

RESOLUTION 2013-05

A RESOLUTION OF THE CITY OF LAKE WALES, FLORIDA, RELATING TO THE PARTIAL SETTLEMENT OF CERTAIN EMINENT DOMAIN LITIGATION APPLICABLE TO THE "C" STREET L.S. 16 AREA SEWER REPLACEMENT PROJECT; PROVIDING FOR ACCEPTANCE BY THE LAKE WALES CITY COMMISSION OF A "DISCLOSURE OF BENEFICIAL INTEREST"; PROVIDING FOR THE APPROVAL BY THE LAKE WALES CITY COMMISSION OF THE TERMS AND CONDITIONS OF A RIGHT OF WAY AGREEMENT AND A STIPULATED SETTLEMENT AGREEMENT; PROVIDING FOR AUTHORIZATION AND DIRECTION BY THE LAKE WALES CITY COMMISSION TO THE CITY'S SPECIAL EMINENT DOMAIN COUNSEL CONCERNING EXECUTION OF THE STIPULATED SETTLEMENT AGREEMENT AND PERFORMANCE THEREUNDER; PROVIDING FOR DIRECTION BY THE LAKE WALES CITY COMMISSION TO THE CITY'S FINANCE DIRECTOR CONCERNING THE PROVISION OF FUNDS REQUIRED PURSUANT TO THE STIPULATED SETTLEMENT AGREEMENT.

WHEREAS, the City Commission of the City of Lake Wales, Florida has identified the need for the replacement of sewer lines and a lift station (i.e. "L.S. 16") that serve properties within the City in the general vicinity of "C" Street, South of Florida Avenue, West of the Seaboard Coast Line Railway Line, North of the Seaboard Coast Line East-West Spur Railway Line and East of "G" Street (the "C" Street – L.S. 16 Area); and

WHEREAS, The City Commission of the City of Lake Wales, Florida, has previously authorized the acquisition of easement interest necessary for the placement of the replacement sewer lines in the "C" Street – L.S. 16 Area; and

WHEREAS, the City Commission of the City of Lake Wales has previously authorized BRYANT MILLER OLIVE, P.A. as special eminent domain counsel to file an action in eminent domain for the acquisition of those easement interests not acquired through a voluntary conveyance; and

WHEREAS, a Petition in Eminent Domain styled *The City of Lake Wales v. The Estate of Willie Jenkins, et al* (Case No. 2013-CA-000548) has been filed in the Circuit Court of the Tenth Judicial Circuit of Florida (the “Petition in Eminent Domain”) to acquire easement interest in those parcels that have not been acquired by voluntary conveyance ; and

WHEREAS, B&S Land Development, LLC (B&S) is a Defendant in the above styled action and owner of parcel 1190 described in such action.

WHEREAS, pursuant to §286.23 Florida Statutes, B&S is required to provide the “Chief Officer of the City” with a “Disclosure of Beneficial Interest” prior to entering into any agreement with the City providing for the sale of real property. Such Disclosure of Beneficial Interest is attached hereto as “Exhibit A”; and

WHEREAS, attached hereto as “Exhibits B and C”, respectively, are a Right-of-Way Agreement and a Stipulated Settlement Agreement which set forth the terms and conditions for the sale by B&S and the purchase by the City of Lake Wales of an easement interest in parcel 1190; and

WHEREAS, the City Commission of the City of Lake Wales has considered and is in agreement with the terms and conditions of the Right-of-Way Agreement and Stipulated Settlement Agreement; and

WHEREAS, the City Commission of the City of Lake Wales desires to provide direction to its special eminent domain counsel regarding the Stipulated Settlement Agreement and regarding the manner of making payment to B&S for the transfer of the easement interests and for all attorney’s fees and costs incurred by B&S; and

WHEREAS, the City Commission of the City of Lake Wales desires to provide direction

to the Finance Director of the City concerning payment of any monies required of the City pursuant to the Stipulated Settlement Agreement;

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF LAKE WALES, FLORIDA:

SECTION 1. The foregoing recitals and findings are incorporated by reference and made a part hereof.

SECTION 2. The City Commission of the City of Lake Wales hereby acknowledges receipt of the "Disclosure of Beneficial Interest" made on behalf of B&S as set forth in "Exhibit A" attached hereto.

SECTION 3. The City of Commission of the City of Lake Wales hereby gives its final approval of the Right-of-Way Agreement attached hereto as "Exhibit B" and further is in agreement with the terms and conditions set forth in the Stipulated Settlement Agreement attached hereto as "Exhibit C".

