

RESOLUTION NO. 5138-14

20150128000029740 1/7 \$32.00
Shelby Cnty Judge of Probate, AL
01/28/2015 04:13:11 PM FILED/CERT

WHEREAS, Keystone Building Company, Inc. ("Contractor") obtained approval in 2007 of a Final Map on behalf of Pine Hill Place, LLC ("Developer"), the developer/owner of certain real property known as Heatherwood Subdivision, 7th Sector as recorded in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 39, Page 84A&B (the "Property");

WHEREAS, the Contactor provided a performance bond to the City in the amount of \$75,000 to secure the completion of the certain sidewalk and roadway improvements on the Property;

WHEREAS, construction on the Property ended in September 2009 without completion of the roadway improvements on the Property;

WHEREAS, the Contractor is no longer in business and has a long line of unpaid judgment creditors;

WHEREAS, the City, by and through its attorneys, contacted the Contractor to complete the roadway improvements on the Property and made demand upon Merchants Bonding Company ("Merchants"), the issuer of the performance bond, for the payment of the bond;

WHEREAS, the City has determined that (i) the performance bond was issued by an agent without approval or review by Merchants and thus was issued without authority, (ii) Merchants did not receive a premium for the purchase of the performance bond, and (iii) the performance bond was issued in the name of the Contractor and therefore the bond does not run to the Developer; and

WHEREAS, Merchants has offered to settle the City's claim for Thirty Seven Thousand Five Hundred and NO/100 dollars (\$37,500.00) subject to the approval of the City Council and has presented a release to the City for approval and execution.

NOW, THEREFORE, BE IT RESOLVED by the Hoover City Council in regular meeting, duly assembled, a quorum being present that the Mayor is authorized to execute a release (in substantially the form attached hereto as Exhibit A) releasing Merchants Bonding Company, Anchor Insurance Agency, Inc., Keystone Building Company, Inc. and their agents, sub-agents, employees and insurers from any further liability related to the completion of certain sidewalk and roadway improvements on the Property for and in consideration of the payment to the City in the amount of Thirty Seven Thousand Five Hundred and NO/100 dollars (\$37,500.00); and

BE IT FURTHER RESOLVED that the Mayor and/or his designee is authorized to execute any other document requested to conclude this claim; and

BE IT FURTHER RESOLVED that the City Council does hereby accept public improvements within the road right-of-way of the Property (specifically, the following improvements: street, base, binder, curb and gutter, storm sewer, seal and street signs) and does accept perpetual maintenance of the same.

ADOPTED this the 21st day of July, 2014.



Jack Wright, President of Council

APPROVED:



Gary M. Ivey, Mayor

ATTESTED BY:




Margie Handley, City Clerk



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Exhibit A


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GENERAL RELEASE, RECEIPT AND COVENANT NOT TO SUE

READ BEFORE SIGNING.

THIS RELEASE, RECEIPT AND COVENANT NOT TO SUE (hereinafter referred to as "Release"), executed this 21st day of July, 2014, by the City of Hoover, Alabama (hereinafter collectively designated as RELEASOR), for the benefit of Merchants Bonding Company (Mutual), Anchor Insurance Agency, Inc., Keystone Building Company, Inc., and any agents, sub-agents, employees and insurers related thereto (hereinafter collectively designated as RELEASEES).

1. For and in consideration of the payment by RELEASEES of the sum of Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$37,500.00) to RELEASOR, the receipt and sufficiency of which the RELEASOR does hereby acknowledge for itself and its agents, representatives, successors, assigns, officers and employees, the RELEASOR DOES HEREBY voluntarily and knowingly forever release, discharge, quitclaim, assign and relinquish unto RELEASEES any and all claims, demands, causes of action, choses in action, debts, wrongs, damages, judgments, and executions, whether in law or in equity, whether known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent, whether heretofore asserted or not, which RELEASOR ever had, now has, or may claim to have, arising out of or in any way connected with any loss, damage, or expense in connection with the development and construction of the Heatherwood Subdivision 7th Sector in Hoover, Alabama, and a claim by the City of Hoover, Alabama associated with a Performance Bond referencing Heatherwood Subdivision 7th Sector, which bond was issued by Anchor Insurance Agency, listing Merchants Bonding Company as surety for Keystone Building Company, Inc.

2. The RELEASOR further covenants not to sue RELEASEES with respect to any matter referenced above and agrees not to execute upon any judgment with respect to any such matter. The RELEASOR further agrees to indemnify RELEASEES for all costs or expenses, including attorney fees, incurred by any RELEASEE who is sued, or against whom any effort is made to execute upon any judgment, by any person claiming by or through RELEASOR with respect to any claim referenced above.

