

**STATE OF GEORGIA,**

**COUNTY OF DEKALB.**

**SETTLEMENT AGREEMENT AND RELEASE**

**THIS SETTLEMENT AGREEMENT AND RELEASE** (hereinafter referred to as the "Settlement Agreement") is entered into by and between, CALEB STRICKLAND ("Strickland"), and CITY OF CHAMBLEE, GEORGIA (the "City") (and together with Strickland, the "Parties"), pursuant to the terms and conditions specified below and as of the date appearing and specified below.

**PART I. RECITALS**

This Agreement is entered into with reference to the following facts and recitals, which are true to the best of the Parties' knowledge, and are made a part of this Agreement:

WHEREAS, since March 23, 2018, Strickland has owned the real property in the City of Chamblee known as Parcel ID 18 204 03 013, which is located at 2135 Clairmont Terrace NE, Atlanta, Georgia 30345 (the "Subject Property"). The Subject Property is approximately 0.5 acres and improved with a single-family home and other features.

WHEREAS, on November 21, 2018, Strickland purchased the real property across the street from the Subject Property known as Tax Parcel ID 18 204 01 029 which is located at 2166 Clairmont Terrace NE, Atlanta, Georgia 30345 (the "2166 Clairmont Terrace Property"). The 2166 Clairmont Terrace Property borders the North Fork of Peachtree Creek and is unimproved.

WHEREAS, subsequent to purchasing the Subject Property, Strickland discovered storm water infrastructure on the Subject Property, which, during most rain events, backs stormwater onto the Subject Property. A concrete flume, located on the southwest side of the Subject Property, serves to collect, concentrate, and convey storm water flowing from Clairmont Terrace to a catch basin at the bottom of the flume but not tied directly to it; the catch basin is intended to capture stormwater and direct it to a pipe that runs under Clairmont Terrace before daylighting on the other side of the road, where it flows into a ditch on the 2166 Clairmont Terrace Property, that runs to the North Fork of Peachtree Creek.

WHEREAS, the City contends a portion of the storm water infrastructure is located within the right-of-way of Clairmont Terrace. The City further asserts that this stormwater infrastructure was constructed before the area was annexed by the City in 2013; it is not known to the City whether DeKalb County installed this infrastructure.

WHEREAS, the 24" pipe under Clairmont Terrace and other storm water infrastructure appears to be aged and in a state of disrepair. The flume is in disrepair and the pipe under the road now appears unable to accommodate the amount and rate of flow, resulting in storm water backing onto the Subject Property, causing pooling, saturation, and flooding of portions of the Subject Property. A portion of the area which floods is now shown as floodplain on updated FEMA Flood Hazard maps.

WHEREAS, the concrete flume, pipe under Clairmont Terrace, and other storm water features (i.e., an open ditch conveying stormwater through the floodplain on the Subject Property) are and have been utilized by the City, since annexation, as part of the City's storm water drainage system.

WHEREAS, Strickland sought to resolve the failing infrastructure and adverse storm water conditions with the City;

WHEREAS, on or about July 5, 2019, Strickland applied for and the City received Strickland's application to subdivide the Subject Property into two (2) lots, with a variance from the front yard setback, in order to build a second house on the new lot. The City's Mayor & Council approved the variance, with conditions, at a meeting held May 19, 2020, all as set forth in a letter, dated May 26, 2020 (Permit #585 and associated Plat/Lot Split Permit #502 & 875);

WHEREAS, on June 22, 2020, Strickland sent the City written notice of potential claims arising from the drainage infrastructure and impacts to his property;

WHEREAS, on or about August 19, 2020, Strickland commenced an action against the City by filing a Complaint in the Superior Court of DeKalb County, Georgia, *Caleb A. Strickland v. City of Chamblee*, Civil Action File No. 20-CV-5928 (the "Lawsuit"), which is presently pending.

WHEREAS, Strickland alleges that the City, without authority or permission, recorded or otherwise, has and continues to unlawfully trespass upon, occupy, and use the Subject Property to (a) physically locate its storm water infrastructure and (b) convey and dispose of its storm water flows, during and following rain events, causing damage and injury to Strickland's property and preventing his lawful use thereof.

WHEREAS, the City denies Strickland's allegations in the Lawsuit.

WHEREAS, the Parties (collectively the "Parties" and individually a "Party") have determined and agreed that it is in their mutual best interests to resolve all claims and disputes between or among them that relate to or arise out of the concrete flume and storm water infrastructure, including without limitation, the allegations and claims asserted in the Lawsuit and the issues associated with the Variance and Lot Split;

NOW THEREFORE, in consideration of the foregoing recitals and the covenants, promises, payments, and agreements set forth below, the execution of documents incorporated herein by reference, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **PART II. TERMS OF AGREEMENT**

### **1. Acknowledgment**

The above recitals are incorporated into the terms of this Agreement for purposes of not only demonstrating the intent of the Parties, but to incorporate those recitals as consideration for the releases contained herein.

