

## **AMENDMENT TO COMPREHENSIVE SERVICE AGREEMENT**

**THIS AMENDMENT TO COMPREHENSIVE SERVICE AGREEMENT** (this "Amendment") is made and entered into this \_\_\_\_\_ of \_\_\_\_\_, 2006, by and between **LELY COMMUNITY DEVELOPMENT DISTRICT**, a community development district established and existing pursuant to Chapter 190, Florida Statutes (the "District") and **LELY RESORT MASTER PROPERTY OWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation (the "Master Association").

### **WITNESSETH THAT:**

**WHEREAS**, the District is a local unit of special purpose government organized and existing in accordance with the Uniform Community Development District Act, Chapter 190, Florida Statutes, as amended, and established pursuant to a rule, adopted under Chapter 120, Florida Statutes, by the Florida Land and Water Adjudicatory Commission; and

**WHEREAS**, the District was established for purposes that include, without limitation, the delivery of certain community services within its jurisdiction; and

**WHEREAS**, the Master Association is a homeowners' association formed and existing pursuant to Chapters 617 and 720, Florida Statutes; and

**WHEREAS**, the Master Association is homeowners' association in control and governing all of Lely Resort pursuant Declaration of General Covenants, Conditions and Restrictions for Lely Resort dated March 13, 1990 and recorded March 16, 1990 in Official Records Book 1513, Page 835 of the Public Records of Collier County, Florida, as amended, together with the Articles of Incorporation and By-laws of the Master Association; and

**WHEREAS**, the Master Association and District previously entered into that certain Comprehensive Service Agreement dated December 28, 2006 (the "Agreement") through which the District, for compensation, would provide to properties within Lely Resort but situated outside the boundaries of the District, certain services that the District currently provides to the properties situated within the District; and

**WHEREAS**, the District has the authority under Chapter 190, Florida Statutes to provide the services described in the Agreement; and

**WHEREAS**, the Master Association and the District desire to amend the Agreement to clarify certain provisions of the Agreement.

**NOW, THEREFORE**, 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. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.
2. **Modification to Section 2(b).** Section 2(b) of the Agreement is hereby amended and restated as follows (with the strikeout indicating deleted language and underlining indicating 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") for the provision of Public Services to the Master Association within the Classics. The Annual O&M Fee shall only 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"). The Master Association will only pay for those Sold Units within its jurisdiction. The Annual O&M Fee to be paid by the Master Association shall be determined each fiscal year by determining the quotient of the District's costs for those services actually provided to the Master Association (as described below) divided by sum of the then-existing number of dwelling units within the jurisdictional boundaries of the District ~~(the Fiscal Year 2005 number of existing units is 3,477)~~ plus the number of Sold Units in the Classics. For purposes of this subsection, the District's costs shall include those costs directly related to and arising from ~~the provision of the 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. ~~For informational purposes, the Annual O&M Fee per unit for the District's Fiscal Year 2005 is \$497.00.~~

3. The terms of this 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 Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.

4. This 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 Amendment shall be acceptable and binding upon both parties.

*(Remainder of Page Intentionally Left Blank- Signatures Intentionally Left Blank)*

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

**DISTRICT:**

**LELY COMMUNITY DEVELOPMENT  
DISTRICT**

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, Secretary

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

Approved as to form and legal sufficiency:

\_\_\_\_\_  
David Bryant  
District Counsel

STATE OF FLORIDA                    )  
  ) ss.  
COUNTY OF COLLIER                )

The foregoing instrument was acknowledged before me, this \_\_\_\_\_ of \_\_\_\_\_, 2006, by \_\_\_\_\_ as \_\_\_\_\_, of the Lely Community Development District, on behalf of the district, who is (    ) personally known to me or (    ) has produced \_\_\_\_\_ as evidence of identification.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

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

(Type or Print)

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:

\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

STATE OF FLORIDA                    )  
  ) ss.  
COUNTY OF COLLIER                )

The foregoing instrument was acknowledged before me, this \_\_\_\_\_ of \_\_\_\_\_, 2006, by \_\_\_\_\_  
as \_\_\_\_\_ of Lely Resort Property Owners Association, Inc.,  
a Florida not-for-profit corporation, on behalf of the corporation, who is (    ) personally known to me or (    )  
has produced \_\_\_\_\_ as evidence of identification.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

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

(Type or Print)

My Commission Expires: \_\_\_\_\_

## **SECOND AMENDMENT TO COMPREHENSIVE SERVICE AGREEMENT**

**THIS SECOND AMENDMENT TO COMPREHENSIVE SERVICE AGREEMENT** (this "Second Amendment") is made and entered into this 20<sup>th</sup> of June, 2007, by and between **LELY COMMUNITY DEVELOPMENT DISTRICT**, a community development district established and existing pursuant to Chapter 190, Florida Statutes (the "District") and **LELY RESORT MASTER PROPERTY OWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation (the "Master Association").

