

TOWN OF GEORGETOWN, INDIANA

Resolution R 16-03

**A Resolution Approving the Release and Settlement Agreement on Catalpa Ridge
Subdivision Bond and Authorizing Town Council President To Sign**

WHEREAS, the Town of Georgetown, Indiana, herein called the "Town", has worked with the bonding company, American Southern Insurance Company of America, herein called "American Southern", to complete the work at Catalpa Ridge subdivision.

WHEREAS, American Southern has completed the work under the Subdivision Bond, No. B98815018046, herein called "Bond."

WHEREAS, the Town wishes to accept the terms and conditions of the Release and Settlement Agreement, attached hereto as Exhibit A.

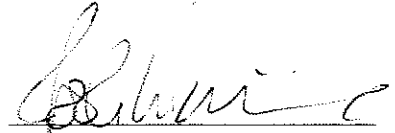
**NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF
THE TOWN OF GEORGETOWN, INDIANA, AS FOLLOWS:**

1. Everett Pullen shall be authorized to sign the Release and Settlement Agreement on the Bond for Catalpa Ridge subdivision.
2. The Town agrees to accept the terms and conditions of the Release and Settlement Agreement.

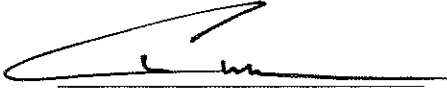
SO RESOLVED by the Town Council of the Town of
Georgetown, Indiana this 17th day of October, 2016

GEORGETOWN TOWN COUNCIL

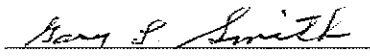

Everett Pullen, President


Josh Williams, Vice President


Kathy Haller, Member



Chris Loop, Member



Gary Smith, Member

Attested by:



Brenton Fender, Clerk/Treasurer

RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (hereinafter "Agreement") is made by and between Town of Georgetown, Indiana ("Georgetown"), and American Southern Insurance Company ("American Southern"), all of which are hereinafter referred to individually as "Party" or collectively as "Parties."

WHEREAS, on or about August 1, 2006, the Plan Commission of Georgetown, Indiana, approved the final plat submitted by Landmark Building & Development, LLC ("Landmark") and/or Ronald Payne for the Project known as Catalpa Ridge Subdivision located in Georgetown, Indiana (hereinafter referred to as the "Project");

WHEREAS, Landmark and its agent, Ron Payne, were required to obtain a Subdivision Bond for the completion of roadway improvements, sewer lines, and drains;

WHEREAS, American Southern, as Surety, issued a Subdivision Bond designated No. B98815018046 (the "Bond") to Georgetown, as Obligee, and for Landmark, designated as Principal, in the amount of \$150,000.00 for the Project, that was later reduced to \$79,500.00;

WHEREAS, on or about July 3, 2014, Georgetown, by its attorney, notified American Southern that it was in fact making a formal notice of its intent to make a claim against the Bond to complete various portions of the Project, and that the Town Council was preparing to pass a resolution regarding same;

WHEREAS, on or about July 21, 2014, the Town Council of Georgetown approved a resolution No. R-14-02 which stated that it was declaring Landmark in default on the above-referenced Bond and that it desired to make a claim against the Bond;

WHEREAS, American Southern, through its agent, United Risk Management Corporation, conducted an investigation of the remaining scope of work;

Exhibit A

WHEREAS, American Southern agreed to fulfill its obligations under the Bond by arranging for a paving contractor to complete certain agreed upon portions of the Project;

WHEREAS, American Southern entered into a "Completion Agreement" with Libs Paving Company, Inc. ("Libs") on or about August 8, 2016 for the purpose of completing the remaining scope of work;

WHEREAS, as a material inducement for their respective consent to this Agreement, each Party declares, represents and warrants that:

- (a) each Party has discussed this Agreement with its attorneys and that it understands the terms of the Agreement and voluntarily accepts the Agreement;
- (b) each Party relies solely upon its own judgment, belief and knowledge of the nature, extent, and effect of its claimed injuries and damages and its own judgment, belief and knowledge of all facts relating to its respective claims and, therefore, does not rely upon any statement or representation by any other Party, third party or any of their respective representatives; and
- (c) no promise, enticement or agreement not expressed in this Agreement has been made by any Party or their respective representatives.

