty, Attorney at Law
Green & Sapp, LLP
750 Hammond Dr., Building 8
Atlanta, GA 30328

Dear Mr. Moriarty:

I am writing to acknowledge receipt of your letter dated March 29, 2016, and the attached complaint regarding the easement that the Virginia Highland Civic Association (VHCA) claims provides for ingress and egress to the southwest corner of my residential property located at 797 Ponce de Leon Terrace. In this correspondence you indicate that the VHCA is prepared to file the enclosed lawsuit against me in relation to this matter.

I am surprised to receive this threat of a lawsuit regarding the easement on my property, because you and the VHCA are well aware that we have already previously reached an agreement regarding the easement in November 2015. As a reminder, pasted below is a copy of your e-mail to me dated 12/16/15 and my return e-mail to you on 12/17/15.

Jason King <jking575@gmail.com>

12/17/15

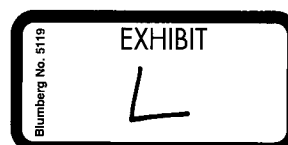
■
Daniel |
■
me

Daniel,

I'm writing to acknowledge receipt of your message.

Jason King
Sent from my iPhone

> On Dec 16, 2015, at 3:35 PM, Daniel Moriarty <dmoriarty@greensapp.com> wrote:
>
> Jason,
>



VHCA re: my home
March 30, 2016
Page 2

> We have a deal. The VHCA will not pursue any litigation concerning the easement in your backyard. In return, you will post a sign on your driveway fence identifying the monument, warning the public of your pool, and asking the public to only visit during daylight hours. The VHCA will design the sign at its expense, and will provide a draft of the sign for your approval before it is posted. You will also add the VHCA as an additional insured to your homeowner's policy. The VHCA will need documentation showing that is an additional insured for its records.

>

> I'm glad we were able to resolve this without litigation. Let me know if you have questions. I'll be in touch after the holidays with a rough draft of the sign.

>

> Best regards,

> Dan

As you can see, this agreement specifies that "*The VHCA will not pursue any litigation concerning the easement in your backyard*" [emphasis added] in return for me posting a sign designed by the VHCA and adding the VHCA as an additional insured to my homeowner's policy. Please find attached with this letter a copy of my homeowner's insurance policy which documents that I have added the VHCA added as an additional insured entity. To date, I have not received the sign that was to be provided by the VHCA.

This agreement constitutes a written contract, which prohibits the VHCA from filing a lawsuit against me regarding the easement in my backyard. I have fulfilled my end of the agreement and I expect the VHCA to fulfill its obligations under this written contract. If the VHCA unilaterally fails to comply with this agreement, this represents a breach of contract. If necessary, I am prepared to enforce this written contract in court.

Sincerely,



Jason A. King
Owner