

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
COLLIER COUNTY, FLORIDA CIVIL ACTION

STOCK DEVELOPMENT, LLC, and LELY  
RESORT MASTER PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiffs,

v.

LELY COMMUNITY DEVELOPMENT  
DISTRICT,

Defendant.

Case No. 2013 – 1507 – CA

### **SETTLEMENT AGREEMENT**

**Plaintiffs**, STOCK DEVELOPMENT, LLC (“Stock Development”), and LELY RESORT MASTER PROPERTY OWNERS ASSOCIATION, INC. (“Master Association”), (collectively the “Plaintiffs”), and **Defendant**, LELY COMMUNITY DEVELOPMENT DISTRICT (“CDD”), (the Plaintiffs and CDD collectively referred to herein as the “parties”) enter into this Settlement Agreement (“Agreement”) desiring to settle certain issues between them, and hereby agree as follows:

#### **1. RECITALS:**

The parties to this Agreement desire to settle certain issues between them, including but not limited to, the issues arising out of the case styled *Stock Development, LLC, and Lely Resort Master Property Owners Association, Inc., v. Lely Community Development District*, Case No. 2013 – 1507 - CA, (“Lawsuit”), and enter into this Agreement to settle such issues.

#### **2. CONSIDERATION:**

The consideration for this Agreement and for the execution and delivery of all documents

pursuant to it are the mutual promises contained in this Agreement, the sufficiency of which is acknowledged by the parties.

**3. THE PARTIES SPECIFICALLY AGREE AS FOLLOWS:**

- A. *Parity Fee.*** The Comprehensive Service Agreement, dated December 28, 2005, as amended (“CSA”), by virtue of this Agreement shall be modified to provide the units subject to the CSA and the units within the CDD shall be in parity with regard to the annual fee, effective January 1, 2017 and shall continue throughout the life of the CSA, and this provision of the Agreement will be memorialized and recorded pursuant to **Exhibit 1** attached hereto. From January 1, 2017 through September 30, 2017, the annual parity fee will be \$642.47.
- B. *Standing.*** The annual parity fee, effective January 1, 2017, shall be based on accurate budgets prepared in good faith. The CDD hereby gives CSA members special standing, as third party beneficiaries, to object to the CDD’s budgets and sue the CDD regarding the CDD’s budgets, in the event there is alleged abuse regarding the parity or calculations of the annual fee.
- C. *Excluded Tracts.*** Commercial Tract 22 and Tract 54 in Lely Resort shall be excluded from the CSA, which is memorialized as part of Exhibit 1.
- D. *Amendments.*** Lutheran Life and York will continue to be governed by their respective amendments to the CSA.
- E. *Landscape Maintenance.*** The Master Association landscape maintenance of the common areas depicted in **Exhibit A**, attached to **Exhibit 1** hereto,

shall become the responsibility of the CDD, effective October 1, 2017, and shall continue to be the responsibility of the CDD throughout the life of the CSA, and which shall be deemed to be part of the CSA as memorialized in Exhibit 1 attached hereto.

- F. *Exhibit 1.*** The parties agree to the terms in the Fifth Amendment to the Comprehensive Service Agreement (“Fifth Amendment”) attached hereto as **Exhibit 1**, agree to execute the attached Fifth Amendment contemporaneously with the execution of this Agreement, and agree the executed Fifth Amendment shall be recorded by Stock Development within ten (10) business days of the Effective Date of this Agreement.
- G. *Settlement Payments.*** The CDD shall pay the sum of **\$962,500.00** to the Master Association, c/o Cheffy Passidomo, P.A., 821 5th Avenue South, Naples, Florida 34102, via wire transfer on or before **March 1, 2017**. The wire instructions of Cheffy Passidomo shall be provided before the Effective Date to counsel for the CDD.
- H. *Attorneys’ Fees.*** The parties shall each bear their own attorneys’ fees and costs.
- I. *Dismissal.*** The Plaintiffs and Defendant each agree to dismiss with prejudice their respective Complaints and Counterclaims within five (5) business days after the successful transfer of the described funds to the Trust Account of Cheffy Passidomo, P.A.
- J.** The parties agree there is no issue with the irrigation of the new commercial project and new commercial development at Grand Lely

Boulevard and Collier Boulevard (referred to as Tract 22 above) because Stock Development obtained a separate water permit to irrigate the property.

**K.** The parties agree there is no issue with the irrigation of the new commercial/residential development at Rattlesnake Hammock Road and Grand Lely Boulevard (referred to as Tract 54 above) because Stock Development obtained a separate water permit to irrigate the property.