### **2. Settlement Payment**

For and in consideration of the promises and agreements set forth herein and incorporated herein by reference, the City agrees to pay Strickland the sum of One Hundred & Fifty Thousand no/100ths Dollars (\$150,000.00) ("Settlement Funds"). The Settlement Funds shall be made payable to "Weissman PC" for deposit in its escrow account within fourteen (14) days of approval of this Settlement Agreement by the Mayor Council of the City of Chamblee, which shall be determined at the next City Council meeting following execution of this Agreement or sooner, and whereby the Settlement Funds will be held in escrow until disbursed to Strickland. From his Settlement Funds, Strickland shall pay all of Plaintiff's attorneys fees and litigation expenses incurred in this litigation to date.

### **3. Repair of Drainage Infrastructure**

As additional consideration of the promises and agreements set forth herein and incorporated herein by reference, the City agrees to perform or cause to be performed by a licensed utility contractor, in a good and workmanlike manner and in accordance with applicable laws, certain improvements, repairs, and/or replacements of the drainage features on and around the Subject Property as contemplated by and set forth in **Exhibit A**.

4. **Easement and Conveyance.**

In consideration of the promises and agreements set forth herein and incorporated herein by reference, Strickland hereby grants the City a stormwater drainage easement over and through the Subject Property (2135 Clairmont Terrace), including the open drainage ditch, pursuant to the terms set forth in the Stormwater Easement and Encroachment Agreement (the "2135 Easement Agreement") attached hereto as **Exhibit B**, and a limited warranty deed conveying marketable title, in fee simple, to the City of Chamblee for the 2166 Clairmont Terrace property (entire lot), attached hereto as **Exhibit C**.

5. **Lot Split / Variance**

The City further agrees that the improvements set forth above in Paragraph 3 and shown in **Exhibit A** along with those improvements (identified in and made a part of **EXHIBIT A**) and subdivision plat (attached hereto as **Exhibit D**) satisfy all conditions of the Variance and the Lot Split.

The City agrees to provide final approval on the Lot Split plat and provide Strickland with a signed version of the same contemporaneously with the execution of this Settlement Agreement; Strickland shall have the plat recorded in DeKalb County records at his expense.

6. **Mutual Release**

For and in consideration of the promises and agreements set forth herein and incorporated herein by reference, the Parties hereby release and forever discharge one another and their successors, agents, and assigns, from any and all actions, causes of actions, suits, proceedings, damages, costs, loss of services, expenses, obligations, claims, and demands whatsoever, whether in law or equity, known or unknown, foreseen or unforeseen, in any way resulting or arising out of any incident referenced in and/or any allegations, claims, and causes of action which were brought or which could have been brought in the Lawsuit. Furthermore, in consideration for the City being

responsible for the design and construction of stormwater infrastructure within the right-of-way of Clairmont Terrace specifically to serve the Subject Property, the parties covenant, agree and promise Strickland will not hereafter commence any civil action against the City based upon design and construction of such stormwater infrastructure; absent gross negligence or willful neglect in the design and construction of the same and provided, IT IS SPECIFICALLY UNDERSTOOD AND AGREED that this release does not pertain to any claims that may arise in the future due to the City's failure to maintain the stormwater infrastructure or increased flows onto any portion of the Subject Property.

**7. Dismissal of Lawsuit**

Within five (5) business days following the payment of the Settlement Amount, Plaintiff shall file, or cause to be filed, a Dismissal of the Lawsuit, with prejudice, and/or shall file such other papers as may be necessary to terminate the Lawsuit with prejudice.

**8. No Admission of Liability or Fault**

Each Party to this Agreement hereby acknowledges and agrees that this Agreement and the settlement terms included herein as well as any documents incorporated herein by reference, are intended to compromise doubtful and disputed claims and defenses, to avoid litigation and to buy peace, and that this Agreement and the settlement terms included herein and documents incorporated herein by reference, shall not be construed or viewed as an admission by any Party of liability or wrongdoing, such liability being expressly denied.

**9. No Reliance on Representations**

IT IS UNDERSTOOD AND AGREED that this Agreement is executed by all Parties voluntarily, based solely on their own judgment and is not based on any representation or statements of any kind made by any Party to this Agreement as to the merits, legal liabilities, tax consequences, or value of the claims or potential claims of the Parties, and that no promise, inducement, compromise, or agreement not herein expressed has been made to the Parties.

**10. Severability**

IT IS UNDERSTOOD AND AGREED that this Agreement is intended to be performed in accordance with and to the extent permitted by all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement, or the application thereof to any person, corporation, entity, or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances, shall not be affected thereby but rather shall be enforced to the fullest extent permitted by law.

**11. Entire Understanding**

IT IS UNDERSTOOD AND AGREED that this Agreement contains the entire understanding of the Settling Parties and agreement by and between the parties hereto with respect to the subject matter hereof; this Agreement supersedes any prior understandings or agreements, oral, implied, or written, and none of the parties is relying on any promises, representations, communications, statements, assertions, declarations, admissions, agreements, arrangements, or understandings, oral, implied, or written, that are not fully expressed herein. This Agreement is a result of an arms-length negotiation between the Settling Parties.

