

UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

Lighthouse Rescue Mission, Inc,
a Mississippi Non-profit Corporation,

Plaintiff,

Hon. Keith Starrett
Magistrate Judge Michael T. Parker
Case No.: 2:12-CV-00184-KS-MTP

v.

The City of Hattiesburg, Mississippi,
a Mississippi Municipal Body,

Defendant.

Order, Settlement Agreement and Mutual Release

This Order, Settlement Agreement and Mutual Release (hereinafter referred to as the "Agreement") are entered into on this date between Lighthouse Rescue Mission, a Mississippi Non-profit Corporation, (hereinafter referred to as "Plaintiff," "Lighthouse" or "Ministry") and the City of Hattiesburg, Mississippi (hereinafter referred to as "Defendant" or "City").

The intent and purpose of this Agreement is to fully and finally settle and resolve those issues of dispute between Plaintiff and Defendant, ("the Parties"), as set forth in *Lighthouse Rescue Mission, Inc. v. City of Hattiesburg, Mississippi*, Case No. 2:1200184-KS-MTP, pending before the Honorable Keith Starrett (the "Action") as specifically set forth herein.

For purposes of this Agreement, all references to "Plaintiff's building," "Plaintiff's property," or "Plaintiff's building and grounds" refer to the property owned by Lighthouse Rescue Mission, Inc. located at 204 Eupora, Hattiesburg, Mississippi 39401 as described in *Exhibit 1 (Deed of property)*.

NOW, THEREFORE, in consideration of the foregoing and of the promises, forbearance, and mutual covenants herein, it is hereby agreed between the Parties as follows:

1. **Agreement.** Subject to the terms herein, the Parties agree to accept this Agreement as full and final resolution of this cause of action. The Parties have the authority to enter into this agreement and agree to the terms of this Settlement Agreement and mutual release without objection or appeal.

2. **Mutual Release.** The Parties agree to mutually release each other as well as the other's agents, employees, assigns, directors, commissioners, officers, attorneys, insurers, affiliates, subsidiaries, parents, and successors in interest from and against any and all past or present claims, demands, damages, actions, causes of action of whatever kind or nature, which arose or which existed from the beginning of time up to the time of the final execution of this Settlement Agreement and Release. However, this release does not contemplate or bar the award of attorney fees and cost as set forth in paragraph five (4) of this Agreement.
3. **Settlement Terms.** The Parties to this Agreement agree to the following settlement terms:
 - a. **Oversight.** The Ministry agrees that to the extent that its residents are under the jurisdiction of the State of Mississippi Drug Courts, the participants of Drug Court will comply with the Drug Court's rule and regulations.
 - b. **Park.** The Ministry agrees to keep the playground at the rear of its Property open to the public for use with reasonable restrictions concerning use and hours of operation. However, should issues arise with the public concerning the use of the park, Lighthouse reserves the right to close the park with the exception of using it for ministry outreach.
 - c. **Fence.** The City of Hattiesburg agrees to select one of the three separate fence options, as prepared by Plaintiff and provided to Defendant no later than December 15, 2013 and notifies Plaintiff, in writing, of the same by the same date. Once the fence option is timely selected, and Plaintiff is notified in writing of the same, Plaintiff has One Hundred and Eighty Days (180) days to modify the existing fence to comply with the selected fence option. Should the City fail to select and notify Plaintiff of the fence choice by December 15, 2013, the Parties agree that the current fence will remain standing as is.
 - d. **Damages.** The Defendant shall pay the Plaintiff Fifteen Thousand Dollars (\$15,000.00) no later than seven (7) days after the entry of this Order. The check shall be made payable to Lighthouse Rescue Mission, Inc. and the law firm of Dalton & Tomich, plc and delivered to Daniel P. Dalton at The Chrysler House, Dalton & Tomich plc, 719 Griswold Street, Suite 270; Detroit, Michigan 48226.
 - e. **Building Code and Occupancy Permits.** The City of Hattiesburg shall inspect Plaintiff's property located at 204 Eupora, Hattiesburg, Mississippi 39401 as a residential property to be used a ministry that includes overnight transitional care and provide and process all necessary and required permits for a certificate of occupancy no later than December 15, 2013.

f. **Zoning and Land Use Code, Use Permit.** The parties agree that Plaintiff shall be granted a use permit for its property located at 204 Eupora, Hattiesburg, Mississippi 39401.

