01-R-1636

A RESOLUTION

BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT AGREEMENT IN SETTLEMENT OF ALL CLAIMS RESULTING FROM THE CASE OF WIEUCA TRACE HOMEOWNERS ASSOCIATION V. BETANCOURT CONSTRUCTION, L.L.C., CITY OF ATLANTA, ET AL. SUPERIOR COURT OF FULTON COUNTY; CIVIL ACTION FILE NO. 1999CV07862; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta, Georgia ("City") is a defendant in the lawsuit known as Wieuca Trace Homeowners Association, Ltd. v. Betancourt Construction, L.L.C.; Neiman D. Cohen; Bethann Kushner; Dorothy C. Phillips; Rivercrest Homes, Inc.; Jim Newman; Independent Bank and Trust Company; Stephen J. Brown; John Does 1 through 50; Jack Jones 1 through 50; Arthur Ferdinand, not in his individual capacity but in his capacity as Tax Commissioner of Fulton County, Georgia and ex-officio Tax Collector for the City of Atlanta; City of Atlanta, Georgia; Charles Jabaley, Jr.; Jackie Barrett, not in her individual capacity but in her capacity as Sheriff of Fulton County, Georgia; and That Parcel of Land Lying and Being in Land Lot 64 of the 17th District of Fulton County, Georgia, Civil Action File No. 1999CV07862, pending in the Superior Court of Fulton County, State of Georgia ("Action"); and

WHEREAS, the Action was brought by the Wieuca Trace Homeowners Association, Ltd. ("Wieuca") to resolve alleged problems with the City and others regarding the ownership by Wieuca of that certain private road, located in that certain subdivision located in Land Lot 64 of the 17th District of Fulton County, Georgia in the City of Atlanta, Georgia known as Wieuca Trace Subdivision ("Subdivision"), such road being known as Wieuca Trace, parcel number 17-64-00039 ("Road") and the ownership by Wieuca of that certain private water and sewer system servicing the Subdivision; and

WHEREAS, Wieuca and the City desire to compromise and settle all claims which have been asserted between Wieuca and the City in the Action by entering into a Settlement Agreement and Mutual Release ("Agreement"), a copy of which is attached as Exhibit "A"; and

WHEREAS, the City Attorney has determined that it is desirable and in the best interests of the City for the City to execute the Agreement in compromise of all claims that have been asserted in this Action;

BE IT HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA that the Mayor is authorized to execute, on behalf of the City, the Agreement attached as Exhibit "A" in order to compromise and settle all claims that have been asserted between Wieuca and the City in the Action.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA that the Agreement will not become binding on the City until it has been executed by Wieuca, approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk, delivered to Wieuca and the City has received from Wieuca a Dismissal of the Action with Prejudice filed with the Fulton County Superior Court Clerk.

EXHIBIT A

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into as of this _____ day of _____, 2001, between Wieuca Trace Homeowners Association, Ltd. ("Wieuca") and the City of Atlanta, Georgia ("City").

BACKGROUND:

Wieuca and the City are parties to the lawsuit known as Wieuca Trace Homeowners Association, Ltd. v. Betancourt Construction, L.L.C.; Neiman D. Cohen; Bethann Kushner; Dorothy C. Phillips; Rivercrest Homes, Inc.; Jim Newman; Independent Bank and Trust Company; Stephen J. Brown; John Does 1 through 50; Jack Jones 1 through 50; Arthur Ferdinand, not in his individual capacity but in his capacity as Tax Commissioner of Fulton County, Georgia and ex-officio Tax Collector for the City of Atlanta; City of Atlanta, Georgia; Charles Jabaley, Jr.; Jackie Barrett, not in her individual capacity but in her capacity as Sheriff of Fulton County, Georgia; and That Parcel of Land Lying and Being in Land Lot 64 of the 17th District of Fulton County, Georgia; Civil Action File No. 1999CV07862, pending in the Superior Court of Fulton County, State of Georgia ("Action"); and

Wieuca and the City desire to compromise and settle all claims which have been asserted between Wieuca and the City in the Action by executing this Agreement.

Accordingly, Wieuca and the City agree as follows:

1. Dismissal Of Claims against the City.

Upon execution of this Agreement by Wieuca and the City, Wieuca must file with the Clerk of the Superior Court of Fulton County, Georgia a Dismissal With Prejudice of its claims in the Action against the City in the form attached as Exhibit "A".

2. Repair of Road By City.

The City Acknowledges that certain of its employees may have either cut or dug a trench in that certain private road located in that certain subdivision located in Land Lot 64 of the 17th District of Fulton County, Georgia in the City of Atlanta, Georgia known as Wieuca Trace Subdivision ("Subdivision"), such road being known as Wieuca Trace, parcel 17-64-00039 (hereinafter referred to as the "Road"). If not already repaired by the City prior to the execution of this Agreement, within a reasonable time not to exceed 90 days after the execution of this Agreement, the City agrees that it will repair the damages to the pavement of the Road that may have occurred as a result of the trench that was cut or dug in the Road, placing the pavement of the Road in substantially the same condition as it was prior to the trench being either cut or dug.

