

**RESOLUTION NO. 808**

**A RESOLUTION OF THE TOWN OF SEWALL'S POINT TOWN  
COMMISSION APPROVING THE SETTLEMENT OF CLAIMS RELATED TO  
THE NEHME CONDEMNATION**

**WHEREAS**, the Town Attorney has negotiated agreements for the settlement of claims related to the Nehme Condemnation with Captec Engineering, Inc. and Betsy Lindsay, Inc.; and

**WHEREAS**, Staff recommends that the Commission approve the agreements for the settlement of claims.

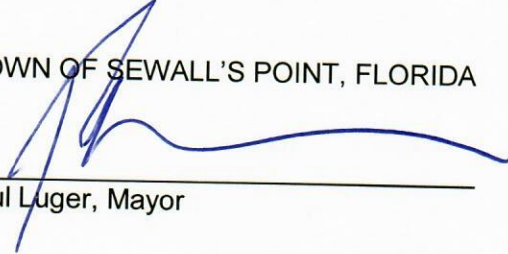
**THEREFORE**, be it resolved, that the Town Commission of the Town of Sewall's Point approves the agreements for the settlement of claims related to the Nehme Condemnation with Captec Engineering, Inc. and Betsy Lindsay, Inc. ( copies of which are attached hereto as exhibit "A").

**Section 1.** The whereas clauses incorporated herein as true and correct.

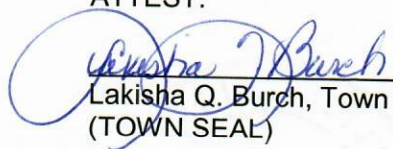
**Section 2.** This Resolution shall take effect immediately upon adoption.

**DULY ADOPTED** at a regular meeting this **24<sup>th</sup>** day of February, 2015.

TOWN OF SEWALL'S POINT, FLORIDA

  
\_\_\_\_\_  
Paul Luger, Mayor

ATTEST:

  
\_\_\_\_\_  
Lakisha Q. Burch, Town Clerk  
(TOWN SEAL)

  
\_\_\_\_\_  
Glen J. Torcivia, Town Attorney  
Florida Bar No. 343374  
Approved as to form and legal sufficiency

EXHIBIT "A"

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS IS A SETTLEMENT AGREEMENT AND MUTUAL RELEASE** between the TOWN OF SEWALL'S POINT, its officers, employees and agents, whose mailing address is 1 South Sewall's Point Road, Sewall's Point, Florida 34996 ("Town") and CAPTEC ENGINEERING, INC. ("Captec"), whose mailing address is 301 N.W. Flagler Avenue, Stuart, Florida 34994 and serves to resolve all claims arising from the eminent domain dispute involving property located at 19 S. Sewall's Point Road, more commonly known as the "Nehme Property" (the "Eminent Domain Dispute") (the "Agreement").

**NOW THEREFORE**, the Town and Lyndsay, intending to be legally bound, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

1. **Effective Date.** The Effective Date of this Agreement shall be the date this Agreement is last signed by a party.

2. **Payment and Waiver.** Captec agrees to waive any claims to the accounts receivable from the Town in the amount of **Two Thousand Three Hundred Forty-Four Dollars (\$2,344.00)** which shall be deemed so waived when Captec has executed this Agreement. Captec also agrees to provide the Town a credit in the amount of **Five Thousand Five Hundred Dollars (\$5,500.00)** to be used by the Town at the Town's discretion for future services.

3. **Attorneys' Fees and Costs.** Each party shall bear its own attorneys' fees and costs related to this dispute and the negotiation and drafting of this Agreement.

4. **No Admission.** This Agreement shall not be deemed to be an admission of any liability by either party or an admission of any fact, allegation or statement made by either party.

5. **Mutual Release.** Upon the Town's receipt of the Agreed Sum and in consideration of the mutual premises contained herein, the parties hereby release, acquit, and forever discharge each other and their officers, employees and agents from any and all actions, causes of actions, claims, counterclaims, demands, damages, costs, expenses, interest, attorneys' fees and compensation whatsoever, now or in the past existing, whether known or unknown, in any way relating to or arising out of the Eminent Domain Dispute and services provided in connection with such dispute.

EXHIBIT "A"

6. **Miscellaneous.**

- 6.1 Time is of the essence in this Agreement.
- 6.2 This Agreement is made in the State of Florida and shall be governed exclusively by Florida law. Venue for any litigation shall be in Martin County, Florida, exclusively.
- 6.3 This is the entire agreement between the parties and shall not be modified or amended except by a written document signed by both parties.
- 6.4 The parties acknowledge that they have read the Agreement, understand it and agree to abide by its terms and conditions; that the parties were provided the opportunity to seek the advice of legal counsel; and that each party is entering into this Agreement knowingly and voluntarily.
- 6.5 Each party binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants, provisions or obligations of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee, or agent of either party related to the settlement of the lawsuit.
- 6.6 The terms and provisions of this Agreement may be enforced by specific performance and damages, in addition to any other remedies for breach hereof.
- 6.7 If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, prejudgment interest at the statutory rate, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals) incurred in that action or proceeding, and the immediate entry of judgment on the Agreement, in addition to any other relief to which such party may be entitled.
- 6.8 If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to

EXHIBIT "A"

- persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 6.9 Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that party's right to enforce or exercise said right(s) at any time thereafter.
- 6.10 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- 6.11 The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement.
- 6.12 This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 6.13 Either or both parties to this Agreement may sign this Agreement via facsimile or email and such signature is as valid as the original signature of such party.
- 6.14 Joseph W. Capra represents that he has full power, authority and legal right to execute and deliver this Agreement and perform all of its obligations under this Agreement. By signing this Agreement, Joseph W. Capra hereby represents to the Town that he has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of Captec Engineering, Inc., as its President, and to bind and obligate such parties with respect to all provisions contained in this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**

