



**ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM**

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

Cc: Terrence D. McCracken, Secretary
Joyce A. Tomaka, Chief Financial Officer
Leonard F. Kowalski, Executive Engineer

From: Mark S. Carney, General Counsel
Jessica A. Kulpit, Associate Attorney

Date: July 7, 2023

Subject: Country Meadows Settlement Agreement

The issue of non-payment of Country Meadows Villa and Country Meadows Condominiums has been an on-going dispute for three years. The outstanding balance has grown to over \$120,00.00 and through the efforts of Jessica Kulpit, Esq. working with the counsel for both Country Meadows Villa and Country Meadows Condominiums an agreement was reached in the appropriate way to determine responsibility for the joint metered water line.

Both entities are paying for all the water used with the understanding that the Erie County Water Authority will waive applicable fees pursuant to their request.

The legal department believes this is in the best interest of the Erie County Water Authority as the reason for the discrepancy was due to the ambiguity in the property management agreement between these two entities.

This settlement will alleviate unnecessary litigation and the collection of these monies, as well as provide the prompt payment of the balance due.

It is recommended the Board of Commissioners accept and enter into the settlement agreement.

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** _____
Project Description: Acceptance and Execution of Country Meadows Settlement Agreement and One-Time Reversal for Lates Charges over \$500.00

Item Description:

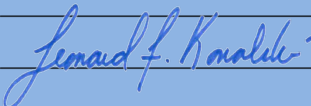


<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input type="checkbox"/> Recommendation for Award of Contract	<input type="checkbox"/> Recommendation to Reject Bids		
<input type="checkbox"/> Request for Proposals			
<input checked="" type="checkbox"/> Other <u>Recommendation to Execute Settlement Agmnt and Authorize One-Time Late Fee Reversal</u>			

Action Requested:


<input checked="" type="checkbox"/> Board Authorization to Execute	<input type="checkbox"/> Legal Approval
<input type="checkbox"/> Board Authorization to Award	<input type="checkbox"/> Execution by the Chairman
<input type="checkbox"/> Board Authorization to Advertise for Bids	<input type="checkbox"/> Execution by the Secretary to the Authority
<input type="checkbox"/> Board Authorization to Solicit Request for Proposals	
<input checked="" type="checkbox"/> Other <u>Board Authorization to allow One-Time Late Fee Reversal</u>	

Approvals Needed:

APPROVED AS TO CONTENT:

<input type="checkbox"/> Other (if Applicable)	_____	Date: _____
<input type="checkbox"/> Chief Operating Officer	_____	Date: _____
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>07/07/2023</u>
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>07/07/2023</u>
<input checked="" type="checkbox"/> Legal		Date: <u>7/7/2023</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>7/10/23</u>
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Remarks: _____

Resolution Date: _____ **Item No:** _____

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (herein “Agreement”) is made effective as of July 20, 2023 by and among the ERIE COUNTY WATER AUTHORITY (“Authority”), by its Chair, Jerome D. Schad, Esq., and Country Meadows Condominium (“CMC”) by its attorney Christopher T. Pusateri, Esq., and Country Meadow Villas (“CMV”) by its attorney, Ronald S. Shubert, Esq. (CMC and CMV collectively represent all water and utility interests of which encompass the Country Meadows of Hamburg Homeowners Association, Inc.). The Authority, CMC and CMV are sometimes referred to herein collectively as the “Parties.”

WHEREAS, effective June 5, 2007, Country Meadows of Hamburg Homeowners Association, Inc., executed a Declaration of Reciprocal Easement Agreement which endeavored to share utility and water charges equally between property on a pro-rata basis. This agreement specified “Each Country Meadows Owner shall pay its Pro Rata Share of the cost of water supplied by the Erie County Water Authority Unless agreed between the parties, the account or such water supply shall be in the name of Clover.”;

WHEREAS, on or about April 28, 2023, a new agreement regarding the apportionment and payment of water usage formally under “Clover” for Country Meadows of Hamburg Homeowners Association, Inc. was reached between the Parties delineating CMV as the new water utility designee and account holder. The new water apportionment and payment agreement is set forth as follows: CMC will pay 12/148 and CMV will pay 136/148, respectively of the monthly water charges assessed by the Authority;

WHEREAS, as of May 19, 2023 “Clover” and therefore CMV and CMC owe the water authority past payment for water of \$118,410.19 and \$12,441.56 in late fees for several months of nonpayment;

WHEREAS, the Authority has demanded past payment of \$118,410.19 from CMV and CMC for past payment and CMV will furnish 108,176.76 and CMC will furnish 10,233.43, making payments owed current to May 19, 2023;

WHEREAS, the Authority has demanded past payment and after the agreed upon terms are completed, the parties will make all payments current.