### **WITNESSETH THAT:**

**WHEREAS**, the District is a local unit of special purpose government organized and existing in accordance with the Uniform Community Development District Act, Chapter 190, Florida Statutes, as amended, and established pursuant to a rule, adopted under Chapter 120, Florida Statutes, by the Florida Land and Water Adjudicatory Commission; and

**WHEREAS**, the District was established for purposes that include, without limitation, the delivery of certain community services within its jurisdiction; and

**WHEREAS**, the Master Association is a homeowners' association formed and existing pursuant to Chapters 617 and 720, Florida Statutes; and

**WHEREAS**, the Master Association is homeowners' association in control and governing all of Lely Resort pursuant Declaration of General Covenants, Conditions and Restrictions for Lely Resort dated March 13, 1990 and recorded March 16, 1990 in Official Records Book 1513, Page 835 of the Public Records of Collier County, Florida, as amended, together with the Articles of Incorporation and By-laws of the Master Association; and

**WHEREAS**, the Master Association and District previously entered into that certain Comprehensive Service Agreement dated December 28, 2005 as amended by that certain Amendment to Comprehensive Service Agreement (collectively, the "Agreement") through which the District, for compensation, would provide to properties within Lely Resort but situated outside the boundaries of the District, certain services that the District currently provides to the properties situated within the District; and

**WHEREAS**, the District has the authority under Chapter 190, Florida Statutes to provide the services described in the Agreement; and

**WHEREAS**, the Master Association and the District desire to amend the Agreement with respect to the specific real property described herein.

**NOW, THEREFORE**, 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. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.
2. **Services Provided to York Property.** Lely Apartments, LLC, a Georgia limited liability company ("York") is the owner of that certain real property within Lely Resort legally described on Exhibit "A" attached hereto and made a part hereof (the "York Property"). York purchased the property from Stock

Development, LLC, a Florida limited liability company ("Stock") for the intended purpose of developing a luxury apartment complex. Notwithstanding anything in the Agreement to the contrary, the following terms shall apply to the services provided by the District to the York Property:

(a) Except as agreed in writing by the owner of the York Property, the District shall only provide the York Property, and the owner of the York Property shall only be responsible for paying for, services relating to the following: (i) irrigation water, (ii) stormwater management, and (iii) street lighting on Lely Cultural Parkway, together with the standard administrative fee paid pursuant to the Agreement. The owner of the York Property shall pay for the foregoing services based upon the actual number of units actually constructed on the York Property. For purposes of illustration and calculation of the annual operation and maintenance fees, an example calculation is attached as Exhibit "B" which example presumes 308 units constructed on the York property at the 2007-2008 expense rates.

(b) Payment of the annual operation and maintenance fees for the York Property shall not commence for any unit until such unit has been constructed and received a Certificate of Occupancy or its equivalent for apartment units from Collier County.

(c) In the event that either (i) the York Property is developed or converted into a condominium-type project wherein individual dwelling units are offered for sale or sold to the general public or (ii) any apartment project constructed on the York Property accepts government subsidies or grants in relation to rental units, the District shall have the sole authority to terminate this Second Amendment, upon written notice to the Master Association and the owner of the York Property. However, in the event that this Second Amendment is terminated due to the changes in the York Property as set out in this paragraph, and in the sole discretion of the District, the District may establish a new charge for the services to be received by the York Property, which charge for services shall reflect the actual services provided by the District to the York Property. Any termination of this Second Amendment by the District shall not affect or otherwise serve to terminate the initial Comprehensive Service Agreement, as amended by the Amendment to Comprehensive Service Agreement.

(d) The terms of this Second Amendment shall only apply to the York Property and no other property shall be affected by this Second Amendment.

3. **Conflict/Amendment.** The terms of this Second 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 Second Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.

4. **Counterparts/Facsimile.** This Second 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 Second Amendment shall be acceptable and binding upon both parties.

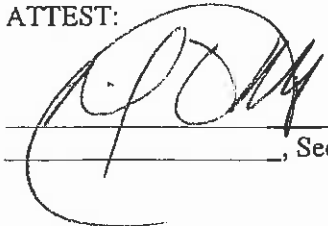
*(Remainder of Page Intentionally Left Blank- Signatures Intentionally Left Blank)*

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

DISTRICT:

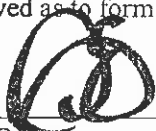
LELY COMMUNITY DEVELOPMENT  
DISTRICT

ATTEST:

  
\_\_\_\_\_, Secretary

By: Vera C. Orr  
VERA C. ORR Chairman


Approved as to form and legal sufficiency:

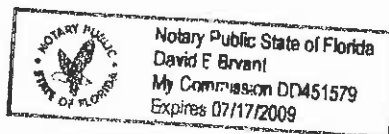
  
\_\_\_\_\_  
David Bryant  
District Counsel

STATE OF FLORIDA                     )  
  ) ss.  
COUNTY OF COLLIER                 )

The foregoing instrument was acknowledged before me, this 20th of JUNE, 2007, by VERA C. ORR as CHAIRMAN, of the Lely Community Development District, on behalf of the district, who is ☒ personally known to me or ( ) has produced \_\_\_\_\_ as evidence of identification.