3. Further Acknowledgments and Agreements by the City.

The City agrees that the Road has never been dedicated to the City and, therefore, the Road is a private road owned and controlled by Wieuca. The City further agrees that the water and sewer system servicing the Subdivision is a private water and sewer system and the City has no legal authority to connect and it shall not connect any persons, entities or properties to that private water and sewer system without the prior express written consent of Wieuca.

4. Sanitary Service Charges.

The City acknowledges that the Road is not subject to the City's sanitary service charges established by Section 130-77, et seq. of the Code of Ordinances for the City of Atlanta, Georgia and, therefore, the City agrees that it will not take any actions to collect any assessments for sanitary service charges against the Road. Further, to the extent that the City has, in the past, assessed sanitary service charges, it will charge off all such assessed sanitary service charges and will take no further collection actions.

5. Postage of Sign.

Wieuca must post and maintain a conspicuous sign at the entrance of the Road that states "PRIVATE STREET", or contains similar language, within a reasonable time, not to exceed 90 days after the execution of this Agreement.

6. Release of Wieuca.

The City, and its employees, agents and attorneys, fully and finally releases, acquits, and discharges Wieuca and its successors, assigns, officers, directors, employees, agents, attorneys and all other related entities, from all claims, liabilities or causes of action, whether known or unknown, which relate to or arise from any actions or omissions asserted in the Action.

7. Release of the City.

Wieuca, and its successors, assigns, officers, directors, employees, agents and attorneys, and all other related entities, fully and finally releases, acquits, and discharges the City and its employees, agents and attorneys from all claims, liabilities or causes of action, whether known or unknown, which relate to or arise from any actions or omissions asserted in the Action. Nothing contained in this release, however, shall prevent Wieuca from asserting any and all claims against any persons or entities (other than the City) connected to Wieuca's private water and sewer system by the City without Wieuca's consent.

8. Entire Agreement.

This Agreement contains the sole, complete and entire understanding between the parties and may not be altered, modified, or changed in any manner except in writing executed by all parties in accordance with all applicable legal requirements. No party is relying on any representation other than those expressly set forth in this Agreement, and there are no other oral or written collateral agreements concerning the subject matter of this Agreement. All prior negotiations and agreements between the City and Wieuca are superseded by this Agreement.

9. Governing Law.

This Agreement is executed in the State of Georgia, and all matters pertaining to the validity, construction, interpretation and effect of this Agreement will be governed by the laws of the State of Georgia. The parties fix venue for any actions under this Agreement in Fulton County, Georgia.

10. Execution of Agreement.

This Agreement may be executed in counterparts and by facsimile by one or more of the parties and all counterparts, when executed, will together constitute the final Agreement, as if all parties had signed one document. Each counterpart, upon execution and delivery, will be deemed a complete original, binding the party or parties subscribed to the counterpart upon the execution by all parties to this Agreement.

11. Advice of Counsel.

THE UNDERSIGNED HEREBY CERTIFY THAT THEY HAVE READ ALL OF THIS AGREEMENT, OR HAVE HAD THIS AGREEMENT READ TO THEM, THAT THEY FULLY UNDERSTAND IT AND THAT THEY EXECUTE THIS AGREEMENT VOLUNTARILY AND WITH THE ADVICE AND CONSENT OF COUNSEL OF THEIR CHOICE.

12. Ownership of Claims.

Each of the parties to this Agreement warrants to the other that it is the owner of all claims subject to this Agreement and released by it, it has not assigned any right or interest in any of those claims to any third parties and no third party has or will become subrogated to the right to assert any of those claims.

13. Future Sewer and Water Line Dedication

The City acknowledges that Wieuca has expressed a desire at some point in the future to dedicate the private water and sewer system to the City and to have meters installed for each of the residences in the Subdivision. The City confirms that if Wieuca meets all of the technical, legal and other requirements for dedication, at Wieuca's sole cost and expense, the City will consider, in good faith, accepting such a dedication, provided that easements are given as required.

WIEUCA TRACE HOMEOWNERS ASSOCIATION, LTD.

By: _____
Name:_____
Title:_____

_____
Notary Public (Seal)

My Commission Expires:_____

APPROVED BY:

_____
Robert J. Proctor
Proctor & Chambers
8010 Roswell Road
Suite 245
Atlanta, Georgia 30350
Attorney for Wieuca Trace Homeowners Association, Ltd.

CITY OF ATLANTA, GEORGIA

By: _____
Mayor

Attest: _____
Municipal Clerk (Seal)

Approved as to form:

_____

City Attorney

EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WIEUCA TRACE HOMEOWNERS ASSOCIATION, LTD.	)	
Plaintiff,	)	**CIVIL ACTION FILE NO. 1999-CV-07862**
V.	)	
BETANCOURT CONSTRUCTION, L.L.C., CITY OF ATLANTA, et al.,	)	
Defendants.	)	

Plaintiff, WIEUCA TRACE HOMEOWNERS ASSOCIATION, LTD., dismisses all issues in the above-styled civil action against the Defendant, City of Atlanta, with prejudice.

This _____ day of September 2001.

PROCTOR & CHAMBERS

By: _____
ROBERT J. PROCTOR, ESQ.

ATTORNEY FOR PLAINTIFF

8010 Roswell Road, Suite 245
Atlanta, Georgia 30350
(770) 394-3500
Georgia State Bar No. 588438