3. The undersigned signatory on behalf of RELEASOR represents and warrants that he or she is authorized and directed by the said RELEASOR to execute this Release on behalf of such entity.

4. RELEASOR further warrants and represents as follows:


A. That RELEASOR has read this Release and is fully aware of and understands its contents.

B. That it is and has been represented by counsel in connection with its claims and defenses in this matter or that it has elected voluntarily to proceed without counsel, and that it has had the benefit of any legal advice it desires in regard to its execution of this Release.

C. That it voluntarily executes this Release without any undue pressure or influence by any person or entity and that it has not relied upon any representation, promise or statement of any other party to this Release, including but not limited to RELEASEES.

D. That it has neither granted nor made any assignment, subrogation or other right of substitution to any person of its rights against any person named, referenced or designated, whether by name or category in Paragraph 1 of this Release.

E. That it is fully informed as to the nature, extent, effects and consequences of signing this Release and of the rights it is forever foregoing as a result of executing this Release.


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F. That it understands that any presumptions, assumptions or beliefs it or its representatives may have formed regarding the severity, amount, likelihood or nature of any losses, damages or injuries it may have suffered or may suffer could be erroneous, and that any losses, damages or injuries it may have suffered, or it may in the future suffer or discover, now known or unknown may be more severe or extensive than presently anticipated or believed.

G. This release extends and applies to and also covers and includes, all unknown, unforeseen, unanticipated and unsuspected injuries, damages, loss and liability, and the consequences thereof, as well as those now disclosed and known to exist. The provisions of any state, federal, local or territorial law or statute providing in substance that any releases shall not extend to claims, demands, injuries and damages which are unknown or unsuspected to exist at the time, to the person executing such a release, are hereby especially waived.

5. The RELEASOR further agrees and acknowledge that this Release constitutes the full and entire settlement of disputed claims between RELEASOR and RELEASEES, and that the execution of this Release or the passage of any monies in accordance herewith shall not be in any way construed as an admission of liability on the part of any party hereto. RELEASOR assumes all risk that this Release was the result of any mistake of any kind, waiving all claims or defenses based upon the doctrine of mistake. This Release shall act as an accord and satisfaction with respect to all claims and persons designated herein.

6. The word "RELEASEES" as used herein shall be deemed to include the named RELEASEES, together with all such RELEASEES' past and present officers, shareholders, directors, employees, attorneys, subsidiaries, related corporates, designees, transferees, guardians, conservators, insurance carriers, agents, trustees, employers, principals, heirs, successors, representatives and assigns.

7. The word "RELEASOR" as used herein shall be deemed to include the named RELEASOR, together with all of such RELEASOR'S past and present officers, shareholders, directors, employees, attorneys, subsidiaries, related corporates, designees, transferees, guardians, conservators, insurance carriers, agents, trustees, employers, principals, heirs, successors, representatives and assigns.

8. Each matter stated herein is contractual and not a mere recital. This Release constitutes the entire agreement between the RELEASOR and RELEASEES and any previous discussions or negotiations not contained herein shall be deemed extinguished by the signing of this Release.

9. This Release shall be interpreted and construed in accordance with the laws of the state of Alabama and may be executed in counterparts, in which case each such counterpart shall be construed as an original. Further that if any portion of this Release shall be deemed invalid or unenforceable that the remaining portions of the Release shall remain valid and enforceable.

10. It is intended that this Release be construed in the broadest possible manner, in accordance with RELEASOR'S express intention that all disputes between RELEASOR and RELEASEES be forever resolved. This Release is intended as a release of all claims of the kind or nature set forth whether such persons are specifically named or designated herein, and regardless of whether such persons, firms or corporations were parties to any dispute, agreement or litigation arising out of this matter.

IN WITNESS WHEREOF, I, Gary Ivey, Authorized Representative of the City of Hoover, Alabama (RELEASOR) have executed this Release, Receipt and Covenant Not to Sue on this 21st day of July, 2014.

THE CITY OF HOOVER, ALABAMA

By: _____

Its: Mayor

STATE OF ALABAMA

)

) ss.

COUNTY OF JEFFERSON

)

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, Gary Ivey, who acknowledged that he is the Mayor of the City of Hoover, Alabama, and that for and on behalf of said entity and as its act and deed he executed the above and foregoing instrument after first having been duly authorized by said entity so to do.

Margie Handley
Notary Public

My commission expires: April 15, 2018


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CERTIFICATION

I, Margie Handley, City Clerk for the City of Hoover, Alabama, do hereby certify the attached is a true and correct copy of **Resolution No. 5138-14**, adopted by the City Council of the City of Hoover, Alabama on the 21st day of July, 2014.


Margie Handley
City Clerk


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