**L.** The CDD agrees to maintain all lakes and the lake bank access easements within Lely Resort, and the Plaintiffs agree to provide any lake bank access easements in Lely Resort to the CDD that may be reasonably necessary for the CDD to maintain the lakes in Lely Resort, and the Plaintiffs further agree to the transfer of any South Florida Water Management District permits reasonably necessary for the CDD to maintain the lakes and irrigation within Lely Resort.

**M.** Stock Development will provide the CDD with a bill of sale for the Lely Freedom Horses. The CDD agrees to maintain the Lely Freedom Horses.

**4. GENERAL RELEASE:**

STOCK DEVELOPMENT, LLC, and LELY RESORT MASTER PROPERTY OWNERS ASSOCIATION, INC., on the one hand, and LELY COMMUNITY DEVELOPMENT DISTRICT, on the other hand, hereby release and forever discharge each other, together with their successors, assignees, representatives, agents, employees, board members, partners, officers, members, shareholders, directors, managers, affiliates, and attorneys from any and all claims, demands, causes of action, of any kind or nature that ever existed,

whether discovered or undiscovered, whether known or unknown, whether latent or otherwise, from the beginning of the world to the signing of this Agreement, with the sole exception to this Release being the terms of this Agreement.

**5. MISCELLANEOUS:**

- A.** The parties agree that in the event other documents not described in this Agreement are required to fully effectuate the terms, conditions and obligations the parties have agreed to in this Agreement, then in that event, the parties shall make, execute and deliver, or cause to be made, executed and delivered, all further documents or instruments necessary to complete or perfect the said terms, conditions or obligations of this Agreement.
- B.** For purposes of the execution of this Agreement, facsimile signatures are acceptable as originals.
- C.** The Court shall retain jurisdiction to enter such orders as may be necessary or proper to enforce this Agreement.
- D.** If any litigation shall be instituted, or other action taken for the purpose of enforcing or interpreting any of the provisions of this Agreement, the prevailing party or parties as determined by the Court having jurisdiction thereof shall be entitled to recover, in addition to all other relief, an amount equal to all costs and expenses incurred in connection therewith, including without limitation, reasonable attorneys' fees at the trial level and in connection with all appellate proceedings.
- E.** Any number of counterparts of this Agreement may be executed and delivered (including via facsimile, which shall be accepted as originals),

each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

- F.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- G.** No change, modification, termination, or attempted waiver of any of the provisions of this Agreement shall be binding upon any party to this Agreement unless reduced to writing and signed by the party or parties against whom enforcement is sought.
- H.** All understandings and agreements between the parties are contained in this Agreement and Exhibits attached to this Agreement and the parties acknowledge that no representations or warranties have been made other than those specifically set forth herein.
- I.** Time is of the essence in this Agreement.
- J.** The “Effective Date” of this Agreement is the latest date that any of the parties sign this Agreement.
- K.** February 15, 2017 is the date of the next CDD Board meeting, wherein the CDD Board Members will conduct the final review, approval, and execution of the Agreement and its Exhibits, which have been recommended for approval by Counsel for the CDD, together with James Powers and Robert Fisher. The CDD shall provide the fully executed Agreement and Exhibits to the Plaintiffs on or by February 16, 2017.

*[Signatures found on the following page.]*

**STOCK DEVELOPMENT, LLC**

  
\_\_\_\_\_  
Chad Kocses  
Stock Development, LLC  
*Chief Financial Officer and Authorized Representative*

2/16/17  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Edmond E. Koester, Esquire  
Coleman, Yovanovich & Koester, P.A.  
*Counsel for Stock Development, LLC*

\_\_\_\_\_  
Date

**LELY RESORT MASTER PROPERTY OWNERS ASSOCIATION, INC.**

  
\_\_\_\_\_  
Keith Gelder  
Lely Resort Master Property Owners Association, Inc.  
*President and Authorized Representative*

2/16/17  
\_\_\_\_\_  
Date

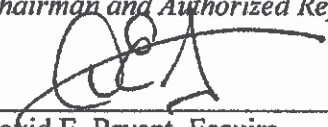
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Louis D. D'Agostino, Esquire  
Cheffy Passidomo, P.A.  
*Counsel for Lely Resort Master  
Property Owners Association, Inc.*

\_\_\_\_\_  
Date

**LELY COMMUNITY DEVELOPMENT DISTRICT**


  
\_\_\_\_\_  
William Lee  
Lely Community Development District  
*Chairman and Authorized Representative*