1. **Permitted Uses.** The Parties agree that Plaintiff's property is zoned R-1A and that Plaintiff is entitled to all of the uses permitted under the R-1A zoning district as provided in the City of Hattiesburg Land Development Code as set forth in the code as of the date of the entry of this agreement, including but not limited to: Single Family homes; Home occupation, pursuant to the Hattiesburg Land Development Code ("HLDC"), Section 82; Parking, See HLDC Section 89; Private Garden, private greenhouse; Public Park and playground; Sign, HLDC Section 95, Sign Regulations. The Parties to the Agreement further agree that Plaintiff may have the following uses permitted pursuant to this Order: Residents may stay on the premises, overnight, continuously for a period of time not to exceed eighteen (18) months; Plaintiff is limited to thirteen (13) residential units and one unit for a supervisor or missionary in the building. The Parties to the Agreement agree and covenant that any potential future expansion of the rooms in the aforementioned Lighthouse building may occur upon agreement and acceptance of the City of Hattiesburg City Council; Plaintiff is granted permission to provide related ministry operations for the property, including but not limited to: Church, Ministry Outreach; Bible study; Drug and Alcohol classes and counseling; GED (high school diploma equivalency) degree courses; Life Skill courses; Vacation Bible School; Retreats; Youth Lock- Ins; Disaster Work Teams temporarily using the facility and staying on the premises; Emergency Sheltering; Life skill Classes; Learning Center; Computer Classes; English as a Second Language; Art Classes; Sewing Classes; Open to the Public for Community Use (Thanksgiving Meals, Daycare, Prom etc.).


2. **Review of Use Permit.** The Parties further agree that Plaintiff shall be granted a use permit, pursuant to the City of Hattiesburg Land Development Code, Section 16. The Hattiesburg Planning Commission may annually, in the anniversary month of the granted Use Permit, visit and review the permitted operation. If the conditions of this Order are not being followed, the Land Development Code Administrator may issue a notice of non-compliance. The property owner shall have sixty (60) days from date of such notice to bring the use in compliance. This Court will retain jurisdiction should Plaintiff be considered non-complaint with the permitted uses of the property.

4. **Attorney fees and Cost.** The Parties agree that the Court will award Plaintiff attorney fees and cost. The Court will make a final determination as the amount of attorney fees and cost in the following manner:
 - A. Plaintiff is the prevailing party in this case on its federal constitutional claims and claims arising under the Religious Land Use and Institutionalized Persons Act, 42 USC 2000cc et seq entitling it to attorney fees and cost pursuant to 42 U.S.C. § 1988 as well as Attorney Fees and Cost under the Fair Housing Act, 42 U.S.C. § 3604 *et seq.*
 - B. Plaintiff will petition the Court for an award of attorney fees and cost under the statutory parameters of 42 USC 1988 and 42 U.S.C. § 3604 *et seq* and case law interpreting within two business days of the entry of this Order;
 - C. Defendant will file its response brief to Plaintiff's Motion for Attorney Fees and Cost within ten (10) days of the filing of Plaintiffs Motion;
 - D. Plaintiff will file its reply brief to Defendant's Response to Plaintiff's Petition for Attorney Fees and Cost on within three (3) days of the filing of Defendant's response;
 - E. Subject to the Court's schedule, the parties desire the Court to issue an Order setting forth the amount of attorney fees and cost to be awarded to Plaintiff to no later than ten (10) days Plaintiffs reply brief;
 - F. The Defendant will pay the law firm of Dalton & Tomich plc the award of attorney fees and cost on within fifteen (15) days of the Order being entered.
 - G. The Parties agree that either Judge Starrett or Magistrate Judge Parker may make the decision of attorney fees and cost awarded to Plaintiff and the decision of the Court concerning the amount of attorney fees and cost is final and that neither Party will appeal the decision of the Court.
5. **Mutual cooperation.** The Parties and their respective successors and assigns shall treat and cooperate with one another in good faith and shall neither take any action which is contrary to or interferes with the spirit of this Agreement, nor omit any action which is necessary or convenient to or consistent with the spirit and intent of this Agreement.
6. **Documents.** The Parties shall execute any and all documents and/or enter into such agreements as are necessary or convenient to carry out the intent of this Agreement. This Agreement may be executed via facsimile in one or more counterparts, all of which together shall constitute the Agreement of the Parties.