**12. Binding Effect**

IT IS UNDERSTOOD AND AGREED that the terms of this Agreement are binding as to each and every party hereto, their agents, successors, assigns, heirs, administrators, servants, employees, subsidiaries, affiliates, and trustees.

**13. Applicable Law**

IT IS AGREED AND UNDERSTOOD that this Agreement shall be construed, interpreted and governed in all respects by the laws of the State of Georgia.

**14. Cooperative Effort**

IT IS UNDERSTOOD AND AGREED that this Agreement has been drafted through a cooperative effort of all parties, and no party shall be considered the drafter of this Agreement so as to give rise to any presumption or convention regarding construction of this document.

**15. Modification or Amendment of Agreement**

IT IS UNDERSTOOD AND AGREED that this Agreement may not be changed orally, but only by a writing signed by all parties.

**16. Headings and Captions**

IT IS UNDERSTOOD AND AGREED that the headings contained herein are for purposes of reference only and have no legal significance.

**17. Counterparts**

IT IS UNDERSTOOD AND AGREED that this Agreement may be executed in counterparts, each of which shall be deemed an original and, together, shall constitute one and the same Agreement.

**18. Effective Date**

This Agreement shall only become effective following execution by all of the Parties, which may be done by each Party signing separate copies of this Agreement as set forth above.

**19. Advice of Counsel**

By executing this Agreement, the Parties hereto agree that they have read and understand the terms and conditions of this Agreement, have been advised to and have had the opportunity to consult with their attorney, and that they have entered into this Agreement freely and voluntarily. The Parties further acknowledge that they have not relied upon any inducements, promises, or representations, whether express or implied, made by any Party or their respective representatives and not contained in this Agreement.

**20. Authority**

All of the Parties hereby acknowledge that the individuals executing this Agreement have the authority and capacity to represent and bind the respective parties hereto.

**21. Point of Contact**

The point of contact for this Agreement will be and all written and verbal notification shall be directed to the following:

**For the City:**

Keri Ware, Wilson Morton & Downs, LLC, 125 Clairmont Ave, Ste. 420, Decatur, GA 30030, (404) 377-3638, [kware@wmdlegal.com](mailto:kware@wmdlegal.com)

**For Strickland:**

Kasey Sturm, Weissman, PC, One Alliance Center, 4<sup>th</sup> Floor, 3500 Lenox Road, Atlanta, Georgia 30326; 404.926.4630 (o); [kaseys@weissman.law](mailto:kaseys@weissman.law).

**[Signatures appear on following page]**

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the dates identified below.

\_\_\_\_\_  
**Caleb Strickland**

Sworn to and subscribed before me this \_\_\_\_ day of November, 2023.

\_\_\_\_\_  
Notary Public [affix seal]

My Commission Expires:

**ON BEHALF OF THE CITY OF CHAMBLEE, GEORGIA:**

**City of Chamblee, Georgia**

\_\_\_\_\_  
By: Kristen Gorham, Interim City Manager

Sworn to and subscribed before me this \_\_\_\_ day of November, 2023.

\_\_\_\_\_  
Notary Public [affix seal]

My Commission Expires

## EXHIBIT A

### SITE IMPROVEMENT PLANS

The City of Chamblee has approved a plan submitted by Caleb Strickland to subdivide the property at 2135 Clairmont Terrace into two (2) building lots; the existing house shall remain in its present location and shall continue to be designated by the house number 2135. The new lot shall be bounded as shown on the drawing attached hereto entitled "Lot Division Plat, prepared for Caleb A. Strickland", dated June 30, 2021 (as hereafter resubmitted to the City) and designated as 2135A Clairmont Terrace, and shall meet all conditions set forth in the City's letter of May 26, 2020 as resolved by this Settlement Agreement.

On or before December 31, 2024 the City, at its sole expense, shall make the following improvements within the right-of-way of Clairmont Terrace or within Drainage Easement granted by Strickland to the City on any portion of the 2135 Clairmont Terrace or upon the lot conveyed by Strickland to the City at 2166 Clairmont Terrace, and made a part of this Settlement Agreement as Exhibits B and C:

- The City will replace the existing 24" culvert under Clairmont Terrace with a 36" culvert;
- The City will remove the concrete flumes on either side of Clairmont Terrace adjacent to the Subject Property and 2166 Clairmont Terrace;
- The City will install catch basins in the right-of-way of Clairmont Terrace that connect directly to the new culvert under Clairmont Terrace;
- The City will seek to have DeKalb County Watershed Management to install a new waterline in the street in the vicinity of the Subject Property before repaving the street with curb and gutter;
- The City will provide compensatory storage within the Stormwater Drainage Easement on 2166 Clairmont Terrace in compliance with Section 330-4 (2) of The Code of Chamblee, Georgia, to meet FEMA requirements for the future conditions floodplain. This work shall increase the cross-section of the existing ditch to accommodate flood volume loss; and
- The City shall remove any trees, or other vegetation and debris within the ditch that currently hinder flow and are at risk of collapse.