

## SETTLEMENT AGREEMENT AND MUTUAL FINAL RELEASE

2/24/15  
2/24/15  
This Settlement Agreement and Mutual Final Release (the "Agreement") is made this day of January, 2015, between Brevard County, Florida, a political subdivision of the State of Florida ("County"), Stately Contractors, Inc., a Florida corporation ("Stately"), and United Fire & Casualty Co., a corporation duly authorized to do business in the State of Florida ("United") (County, Stately and United shall collectively be referred to as the "Parties").

**WHEREAS**, on or about February 20, 2007, the County, as owner, awarded a contract (the "Contract") to Stately, as contractor, for the replacement of approximately four miles of 24-inch diameter HDPE sanitary force main and all other incidentals to complete the work in accordance with the drawings, specifications, and other contract documents (the "Project"); and

**WHEREAS**, in connection with the Contract, United, as surety, issued a Public Construction Performance Bond bearing bond number 54-165403 (the "bond"), on behalf of Stately, as principal, and in favor of the County, as obligee; and

**WHEREAS**, disputes arose between Stately and the County during the course of construction regarding alleged incomplete and defective work, resulting in the County withholding retainage in the amount of \$236,651.20; and

**WHEREAS**, Stately filed a lawsuit against the County in the Circuit Court of Brevard County, Florida (Case No. 05-2010-CA-045771-XXXX-XX) (the "Lawsuit"); and

**WHEREAS**, in said Lawsuit, the County asserted counterclaims against Stately and sued United under the bond; and

**WHEREAS**, the Parties desire to resolve the Lawsuit;

**NOW THEREFORE**, in consideration of the promises, and other good and valuable consideration, and the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Recitals**. The recitals are part of this Agreement as if fully set forth herein.
2. **Contract Balance**. There remains an unpaid balance and/or amounts remaining available for use on the Contract in the amount of \$236,651.20 (the "Retainage"). Stately and United hereby expressly RELEASE, ACQUIT and FOREVER DISCHARGE the County from any and all claims, rights, demands and/or causes of action of whatsoever kind or nature which either party has or may ever claim to have regarding or relating to the Retainage.
3. **Payment to County**. Within fifteen (15) days of the final approval and execution of this Agreement, Stately and United shall pay to the County the sum of \$481,500.00 (\$216,500.00 to be paid by United, and \$265,000.00 to be paid by Stately or on its behalf by its insurers, FCCI Commercial Insurance Company ("FCCI"), Valley Forge Insurance Company (Valley Forge), National Fire Insurance Company of Hartford ("National"), and Transportation Insurance Company ("Transportation")(FCCI, Valley Forge, National and Transportation shall

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collectively be referred to as "Insurers")). This payment is to be made in addition to Stately and United's release of any claims to the Retainage, resulting in a total settlement amount to the County of \$718,151.20. Upon execution of this Agreement and the County's receipt of the payments required herein, Stately and the County shall file notices of voluntary dismissal with prejudice of the Lawsuit.

4. **Mutual General Release.** In consideration of the Parties' performance as specified herein, the County, Stately and United, do hereby expressly RELEASE, ACQUIT and FOREVER DISCHARGE each other and the Insurers of and from any and all claims, rights, demands and/or causes of action of whatsoever kind or nature which either party has or may ever claim to have, now or in the future, whether known or unknown, against the other party under and/or by reason of the Bond, the Contract and/or the Project, except as provided for in paragraph 5 hereof.

5. **Reservation of Rights as Between United and Stately.** This Agreement does not in any way release Stately, Glenn Bower, or any other indemnitors' obligations which any or all may have to United under any Agreement of Indemnity executed for the benefit of United. Furthermore, United does not waive or release any rights or claims, including common law rights, it may have against Stately, Glenn Bower, or any other indemnitor under any Agreement of Indemnity executed for the benefit of United. Thus, any and all Agreements of Indemnity shall remain in full force and effect.

6. **No Admission of Liability.** This Agreement does not constitute an admission of liability on the part of any of the Parties.

7. **Binding Agreement.** This Agreement shall only extend to and be binding upon the Parties hereto and their respective successors and assigns. Nothing contained in this Agreement shall create any third party beneficiaries to other claimants under the Bond, nor confer any benefit or enforceable rights under this Agreement other than to the Parties hereto and their respective successors, assigns, insurers and reinsurers.

8. **No Modification Except as in Writing.** This Agreement may not be modified unless in writing and executed by the Parties hereto. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the Party against whom it is sought to be enforced.

9. **Interpretation of Agreement.** The provisions of this Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the Parties, but, if for any reason any provision is unenforceable or invalid, such provision shall be deemed severed from this Agreement and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this Agreement.