SECTION 4. The City Commission of the City of Lake Wales hereby authorizes and directs BRYANT MILLER OLIVE, P.A., its special eminent domain counsel, to execute the Stipulated Settlement Agreement on behalf of the City; and to perform those functions on behalf of the City necessary for the acquisition of the easement interest of B&S and the entry by the Court of a "Stipulated Final Judgment as to Defendant B&S Land Development, LLC", including making payment to B&S (through its attorney) of moneys identified in the Stipulated Settlement Agreement and made available by the Lake Wales City Commission for this purpose.

SECTION 5. The City Commission of the City of Lake Wales hereby directs its Finance Director, Dorothy Ecklund, to make funds in the amount of Nine Thousand One Hundred Fifty

Dollars (\$9,150.00) available to City Attorney, Albert C. Galloway Jr., for the purpose of making payment for the easement interest of B&S and the attorneys fees and cost of B&S as set forth in the Right-of-Way Agreement and the Stipulated Settlement Agreement

SECTION 6. This resolution shall take effect immediately upon passage.

PASSED AND CERTIFIED AS TO PASSAGE this 19th day of February A.D.

2013.



MICHAEL CARTER, MAYOR

ATTEST: 
CLARA VANBLARGAN
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

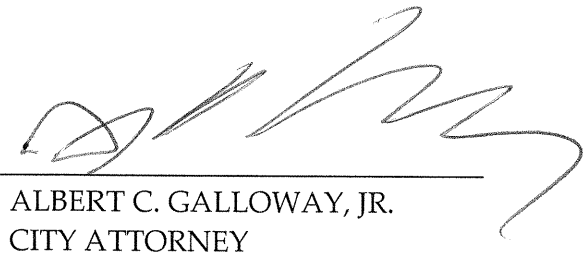

ALBERT C. GALLOWAY, JR.
CITY ATTORNEY

EXHIBIT A

**DISCLOSURE OF BENEFICIAL INTEREST OF PROPERTY OWNED BY B&S LAND
DEVELOPMENT, LLC PURSUANT TO SEC 286.23 FLORIDA STATUTES**

Mayor Commissioner Michael S. Carter
City of Lake Wales, Florida
201 West Central Avenue
Lake Wales, Florida 33853

I, the undersigned, under oath and under the penalty of perjury swear or affirm as follows:

1. My name is Steven Parker and I hold title for B&S Land Development, LLC a Florida Limited Liability Company (B&S) in the capacity of manager. I am providing this sworn disclosure statement (Disclosure) in accordance with the provisions of Section 286.23 Florida Statutes.

2. My address is: PO Box 847
Frostproof

3. B&S holds legal title to certain real property (the Property) situated in Lake Wales, Florida described as:

Lot 5 Block 12 Thulberrys second subdivision, according to the plat thereof recorded in plat book 24 page 21 of the public records of Polk County, Florida.

4. In conjunction with the "C" street sewer improvement project, B&S is considering the sale to the City of Lake Wales, Florida of an easement interest (easement) in property. The easement is more particularly described as follows:

"The North 15.00 feet of Lot 5, Block 12 of the Map of THULLBERY'S SECOND SUBDIVISION, according to the plat thereof as recorded in Plat Book 24, Page 21, of the Public Records of Polk county, Florida, being more particularly described as follows:

Begin at the Northwest corner of the said Lot 5, Block 12 of the Map of THULLBERY'S SECOND SUBDIVISION, thence North 89°33'43" East along the North line of said Lot 5, a distance of 44.50 feet to the Northeast corner of said Lot 5; thence South 00°26'17" East along the East line of said Lot 5, a distance of 15.00 feet; thence South 89°33'43" West, a distance of 44.50 feet to the West line of said Lot 5; thence North 00°26'17" West along the West line of said Lot 5, a distance of 15.00 feet to the Point of Beginning.

Containing 667.50 square feet more or less."

5. The names and address of every person having a beneficial interest in the property is:

Name

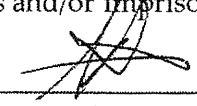
Address

Brent Watkins

530 OTTO POLK RD
Frostproof FL 33843

I have read completely this disclosure and fully understand the document. I understand that I am swearing under oath to the truthfulness of the matters herein and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

DATED 2-4-, 2013.


Steve Parker, Manager

814 WINTER
FRONTPOOF FL 33843
(Address)

(mail to PO BOX only)
PO. 847

STATE OF FLORIDA
COUNTY OF POLK

Sworn to and subscribed before me this 4th day of FEBRUARY, 2013 by
STEVEN D. PARKER who is personally known to me or who has produced
FL. D.W. as identification.