(SEAL)

  
\_\_\_\_\_  
NOTARY PUBLIC  
Name: \_\_\_\_\_  
(Type or Print)  
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:

Susan Phillips  
Signature  
Printed Name: SUSAN PHILLIPS

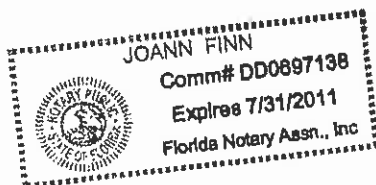
By: Blaine Spivey  
Name: BLAINE SPIVEY  
Title: PRESIDENT

Sandy Haddsworth  
Signature  
Printed Name: SANDY HADDSWORTH

STATE OF FLORIDA                     )  
  ) ss.  
COUNTY OF COLLIER                 )

The foregoing instrument was acknowledged before me, this 8 of November 2007, by Blaine Spivey as President of Lely Resort Property Owners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation, who is ☒ personally known to me or ( ) has produced \_\_\_\_\_ as evidence of identification.

(SEAL)



Joann Finn  
NOTARY PUBLIC  
Name: \_\_\_\_\_  
(Type or Print)  
My Commission Expires: \_\_\_\_\_




## CONSENT

Lely Apartments, LLC, a Georgia limited liability company hereby joins into this Agreement for the purpose of acknowledging its consent to the foregoing Second Amendment to the Comprehensive Service Agreement.

**LELY APARTMENTS, LLC,**  
a Georgia limited liability company

Signed, sealed and delivered  
in our presence:

Signature: [Signature]  
Printed Name: Deborah Johnson

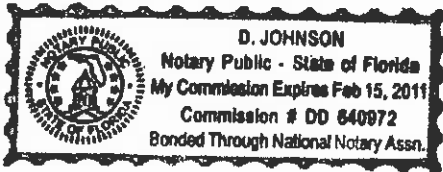
By:   
Name: Kathleen Gonce  
Title: Managing Director

Signature \_\_\_\_\_  
Printed Name: Rock Fortenberry

STATE OF FLORIDA )  
 )  
 ) ss.  
COUNTY OF Palm Beach )

The foregoing instrument was acknowledged before me, this 7<sup>th</sup> of Nov, 2007, by Kathleen Vance as Managing Director of Lely Apartments, LLC, a Georgia limited liability company, on behalf of the company, who is (☒) personally known to me or (☐) has produced \_\_\_\_\_ as evidence of identification.

(SEAL)



NOTARY PUBLIC  
Name: Deborah Johnson  
(Type or Print)  
My Commission Expires: 2/15/2011

**EXHIBIT A**  
**LEGAL DESCRIPTION- YORK PROPERTY**

Being a portion of Tract "D", Lely Resort Phase Two, according to the plat thereof as recorded in Plat Book 18 at Pages 43 through 45 (inclusive) of the public records of Collier County, Florida, together with a portion of Section 22, Township 50 South, Range 26 East, said Collier County, Florida, being more particularly described as follows:

Commencing at the northeasterly most corner of Lely Cultural Parkway, Lely Resort Phase Two; thence South 00°51'50" West, along the easterly boundary of said Lely Cultural Parkway, a distance of 146.34 feet to a point on the boundary of said Tract "D", the same being the POINT OF BEGINNING of the parcel of land herein described; thence continue South 00°51'50" West, along the easterly boundary of said Tract "D", a distance of 18.83 feet; thence continue South 00°51'50" West, a distance of 530.71 feet; thence North 89°08'10" West, a distance of 176.41 feet; thence North 02°03'00" West, a distance of 229.16 feet; thence North 78°19'00" West, a distance of 158.93 feet; thence South 16° 35'42" East, a distance of 218.93 feet; thence South 61°55'33" West, a distance of 201.68 feet; thence North 77°51'00" West, a distance of 517.56 feet; thence South 76°11'00" West, a distance of 354.37 feet; thence North 40°47'11" West, a distance of 651.40 feet to a point on the southerly right-of-way line of said Lely Cultural Parkway, and a point on a non-tangential curve; thence run the following three (3) courses along said southerly right-of-way line; Course No. 1: easterly, 342.81 feet along the arc of a circular curve, concave southerly, having a radius of 1,354.86 feet, through a central angle of 14°29'49" and being subtended by a chord which bears North 80°54'42" East, 341.89 feet; Course No. 2: North 88°09'37" East, 1,376.84 feet to a point of curvature; Course No. 3: southeasterly, 40.45 feet along the arc of a circular curve, concave southwesterly, having a radius of 25.00 feet, through a central angle of 92°42'13" and being subtended by a chord which bears South 45°29'17" East, 36.18 feet to the POINT OF BEGINNING.

Bearings are based on the easterly boundary of Lely Cultural Parkway as being South 00°51'50" W. (assumed per plat).

## EXHIBIT B

### 2007 Second Amendment to Comprehensive Service Agreement/York Properties

<u>Expense Totals</u>		<u>FY 2008</u>
Water Management		\$49,500
Irrigation		<u>\$200,500</u>
	Subtotal	\$250,000
Administrative Charge		<u>\$25,000</u>
	Total	\$275,000
Total Assessable Units		3136
Per Unit Cost		\$87.97/Unit
York Units		308
York cost FY 2008		\$27,095