2/16/2017  
\_\_\_\_\_  
Date

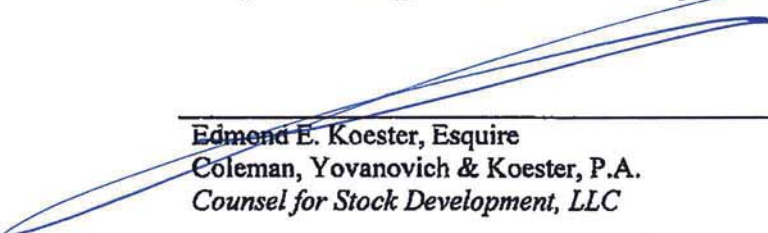
  
\_\_\_\_\_  
David E. Bryant, Esquire  
The Bryant Law Firm  
*Counsel for Lely Community Development District*

2/16/2017  
\_\_\_\_\_  
Date

**STOCK DEVELOPMENT, LLC**

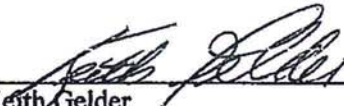
  
\_\_\_\_\_  
Chad Kocses  
Stock Development, LLC  
*Chief Financial Officer and Authorized Representative*

2/16/17  
Date

  
\_\_\_\_\_  
Edmond E. Koester, Esquire  
Coleman, Yovanovich & Koester, P.A.  
*Counsel for Stock Development, LLC*

2/17/2017  
Date

**LELY RESORT MASTER PROPERTY OWNERS ASSOCIATION, INC.**

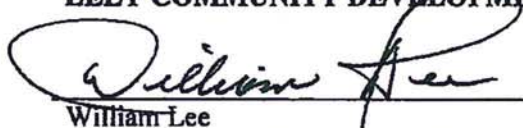
  
\_\_\_\_\_  
Keith Gelder  
Lely Resort Master Property Owners Association, Inc.  
*President and Authorized Representative*

2/16/17  
Date


\_\_\_\_\_  
Louis D. D'Agostino, Esquire  
Cheffy Passidomo, P.A.  
*Counsel for Lely Resort Master  
Property Owners Association, Inc.*

\_\_\_\_\_  
Date

**LELY COMMUNITY DEVELOPMENT DISTRICT**

  
\_\_\_\_\_  
William Lee  
Lely Community Development District  
*Chairman and Authorized Representative*


2/16/2017  
Date

  
\_\_\_\_\_  
David E. Bryant, Esquire  
The Bryant Law Firm  
*Counsel for Lely Community Development District*

2/16/2017  
Date



**STOCK DEVELOPMENT, LLC**

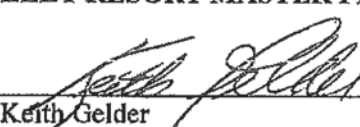
  
\_\_\_\_\_  
Chad Kocses  
Stock Development, LLC  
*Chief Financial Officer and Authorized Representative*

2/16/17  
Date

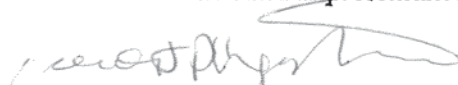
\_\_\_\_\_  
Edmond E. Koester, Esquire  
Coleman, Yovanovich & Koester, P.A.  
*Counsel for Stock Development, LLC*

\_\_\_\_\_  
Date

**LELY RESORT MASTER PROPERTY OWNERS ASSOCIATION, INC.**

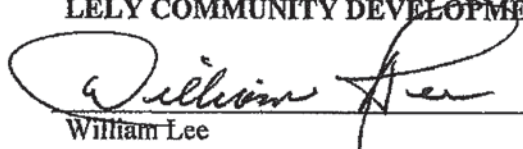
  
\_\_\_\_\_  
Keith Gelder  
Lely Resort Master Property Owners Association, Inc.  
*President and Authorized Representative*

2/16/17  
Date


  
\_\_\_\_\_  
Louis D. D'Agostino, Esquire  
Cheffy Passidomo, P.A.  
*Counsel for Lely Resort Master  
Property Owners Association, Inc.*

2/17/17  
Date

**LELY COMMUNITY DEVELOPMENT DISTRICT**

  
\_\_\_\_\_  
William Lee  
Lely Community Development District  
*Chairman and Authorized Representative*

2/16/2017  
Date

  
\_\_\_\_\_  
David E. Bryant, Esquire  
The Bryant Law Firm  
*Counsel for Lely Community Development District*

2/16/2017  
Date

# **EXHIBIT 1**

## **FIFTH AMENDMENT TO COMPREHENSIVE SERVICE AGREEMENT**

This Fifth Amendment to Comprehensive Service Agreement (“Fifth Amendment”) is made and entered into on this 17th day of February 2017, by and between LELY COMMUNITY DEVELOPMENT DISTRICT, a community development district established and existing pursuant to Chapter 190, Florida Statutes (“District”), and LELY RESORT MASTER PROPERTY OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation (“Master Association”), and STOCK DEVELOPMENT, LLC, the Developer and a Florida limited liability company.