NOTARY PUBLIC



ANDREA R. BRANNON
Notary Public, State of Florida
My Comm. Expires June 10, 2013
Commission No. DD 889374

EXHIBIT B

RIGHT-OF-WAY AGREEMENT

This AGREEMENT made and entered into this ____ day of February ____, 2013, by and between **B&S LAND DEVELOPMENT, LLC**, hereinafter referred to as "Owner", and **CITY OF LAKE WALES, FLORIDA**, hereinafter referred to as "Purchaser".

WITNESSETH

WHEREAS, Purchaser requires an easement interest in the lands of owner described as **Parcel No. 1190**, shown in **Attachment "A"**, to provide additional right-of-way for the construction and maintenance of replacement sewer lines; and

WHEREAS, Purchaser has filed an eminent domain action styled *City of Lake Wales, Florida v. Estate of Willie Jenkins, et al* case no. 2013-CA-000548 in which Purchaser seeks to acquire easement interest in various parcels including the lands of owner described in **Parcel No. 1190**;

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar each to the other paid, it is agreed as follows:

- (a) Owner agrees to sell and convey, by a grant of easement free of liens and encumbrances, unto said Purchaser, said lands and affected improvements for the total sum of **\$7,500.00**
- (b) Purchaser agrees to pay owner said **\$7,500** together with statutory attorney's fees in the amount of **\$1,650.00** for a total settlement amount of **\$9,150.00** payable to the **David W. Holloway, P.A., Trust Account** for disbursement upon the entry of the Court of a "Stipulated Final Judgment as to Defendant B&S Land Development, LLC" and simultaneous delivery to Purchaser of a grant of easement in the form attached hereto as **Attachment "B"**
- (c) Purchaser agrees that in the event the large tree, adjacent to the easement that is on the remainder of Owners property is killed as a result of the Purchaser's use of the easement, the Purchaser, at its expense will remove the tree from the property of Owner.
- (d) Purchaser agrees that no special assessment shall be assessed against the property of Owner for installation of the replacement sewer lines.
- (e) Owner agrees and expressly acknowledges that the monies paid in accordance with (a) and (b) above are full compensation for all property interest and/or claims arising from this acquisition and no other monies including fees and/or costs are owed by Purchaser to Owner.

*** THIS AGREEMENT IS SUBJECT TO FINAL APPROVAL BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA.**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names, and on the date shown above.

B&S LAND DEVELOPMENT, LLC (OWNER)

By:


Steve Parker—its Manager

**CITY OF LAKE WALES, FLORIDA
(PURCHASER)**

By:

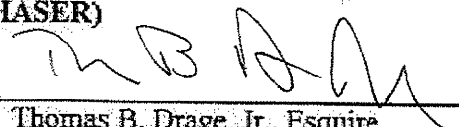

Thomas B. Drage, Jr., Esquire
BRYANT MILLER OLIVE P.A.
Special Eminent Domain Counsel for the
City.

EXHIBIT A

Exhibit "A"
Legal Description

The North 15.00 feet of Lot 5, Block 12 of the Map of THULLBERY'S SECOND SUBDIVISION, according to the plat thereof as recorded in Plat Book 24, Page 21, of the Public Records of Polk county, Florida, being more particularly described as follows:

Begin at the Northwest corner of the said Lot 5, Block 12 of the Map of THULLBERY'S SECOND SUBDIVISION, thence North 89°33'43" East along the North line of said Lot 5, a distance of 44.50 feet to the Northeast corner of said Lot 5; thence South 00°26'17" East along the East line of said Lot 5, a distance of 15.00 feet; thence South 89°33'43" West, a distance of 44.50 feet to the West line of said Lot 5; thence North 00°26'17" West along the West line of said Lot 5, a distance of 15.00 feet to the Point of Beginning.

Containing 667.50 square feet more or less.

EXHIBIT B

Instrument prepared by:
Albert C. Galloway, Jr.
City Attorney
Albert C. Galloway, Jr., P.A.
P.O. Box 3339
Lake Wales, FL 33859

Please return to: Albert C. Galloway, Jr., P.A.

GRANT OF EASEMENT

THIS INDENTURE is made this ____ of February, 2013, between **B&S Land Development LLC**, a Florida Limited Liability Company, hereinafter referred to as Grantor, and the **CITY OF LAKE WALES**, a Florida municipal corporation, of Post Office Box 1320, Lake Wales, Florida 33859-1320, hereinafter referred to as Grantee.