WHEREAS, CMV and CMC and each of their representatives, heirs, officers, directors, shareholders, predecessors, executors, agents, attorneys, employees, insurers, reinsurers, affiliates, related companies, successors and assigns (hereinafter collectively the "Releasees"), in consideration of the Settlement Amount, hereby agree as follows:

1. **General Release**. In exchange for the consideration provided by Releasees that is set forth in this Agreement, Authority and its successors and assigns forever waive, release and discharge Releasees from any claim, charge of, and from all, and all manner of, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, fees, financial charges, claims and demands whatsoever, in law or in equity, which against the Releasees the Authority ever had, now has or which can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this Agreement, including but not limited to all claims for monetary

or equitable relief of any kind. The Authority agrees that this General Release is intended to be as complete and inclusive as may be permitted under the law, and through to the date of execution of this Agreement. Further, this Agreement does not in any way alter the Releasee's obligations to pay for domestic water services received from Authority.

2. **Claims Related to Injuries and Damages.** The foregoing General Release extends to all claims, allegations, damages, costs, fees, interest, delinquent charges, account balances and any other form of relief between Clover (represented by CMV and CMC) and the Authority.
3. **Payment to Authority.** In consideration for the General Release and any additional consideration set forth in this Agreement, Releasees shall pay the Authority the Settlement Amount specified above. The Settlement Amount will be paid via two separate checks, one from CMC in the amount of \$10,233.43 (*Ten thousand two hundred and thirty-three dollars and forty-three cents*) and the other from the CMV in the amount of \$108,176.76 (*One hundred and eight thousand, one hundred seventy six dollars and seventy six cents*). Payment shall be issued to the Authority's Legal Department within thirty (30) days following counsel's (Kenney Shelton Liptak Nowak, LLP, Christopher T. Pusateri, Esq. and Phillips Lytle, LLP,

Ronald S. Shubert, Esq.) receipt of this Agreement executed by the Authority. In this one-time agreement the Authority agrees to waive late fees in the amount of \$12,441.56 (*Twelve thousand, four hundred forty-four dollars and fifty-six cents*), the entirety of the late fees as of May 19, 2023.

4. **Successors and Assigns.** This Agreement shall be binding upon the Authority's successors and assigns, as well as the successors and assigns of the Releasees.
5. **Authority of Signer(s).** Each person whose signature appears hereon warrants and guarantees that he or she has the express authority and consent of the party on whose behalf he/she is signing, and to bind that party to the terms of this Agreement.
6. **No Admission of Liability.** The Authority understands that the Releasees hereby admit no liability of any kind and that the Agreement and Settlement Amount are made to avoid further inconvenience and the expense of litigation. The Authority and Releasees have agreed to settle in order to avoid the inconvenience, distractions, and inherent uncertainties associated with any legal proceeding, and the additional legal fees and expenses of continuing this dispute. This Agreement represents a compromise of a doubtful and disputed claim and any liability, wrongdoing, malfeasance,

misfeasance, or negligence on the part of the Releasees is expressly denied.

7. **Complete Agreement**. This Agreement contains the entire agreement between the parties and the terms of this Agreement are contractual and not a mere recital.
8. **Severability**. Should any provision of this Agreement or the application of any provision of this Agreement for any reason be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be construed and enforced as if it had been more narrowly drawn so as not to be invalid, illegal, or unenforceable, and the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

ALL PARTIES HAS CAREFULLY READ AND FULLY

UNDERSTANDS the provisions of this Agreement and has had sufficient time and opportunity to obtain consultation, both legal and otherwise, prior to executing this Agreement. The decision to enter into this Agreement is completely voluntary and was made in the absence of coercion of any kind whatsoever by any other party.

Erie County Water Authority

By: _____
Jerome D. Schad, Esq.
Chair, Erie County Water Authority

State of NEW YORK)
) SS:
County of ERIE)

On the ___ day of _____ in the year 2023 before me, the undersigned, personally appeared Jerome D. Schad , Esq. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

Country Meadows Condominium (CMC)

By: _____
Christopher T. Pusateri, Esq.
KENNY SHELTON LIPTAK NOWAK LLP CMC President

State of NEW YORK)
) SS:
County of ERIE)

On the 20 day of JUNE in the year 2023 before me, the undersigned, personally appeared Christopher T. Pusateri, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

MARCY J. CONAWAY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CO6059084
Qualified in Monroe County
My Commission Expires 5/2/27

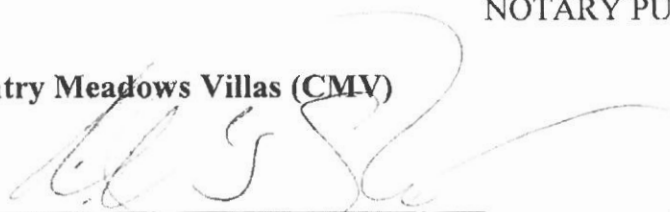
NOTARY PUBLIC

State of NEW YORK)
) SS:
County of ERIE)

On the ___ day of _____ in the year 2023 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

Country Meadows Villas (CMV)

By: 

RONALD S. SHUBERT, ESQ.
PHILLIPS LYTLE, LLP

State of NEW YORK)
) SS:
County of ERIE)

On the 16th day of June in the year 2023 before me, the undersigned, personally appeared RONALD SHUBERT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC

BRYAN J. JENKINS
No. 01JE6278963
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 04/01/2025