### **WITNESSETH THAT:**

For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby declare and agree as follows:

1. **Modification to Section 2(c)**. Section 2(c) of the Comprehensive Service Agreement, dated December 28, 2005, as amended (“Agreement”), is hereby amended and restated as follows (with strikeout indicating deleted language and underlining indicating added language):

(c) District’s Provision of Services. The District agrees to provide ~~or make available~~ the same Public Services to the Classics through the Master Association on the same terms and conditions as are provided to existing owners within the District. Such Public Services shall include, ~~without limitation,~~ the provision of irrigation water (subject to the provisions of Section 3 below), maintenance of main entry landscaping features, lake maintenance (excluding fountain maintenance), street lighting, common area maintenance, community privacy patrol, and off-duty law enforcement patrol. Common area maintenance for the Classics shall include, without limitation, (i) maintaining the landscaping in the roundabout in front of the entrance to the Classics together with the landscaping surrounding the roundabout and (ii) maintaining the common area landscaping on Classics Boulevard leading up to the Classic’s gatehouse. The Master Association hereby transfers and the District hereby accepts the landscaping maintenance responsibilities of the common areas depicted in Exhibit A attached hereto, effective October 1, 2017, and said landscaping maintenance responsibilities shall continue to be the responsibility of the District throughout the life of the Comprehensive Service Agreement. Commercial Tract 22 and Tract 54 in Lely Resort are excluded from the Agreement and are specifically excluded from the District’s common area maintenance responsibilities. ~~The District~~

~~may add new Public Services from time to time; provided, however that in the event the District initiates a new Public Services (other than those existing at the date of this Agreement) the Master Association shall be given the option to opt out of the receipt of said service and all calculations of O&M expenses (as outlined below) shall be adjusted accordingly.~~

2. **Modification to Section 2(e)**. Section 2(e) of the Agreement is hereby amended and restated as follows (with the strikethrough indicating deleted language and underlining indicated added language):

(e) Annual Operation and Maintenance Fee. The Master Association shall pay to the District a per unit, annual operation and maintenance fee (“Annual O&M Fee”) in parity with the annual District’s fees for District units, for the provision of Public Services to the Master Association within the Classics, beginning on January 1, 2017 and continuing throughout the life of the Comprehensive Services Agreement. The per unit fee for District members and Annual O&M Fee for CSA units shall be the same. An example of the calculation is attached hereto as **Exhibit B**. The Annual O&M shall apply to each unit in the Classics upon which a principal structure has been constructed (and received a certificate of occupancy) and sold to an end-user (a “Sold Unit”) and to certain special project units which have received a certificate of occupancy as described in the Second and Third Amendment (a “Special Unit”). Commercial Tract 22 and Tract 54 in Lely Resort are excluded from the Agreement and are specifically excluded from having to contribute the Annual O&M Fee. ~~The Master Association will only pay for those Sold Units and Special Units within its jurisdiction. On or before September 1, 2008, the District and the Master Association shall meet and agree upon the number of Sold Units and Special Units for purposes of calculating the Annual O&M Fee herein for the following District fiscal year. The date on which the District and the Master Association agree on the number of Sold Units and Special Units shall be referred to herein as the “Unit Date”. The Annual O&M Fee to be paid by the Master Association for each Sold Unit shall be determined each fiscal year by determining the quotient of the District's costs for each individual Public Service actually provided to the Master Association (as described below) divided by sum of the following: (i) the then-existing number of dwelling units within the jurisdictional boundaries of the District; plus (ii) the number of Sold Units; plus (ii) (if applicable for the specific Public Service) the number of Special Units. For those projects described in the Second Amendment and Third Amendment, the calculations of the Annual O&M Fee for the~~

~~Special Units in each project shall be computed independently as per the applicable amendment. For purposes of this subsection, the District's costs shall include those costs directly related to and arising from those Public Services actually provided to the Master Association and shall specifically include the following costs related to the provision of irrigation water: electricity for the District's overall irrigation system (including each System, as said term is defined in Section 3); repair and maintenance of the District's overall irrigation system (including each System as said term is defined in Section 3); meter reading; purchasing effluent water; salt monitoring; and the salary and benefits of employees whose services are directly related to the irrigation distribution system within and without the jurisdictional boundaries of the District. Notwithstanding anything to the contrary herein, in no event shall the Master Association be charged for any expenses related to the preparation and collection of District assessments on the Collier County tax roll, including, without limitation, assessment roll preparation fees, Collier County Property Appraiser fees and charges, Collier County Tax Collector fees and charges, and assessment write ups to accommodate for early tax payment discounts.~~