EXHIBIT "A"

IN WITNESS WHEREOF, the parties have signed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

**TOWN OF SEWALL'S POINT**

ATTEST:

By: \_\_\_\_\_  
LAKISHA BURCH, TOWN CLERK

By: \_\_\_\_\_  
PAUL LUGER, MAYOR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
GLEN J. TORCIVIA, TOWN ATTORNEY  
Florida Bar No. 343374

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned, personally appeared PAUL LUGER, MAYOR, on behalf of the TOWN OF SEWALL'S POINT who is personally known to me or who produced \_\_\_\_\_ as personal identification and who executed the foregoing instrument and acknowledged before me that he/she executed the same, for the uses and purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

Signed: \_\_\_\_\_  
Notary Public

[NOTARY SEAL]

\_\_\_\_\_  
Print name of Notary Public  
My Commission Expires: \_\_\_\_\_

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SIGNATURE PAGE FOLLOWS]**

EXHIBIT "A"

**CAPTEC ENGINEERING, INC.**

By: \_\_\_\_\_  
JOSEPH W. CAPRA  
PRESIDENT

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned, personally appeared \_\_\_\_\_, JOSEPH W. CAPRA, on behalf of CAPTEC ENGINEERING, INC., as its President, who is personally known to me or who produced \_\_\_\_\_ as personal identification and who executed the foregoing instrument and acknowledged before me that he/she executed the same, for the uses and purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed: \_\_\_\_\_  
Notary Public

[NOTARY SEAL]

\_\_\_\_\_  
Print name of Notary Public  
My Commission Expires: \_\_\_\_\_

## EXHIBIT "A"

causes of actions, claims, counterclaims, demands, damages, costs, expenses, interest, attorneys' fees and compensation whatsoever, now or in the past existing, whether known or unknown, in any way relating to or arising out of the Eminent Domain Dispute and services provided by Lindsay to the Town in connection with the Nehme Property, the Eminent Domain Dispute, or related surveying and mapping services.

6. **Miscellaneous.**

- 6.1 Time is of the essence in this Agreement.
- 6.2 This Agreement is made in the State of Florida and shall be governed exclusively by Florida law. Venue for any litigation shall be in Martin County, Florida, exclusively.
- 6.3 This is the entire agreement between the parties and shall not be modified or amended except by a written document signed by both parties.
- 6.4 The parties acknowledge that they have read the Agreement, understand it and agree to abide by its terms and conditions; that the parties were provided the opportunity to seek the advice of legal counsel; that each party's legal counsel did review this Agreement; and that each party is entering into this Agreement knowingly and voluntarily.
- 6.5 Each party binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants, provisions or obligations of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee, or agent of either party related to the settlement of the lawsuit.

6.6 The terms and provisions of this Agreement may be enforced by specific

## EXHIBIT "A"

- and expenses incident to appeals) incurred in that action or proceeding, and the immediate entry of judgment on the Agreement, in addition to any other relief to which such party may be entitled.
- 6.8 If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 6.9 Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that party's right to enforce or exercise said right(s) at any time thereafter.
- 6.10 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- 6.11 The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement.
- 6.12 This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 6.13 Either or both parties to this Agreement may sign this Agreement via facsimile or email and such signature is as valid as the original signature of such party.
- 6.14 Elizabeth A. Lindsay represents that she has full power, authority and legal right to execute and deliver this Agreement and perform all of its obligations under this Agreement. By signing this Agreement, Elizabeth A. Lindsay hereby represents to the Town that she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of herself as an individual and on behalf of Betsy Lindsay, Inc., as its President, and to bind and obligate such parties with respect to all provisions contained in this Agreement.



**EXHIBIT "A"**

IN WITNESS WHEREOF, the parties have signed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

**TOWN OF SEWALL'S POINT**

ATTEST:

By: \_\_\_\_\_  
LAKISHA BURCH, TOWN CLERK

By: \_\_\_\_\_  
PAUL LUGER, MAYOR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
GLEN J. TORCIVIA, TOWN ATTORNEY  
Florida Bar No. 343374

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned, personally appeared PAUL LUGER, MAYOR, on behalf of the TOWN OF SEWALL'S POINT who is personally known to me or who produced \_\_\_\_\_ as personal identification and who executed the foregoing instrument and acknowledged before me that he/she executed the same, for the uses and purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

Signed: \_\_\_\_\_  
Notary Public

[NOTARY SEAL]

\_\_\_\_\_  
Print name of Notary Public  
My Commission Expires: \_\_\_\_\_

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SIGNATURE PAGE FOLLOWS]**

**EXHIBIT "A"**

ELIZABETH A. LINDSAY  
AND BETSY LINDSAY, INC.

By: \_\_\_\_\_  
ELIZABETH A. LINDSAY  
(Individually and on behalf of  
Betsy Lindsay, Inc. as its President)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned, personally appeared \_\_\_\_\_, ELIZABETH A. LINDSAY, individually, and on behalf of Betsy Lindsay, Inc., as its President, who is personally known to me or who produced \_\_\_\_\_ as personal identification and who executed the foregoing instrument and acknowledged before me that he/she executed the same, for the uses and purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed: \_\_\_\_\_  
Notary Public

[NOTARY SEAL]

\_\_\_\_\_  
Print name of Notary Public  
My Commission Expires: \_\_\_\_\_