WHEREAS, Grantor is the owner of certain real property lying in Polk County, Florida; and

WHEREAS, Grantee is desirous of obtaining a non-exclusive easement over and upon a portion of the Grantor's property for the purpose of operation and maintenance of a utility service line and Grantor is in agreement that the granting of such an easement is appropriate; and, reconstruction, installation, operation and maintenance of wastewater pipeline improvements and related facilities and Grantor is in agreement that the granting of such an easement is appropriate; and

WHEREAS, Grantee agrees that its installation within the easement will be underground; and

WHEREAS, Grantee acknowledges its obligation to maintain and repair its utility line lying under the easement, and to restore the easement to its existing state at the time of this Grant in the event of such repairs.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant unto Grantee, its assigns and successors in interest, an easement for the purpose of the operation and maintenance of a utility service line over and upon the following described parcel:

The North 15.00 feet of Lot 5, Block 12 of the Map of THULLBERY'S SECOND SUBDIVISION, according to the plat thereof as recorded in Plat Book 24, Page 21, of the Public Records of Polk county, Florida, being more particularly described as follows:

Begin at the Northwest corner of the said Lot 5, Block 12 of the Map of THULLBERY'S SECOND SUBDIVISION, thence North 89°33'43" East along the North line of said Lot 5, a distance of 44.50 feet to the Northeast corner of said Lot 5; thence South 00°26'17" East along the East line of said Lot 5, a distance of 15.00 feet; thence South 89°33'43" West, a distance of 44.50 feet to the West line of said Lot 5; thence North 00°26'17" West along the West line of said Lot 5, a distance of 15.00 feet to the Point of Beginning.

Containing 667.50 square feet more or less.

IN WITNESS WHEREOF, the said Grantor has executed the foregoing this ____ day of February, 2013.

Acknowledgement on the following page

Singed, sealed, and delivered in the
Presence of the following witnesses:

B&S Land Development, LLC

Witness
Print name

BY: _____ its Manager

Witness
Print name

STATE OF FLORIDA
COUNTY OF POLK

ACKNOWLEDGEMENT

The foregoing Grant of Easement was acknowledged before me this ____ day of
February, 2013, by _____, () who is personally known to me or () who has
produced _____ as identification.

Notary Public
My Commission Expires:

EXHIBIT C

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT,
IN AND FOR POLK COUNTY, FLORIDA**

CITY OF LAKE WALES, a municipal
corporation,

Petitioner,

v.

CASE NO.: 2013-CA-000548

DIVISION: 8

PARCEL: 1190

THE ESTATE OF WILLIE C. JENKINS,
Deceased; et al

Defendants.

**STIPULATED SETTLEMENT AGREEMENT BETWEEN THE CITY OF LAKE
WALES, FLORIDA AND B&S LAND DEVELOPMENT, LLC**

Petitioner, the City of Lake Wales Florida, ("The City") and Defendant, B&S Land Development, LLC ("B&S"), (collectively the "Parties") by and through their undersigned attorneys stipulate as follows:

1. The Parties represent that each including their respective attorneys have the authority to enter into this Stipulated Settlement Agreement.
2. The Parties acknowledge that B&S is the fee simple owner of certain property in Lake Wales Florida identified in this action as parcel 1190.
3. The Parties acknowledge that the City requires an easement across parcel 1190 for the installation and placement of replacement sewer lines and that the City has the power and authority to take such easement pursuant to Chapters 73 and 74 F.S.
4. The Parties acknowledge that they have reached agreement concerning the taking of the easement by the City.
5. The City agrees to pay to B&S the sum of Seven Thousand Five Hundred Dollars (\$7,500) in full settlement for acquisition of the easement interest applicable to parcel 1190,

inclusive of severance damages to the remainder of parcel 1190, and for any other claims of any nature whatsoever relating to the taking of parcel 1190, including statutory interests, but excluding attorneys fees and costs.

6. The City agrees to pay to B&S the sum of One Thousand Six Hundred Fifty Dollars (\$1,650.00), pursuant to §73.092 F.S., in full compensation for all attorneys fees incurred by B&S in this matter, including all non-monetary benefits attorneys fees, if any.

7. The Parties acknowledge that B&S has not incurred any costs in this matter pursuant to §73.091 F.S and that the City owes no monies to B&S for costs.