WHEREAS, on or about October 17, 2016, Georgetown approved a resolution No. R-16-03 in which it agreed to accept the terms and conditions of this settlement agreement;

NOW THEREFORE, in consideration of the promises and the undertakings of the Parties hereto, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Recitals set forth above are incorporated into and form a part of this Agreement.

2. The execution of this Agreement is not an admission on the part of any Party of any liability, or fault whatsoever, except as provided for herein, and the Parties hereby deny any liability or fault.

3. In consideration of the covenants and obligations contained in this Agreement, American Southern shall enter into a Completion Agreement with Libs, a copy of which is attached hereto as Exhibit "A" according to the proposal submitted by Libs dated August 8, 2016 and which work was completed and accepted by the Georgetown Town Council, by resolution R-16-5 on or about October 11, 2016.

4. Upon satisfaction of each of American Southern's obligations under this Agreement, Georgetown, and on behalf of their respective divisions, affiliates, employees, principals, agents, insurers, subsidiaries, successors and assigns, fully and finally release, acquit, and forever discharge American Southern, its heirs, executors, administrators, employers, employees, agents, consultants, experts, insurers, attorneys, divisions, affiliates, subsidiaries, successors and assigns (collectively "Released Parties"), for and from any and all liability, claims, demands, controversies, damages, interest of any kind, actions and causes of actions, known and unknown, foreseen and unforeseen, which Georgetown has or may have in the future against American Southern arising out of, or relating to the Project or the Bond, including but not limited to completion costs, liquidated damages, consequential damages, extra-contractual damages, and any and all other damages, injuries, claims for interest, expenses, costs, and attorney fees, claims for payment, and any other claims which Georgetown has or may have in the future American Southern arising out of, or relating to the Project or the Bond.

5. Georgetown acknowledges that arranging the completion of the paving and the completion agreement between American Southern and Libs is not an admission of liability by

American Southern, and that American Southern expressly denies any liability on the Bond related to the Project.

6. This Agreement may be executed by Georgetown and American Southern, (hereinafter identified as the "Parties") in counterparts which when taken together shall be deemed to be one original, and/or may be executed in multiple copies, each of which shall be deemed on original. All true and accurate copies of this fully executed Agreement shall be valid and binding evidence of the agreement of the Parties, whether the document and/or any or all of the signatures are reproductions of an original by photocopy, telecopier transmission, or other method commonly accepted as accurate.

7. The Parties agree that this Agreement shall be interpreted according to the laws of the State of Indiana.

8. If Georgetown is able to locate the original Subdivision Bond, Georgetown agrees to return the original Subdivision Bond to American Southern, within ten (10) business days after the execution of this Agreement. If Georgetown is unable to locate said bond, Georgetown agrees to provide written notice of same from its attorney to counsel for American Southern.

9. The Parties agree to cooperate fully and to execute any and all supplementary documents and to take any additional actions which are consistent with and may be appropriate to give full force and effect to the terms and intent of this Agreement.

10. American Southern and Georgetown shall bear their own costs, expenses and attorney's fees; provided however, that American Southern reserves the right to seek its costs, expenses and attorney's fees from its Indemnitors.

11. This document contains the entire agreement between the Parties and any agreement, oral or written, entered into prior to this Agreement are null and void. Any

alterations, changes or amendments to this Agreement shall be in writing and signed by the Parties.

IN WITNESS WHEREOF, the Parties have signed this agreement on the date(s) indicated below.

WITNESS:

AMERICAN SOUTHERN INSURANCE
COMPANY

By: _____

Its: _____

WITNESS:

TOWN OF GEORGETOWN, INDIANA

By: Emeret Puller

Its: President