3. Lutheran Life and York will continue to be governed by their respective separate amendments to the Agreement.
4. **Conflict/Amendment.** The terms of this Fifth Amendment form a part of the Agreement and shall control and take precedence over any and all terms, provisions and conditions of the Agreement which might vary, contradict or otherwise be inconsistent with the terms and conditions hereof. All of the other terms, provisions and conditions of the Agreement, except as expressly amended and modified by this Fifth Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.
5. **Counterparts/Facsimile.** This Fifth Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures by facsimile transmission of this Fifth Amendment shall be acceptable and binding upon both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment to the Agreement as of the day and year first above written.

*[Signature pages found on following pages.]*

DISTRICT:

LELY COMMUNITY  
DEVELOPMENT DISTRICT

By:

Print Name: William Lee

Its: Chairman and Authorized  
Representative

ATTEST:

By:

Print Name: DAVID E. BRYANT

Its:

LEGAL COUNSEL

Approved as to form and legal sufficiency:

David Bryant  
District Counsel

STATE OF FLORIDA  
COUNTY OF COLLIER

Before me personally appeared William Lee, the Authorized Representative of Lely Community Development District () known to me personally or () identified to me by NA as the person described in and who, after being sworn and under oath by me, executed the foregoing instrument, and acknowledged to and before me that s/he executed said instrument for the purposes therein expressed.

Witness my hand and official seal this 16<sup>th</sup> day of FEBRUARY, 2017.

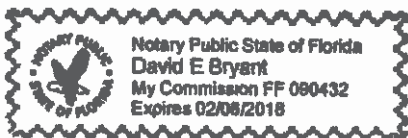
(SEAL)

Notary Public

DAVID E. BRYANT

Print Name:

My commission expires: \_\_\_\_\_



**THE MASTER ASSOCIATION:**

**LELY RESORT MASTER  
PROPERTY OWNERS  
ASSOCIATION, INC., a Florida not-  
for-profit corporation**

Signed, sealed and delivered in our presence:  
By: [Signature]  
Print Name: Chad Kocses

By: [Signature]  
Print Name: Keith Gelder  
Its: President

By: [Signature]  
Print Name: Stacey Anderson

STATE OF FLORIDA  
COUNTY OF COLLIER

Before me personally appeared Keith Gelder, the  
President of Lely Resort Master Property Owners Association, Inc.,  
 known to me personally or  identified to me by \_\_\_\_\_  
as the person described in and who, after being sworn and under oath by me, executed the  
foregoing instrument, and acknowledged to and before me that s/he executed said instrument  
for the purposes therein expressed.

Witness my hand and official seal this 16 day of February, 2017.

[Signature]  
Notary Public



Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STOCK DEVELOPMENT:

STOCK DEVELOPMENT, LLC, a Florida limited liability company

Signed, sealed and delivered in our presence:

By: [Signature]

Print Name: Keith Belder

By: [Signature]

Print Name: Chad Kocses

Its: CFO

By: [Signature]

Print Name: Stacey Anderson

STATE OF FLORIDA  
COUNTY OF COLLIER

Before me personally appeared Chad Kocses, the CFO of Stock Development, LLC, () known to me personally or () identified to me by \_\_\_\_\_ as the person described in and who, after being sworn and under oath by me, executed the foregoing instrument, and acknowledged to and before me that s/he executed said instrument for the purposes therein expressed.

Witness my hand and official seal this 16 day of February, 2017.

[Signature]  
Notary Public

(SEAL)



Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_



# EXHIBIT A



**H.M.**  
**HOLE MONTES**  
 ENGINEERS - PLANNERS - SURVEYORS

950 Encore Way  
 Naples, FL 34110  
 Phone: (941) 254-2000  
 Florida Certificate of  
 Authorization No. 1772

# **EXHIBIT B**

### ***CDD/CSA Calculation***

Total Lely CDD Budget Expenditures	2,895,988
Less Arlington Income	(54,081)
Less Astor Apartment Income	(55,896)
Less Disposition of Fixed Assets	(10,000)
Less Collier County School Board	(22,000)
Less Collier County of Commissioners	(4,800)
Less Interest Income	(5,000)
	<hr/>
	2,744,210

Number of CDD Units	3,139.72
Number of CSA Units	1,215
Total Units	<hr/>
	4,354.72

CDD/CSA Fee Per Unit	<b>630.17</b>
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