7. **Modification of Agreement.** The terms of this Agreement may be amended, changed or modified only by written agreement executed by the parties hereto and approved and ordered by this Court.
8. **Severability.** The Parties agree that if any of this Agreement is deemed by a Court to be invalid or unenforceable, the Agreement shall be read as if the invalid or unenforceable part did not exist and all valid and enforceable provisions shall remain in full force and effect.
9. **Authority.** By their execution of this Agreement, the Plaintiff and Defendant each warrants that they have the authority to execute this Agreement and bind their respective entities to its terms and conditions.
10. **Binding nature of Agreement.** Subject to the terms of this Agreement mentioned above, this Agreement shall be binding upon and inure to the benefit of Plaintiff and the City and their respective successors and assigns, including without limitation successors in interest in the subject Property and subsequent purchasers of the subject Property.
11. **Jurisdiction.** This Court retains jurisdiction to enforce this Agreement. Any disputes arising out of this Agreement shall be interpreted, construed, and applied in accordance with the law of the State of Mississippi.

THE UNDERSIGNED REPRESENT THAT THEY HAVE READ AND UNDERSTAND THE TERMS OF THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE, AND THAT THEY HAVE VOLUNTARILY EXECUTED SAME. IN WITNESS WHEREOF, we have hereto set our hands to this Agreement.

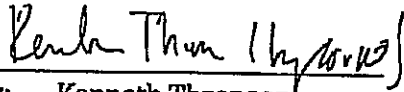
Entered this 7th day of November, 2013.

Hon. 
Honorable Kenneth Starrett
Keith

[Signatures on the following page]

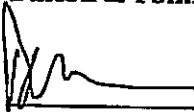
On behalf of Plaintiff

Lighthouse Rescue Mission, Inc.



By: Kenneth Thronson
Its: Executive Director

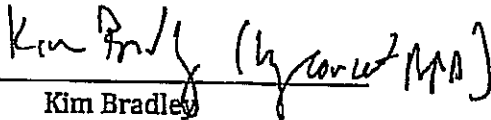
Dalton & Tomich plc



By: Daniel P. Dalton
Lead Attorney for Plaintiff – *Pro Hac Vice*
Lighthouse Rescue Mission, Inc.

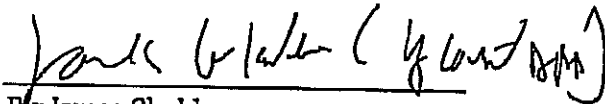
On behalf of Defendant

The City of Hattiesburg, Mississippi



By: Kim Bradley
Its: City Council President

Law Offices of James Gladden



By: James Gladden
Attorney for Defendant
City of Hattiesburg, MS

Exhibit 1

COPY

STATE OF MISSISSIPPI
COUNTY OF FORREST

SPECIAL WARRANTY DEED

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, **HATTIESBURG PUBLIC SCHOOL DISTRICT**, a body politic and corporate of the State of Mississippi, f/k/a as Hattiesburg Municipal Separate School District, hereinafter referred to as the "GRANTOR", does hereby sell, convey and warrant specially, unto **LIGHTHOUSE RESCUE MISSION, INC.**, a Mississippi non-profit corporation, hereinafter referred to as the "GRANTEE", the following described real Property situated, lying and being in the City of Hattiesburg, County of Forrest, and State of Mississippi as per Exhibit A, attached hereto and made a part hereof for all purposes.

This conveyance is subject to the following:

- (i) Current year's ad valorem taxes and rollback taxes, if any;
- (ii) Matters of record, licenses, rights of way, easements, conditions, restrictions, reservations of mineral rights, zoning laws, ordinances, regulations, and other matters affecting the Property;
- (iii) Any state of facts which an accurate survey or an inspection of the Property would reveal, including, but not limited to, the location of boundary lines, improvements and encroachments, if any;
- (iv) Prior reservations or conveyances of oil and gas and other minerals or mineral leases of any kind and character.