8. B&S agrees to cause to be delivered to the City a fully executed Grant of Easement as to parcel 1190, contemporaneous with the entry by the Court of a STIPULATED FINAL JUDGEMENT AS TO DEFENDANT B&S LAND DEVELOPMENT, LLC (in substantially the form attached hereto as "Exhibit A") and upon the City's payment of the sums set forth in paragraphs 5 and 6 herein.

9. The City agrees that in the event the large tree, adjacent to the easement that is on the remainder of the B&S property, is killed as a result of the City's use of the easement, the City, at its expense will remove the tree from the property of B&S.

10. The City agrees that no special assessment shall be assessed against the property of B&S for installation of the replacement sewer lines into the easement.

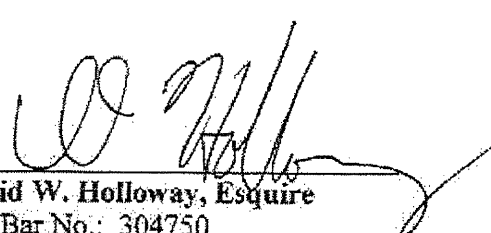
11. The Parties agree to contemporaneously file a joint motion requesting the Court to enter its STIPULATED FINAL JUDGEMENT AS TO DEFENDANT B&S LAND DEVELOPMENT, LLC.

SO STIPULATED:

Thomas B. Drage, Jr., Esquire
Fla. Bar No.: 0173070
BRYANT MILLER OLIVE, P.A.
135 W. Central Blvd., Ste. 700
Orlando, Florida 32801
Telephone: (407) 426-7001
Primary Email: tdrage@bmlaw.com
Secondary Email: mbalmer@bmlaw.com
Secondary Email: mfuller@bmlaw.com

-and-

Susan H. Churuti, Esquire
Fla. Bar No. 284076
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Ste. 2700
Tampa, Florida 33602
Telephone: (813) 273-6677
Primary Email: schuruti@bmlaw.com
Secondary Email: camengual@bmlaw.com



David W. Holloway, Esquire
Fla. Bar No.: 304750
13100 Park Blvd, Ste B
Seminole, Florida 33776
Telephone: (727) 362-5126
Primary Email: david@dwhpa.com

EXHIBIT A

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT,
IN AND FOR POLK COUNTY, FLORIDA**

CITY OF LAKE WALES, a municipal
corporation,

Petitioner,

v.

CASE NO.: 2013-CA-00548

DIVISION: 8

PARCEL: 1190

THE ESTATE OF WILLIE C. JENKINS,
Deceased; et al

Defendants.

**STIPULATED FINAL JUDGMENT AS TO DEFENDANT B&S LAND
DEVELOPMENT, LLC**

This cause came before the Court upon the Joint Motion for entry of a Stipulated Final Judgment, set forth below, made by the Petitioner City of Lake Wales (hereinafter "City") and one of the Defendants in this cause, B&S Land Development, LLC (hereinafter "B&S"), upon finding that the Parties were authorized to enter into such motion and that the compensation to be paid by the City is full, just, and reasonable for all Parties concerned and upon the Court being otherwise duly advised in the premises, the court does hereby

ORDER AND ADJUDGE THAT

1. The Court has jurisdiction of the subject property and of the Parties in this case pursuant to Chapters 73 and 74 Florida Statutes.
2. The City will pay to Defendant B&S the sum of Seven Thousand Five Hundred Dollars (\$7,500) in full settlement for the taking of the easement interest in parcel 1190, for severance damages to the remainder of parcel 1190 and for any other claims of any nature whatsoever relating to the taking of parcel 1190 including statutory interest, but excluding attorneys fees and costs.

3. The City will pay to Defendant B&S the sum of One Thousand Six Hundred Fifty Dollars (\$1,650.00) in full compensation for all attorneys fees pursuant to §73.092 Florida Statutes, in this matter, including all non-monetary benefit attorney's fees, if any.

4. The City will be required to pay nothing for costs pursuant to §73.091 Florida Statutes, in this matter.

5. B&S has provided its counsel with a fully executed Grant of Easement as to parcel 1190 (the easement) that will be held in trust and delivered to counsel for the City upon entry of this Final Judgment and payment by the City of those amounts as set forth in paragraphs 2 and 3 herein.

6. In the event that the City's use of the easement kills the large tree adjacent to the easement and remaining on the property, the City at its expense shall remove the tree.

7. No special assessment shall be assessed against the property of B&S comprising parcel 1190 related to the use of the easement by the City.

8. There shall be no further award to Defendant B&S.

9. The Court reserves jurisdiction to enforce the terms of this Stipulated Final Judgment.

DONE AND ORDERED.

Date: _____

Circuit Judge