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10. **Incorporation of All Prior Negotiations.** This Agreement incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement. Accordingly, the Parties agree that no deviations from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

11. **Acknowledgment of Release of Rights.** The Parties acknowledge and agree that they are releasing certain rights and assuming certain duties and obligations which, but for this Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Agreement is fair and reasonable, that each of them has had an opportunity to consult with and have in fact consulted with such experts of their choice as they may have desired, and that they have had the opportunity to discuss and have in fact discussed this matter with counsel of their choice.

12. **Advice of Counsel.** The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

13. **Obligations of Further Execution.** The Parties agree to execute all such further instruments, and to take all such further actions as may be reasonably required by any Party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.

14. **Event of Enforcement.** In the event that it is necessary for any of the Parties to seek enforcement of this Agreement, the Parties agree that the Agreement will be interpreted and construed in accordance with, and governed by the laws of the State of Florida, and such proceedings shall occur in a court of competent jurisdiction servicing Brevard County, Florida. In the event of any litigation between the parties arising out of this Agreement, each party will bear its own attorney's fees and suit costs for trials and appeals.

15. **Notices.** Any notices or other formal communications made under this Agreement shall be deemed to have been duly given if sent via United States Mail to the following:

**To Stately:**  
Glenn Bower

**With a copy to:**  
Brian F. Stayton  
Stayton Law Group, P.A.  
River Hills Plaza

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4371 Lynx Paw Trail  
Valrico, FL 33596

**To United:**

118 Second Ave. SE  
Cedar Rapids, IA 52407-3909

**With a copy to:**

Ed Kinberg, Esq., Widerman Malek  
Kinberg & Associates, LLC  
1290 W. Eau Gallie Boulevard  
Melbourne, FL 32935

**To County:**

Stockton Whitten  
County Manager  
2725 Judge Fran Jamison Way  
Melbourne, FL 32940-6605

**With a copy to:**


Office of the County Attorney  
of Brevard County Florida  
Attn: Morris Richardson, Esq.  
2725 Judge Fran Jamieson Way  
Melbourne, FL 32940-6605

or at such other address as each of the foregoing may designate in writing by registered or certified mail to the other.


16. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which, when executed and delivered, shall be deemed to be an original, but such counterparts shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have affixed their hands and seals to this Agreement the day and year first set forth above, and the individuals who execute this Agreement personally represent and warrant that they have full authority to execute this Agreement on behalf of the respective Parties.

**ATTEST:**

  
Scott Ellis, Clerk

**BOARD OF COUNTY  
COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA**

By:   
Robin Fisher, Chairman  
Brevard County Commission

As approved by the Board on 12/09/14

Reviewed for Legal Form and Content:

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Assistant County Attorney

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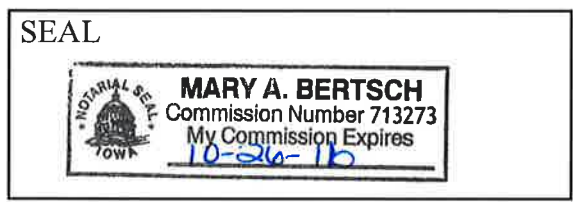
UNITED FIRE & CASUALTY CO.

By:   
Title: CLAIM REPRESENTATIVE  
Date: 1/23/15

STATE OF Iowa  
COUNTY OF Linn

On this 23rd day of January, 2015, before me personally appeared Stuart Overton, as the Claims Representative of UNITED FIRE & CASUALTY CO., who is [ ] personally known to me or has [ ] produced as identification and who being by me duly sworn did depose and state that he/she is the Claims Representative of UNITED FIRE & CASUALTY CO., named in the foregoing Agreement, that he/she executed the foregoing instrument on behalf of the Corporation with full authority to do so, and that he/she executed the foregoing instrument on behalf of the Corporation for the uses and purposes set forth therein.

  
Notary Public



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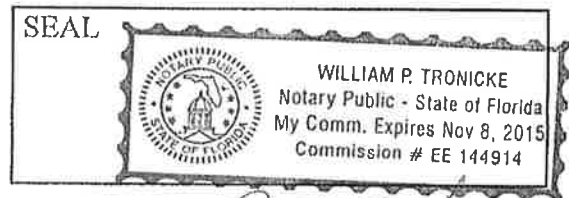
Stately Contractors, Inc.

By: MPB - GLENN P BOWER  
Title: PRESIDENT  
Date: 4-1-2015

STATE OF FLORIDA  
COUNTY OF MANATEE

On this 1 day of ~~January~~ APRIL, 2015, before me personally appeared GLENN BOWER, as the PRESIDENT/OWNER of STATELY CONTRACTORS, INC., who is [] personally known to me or has [] produced as identification and who being by me duly sworn did depose and state that he/she is the PRESIDENT of STATELY CONTRACTORS, INC., named in the foregoing Agreement, that he/she executed the foregoing instrument on behalf of the Corporation with full authority to do so, and that he/she executed the foregoing instrument on behalf of the Corporation for the uses and purposes set forth therein.

Notary Public



*William P. Tronicke*