TO HAVE AND TO HOLD the within described Property, together with the privileges and appurtenances thereunto properly belonging, and subject to the exceptions herein contained and referred to, unto the Grantee, its successors and assigns forever.

WITNESS the signature of Grantor, on this the 21st day of November, 2005.

GRANTOR:

HATTIESBURG PUBLIC SCHOOL DISTRICT
f/k/a Hattiesburg Municipal Separate School District

By: Annie P. Wimbish
Annie P. Wimbish, Ed.D., Superintendent

By: Sam Buchanan
Sam Buchanan, President, Board of Trustees, Hattiesburg Public School District

ATTEST:
Ann Chapman
Ann Chapman, Secretary

ACKNOWLEDGMENT

COPY

STATE OF MISSISSIPPI

COUNTY OF Forrest

This day personally appeared before me, the undersigned authority in and for the State and County aforesaid, the within named Annie P. Wimbish, Ed.D., who acknowledged that she is Superintendent of Hattiesburg Public School District, a body politic and corporate of the State of Mississippi, f/k/a Hattiesburg Municipal Separate School District, and that in such representative capacity, and not individually, and after having been duly authorized by said District so to do, she executed, signed and delivered the foregoing Special Warranty Deed on the day and year therein mentioned and for the purposes therein expressed.

Given under my hand and official seal of office, this the 21st day of November, 2005.

Bonnie Gail Hill
Notary Public
My Commission Expires: 4/12/09

(Seal)



STATE OF MISSISSIPPI

COUNTY OF Forrest

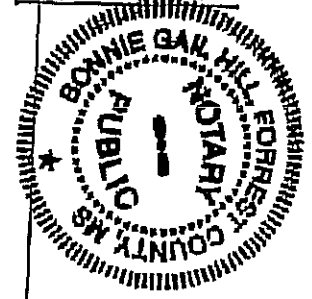
MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 12, 2009
BONDED THRU STEGALL NOTARY SERVICE

This day personally appeared before me, the undersigned authority in and for the State and County aforesaid, the within named Sam Buchanan, who acknowledged that he is the President of the Board of Trustees, Hattiesburg Public School District, a body politic and corporate of the State of Mississippi, f/k/a Hattiesburg Municipal Separate School District, and that in such representative capacity, and not individually, and after having been duly authorized by said Board so to do, he executed, signed and delivered the foregoing Special Warranty Deed on the day and year therein mentioned and for the purposes therein expressed.

Given under my hand and official seal of office, this the 21st day of November, 2005.

Bonnie Gail Hill
Notary Public
My Commission Expires: 4/12/09

(Seal)



MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 12, 2009
BONDED THRU STEGALL NOTARY SERVICE

EXHIBIT A

COPY

Entire Blocks One (1) and Two (2) and that portion of Providence Street lying between said two blocks and the East and West alleys in said two blocks, said street and alleys having been heretofore vacated by Ordinance No. 756 of the City of Hattiesburg, Mississippi all in the W. G. Gillespie Subdivision of the Sanford, Kearney & Gillespie Addition to the said City of Hattiesburg, located in the West Half of the Southeast Quarter of Section Four, Township Four North of Range Thirteen West, together with the improvements and appurtenances thereunto belonging.

GRANTOR'S ADDRESS: Hattiesburg Public School District
f/k/a Hattiesburg Municipal Separate School District
301 Mamie Street
P. O. Box 1589
Hattiesburg, Mississippi 39403

TELEPHONE NUMBER: (601) 584-6283

GRANTEE'S ADDRESS: Lighthouse Rescue Mission, Inc.
206 Eupora Street
Hattiesburg, Mississippi 39401

TELEPHONE NUMBER: (601) 582-5900

COPY

INDEXING INSTRUCTIONS:

Entire Blocks One (1) and Two (2) and a portion of Providence Street and the East and West alleys in said two blocks, all in the W. G. Gillespie Subdivision of the Sanford, Kearney & Gillespie Addition to the City of Hattiesburg, located in the West 1/2 of the Southeast 1/4 of Section 4, Township 4 North, Range 13 West

This instrument was prepared by:
Mark E. Power, Jr.
Adams and Reese, L.L.P.
Post Office Box 24297
Jackson, Mississippi 39225-2497
Telephone Number (601) 353-3234