

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050473

1. ACTION REQUESTED/PURPOSE: Approval of mediated settlement of The Sorrento at the Colony Condominium Association, Inc. v. Lee County and WCI Communities, Inc., Case No. 04-2872CA, upon the terms and conditions contained in the Agreement attached hereto.

2. WHAT ACTION ACCOMPLISHES: Resolves the pending litigation without any additional costs or expenses.

3. MANAGEMENT RECOMMENDATION: County attorney recommends approval.

4. Departmental Category: 12 A12A		5. Meeting Date: 04-19-2005
6. Agenda:	7. Requirement/Purpose: (specify)	8. Request Initiated:
<input type="checkbox"/> Consent	<input type="checkbox"/> Statute	Commissioner _____
<input checked="" type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	Department <u>County Attorney</u>
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	Division <u>Litigation</u>
<input type="checkbox"/> Public	<input type="checkbox"/> Other	By: <u>John S. Turner, Assistant</u> <u>County Attorney</u>
<input type="checkbox"/> Walk-On		

9. Background: The Plaintiff in this litigation initiated pursuant to Section 163.3215, Fla. Stat., to challenge a development order approved by Lee County for WCI Communities, Inc. in construction of the Navona at the Colony Condominium as being inconsistent with the Lee County Comprehensive Plan. The principals in the action entered into a mediated settlement, a copy of which is attached.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
				<i>[Signature]</i>	RK 4/6	58 4/26/05	4/7/05	4/7/06	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY: COUNTY ADMIN: 4/16/05 MP 4:24 COUNTY ADMIN FORWARDED TO: 4/17/05 1pm	FORWARDED TO: COUNTY ADMIN RECEIVED BY: COUNTY ADMIN
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CO. ATTY.
 FORWARDED
 TO CO. ADMIN.
 4/16/05

TWENTIETH JUDICIAL CIRCUIT OF FLORIDA

RECORD OF AGREEMENT

The Sorrento at the Colony v. Lee County

Case No. 04-CA-2872

THE PARTIES AND COUNSEL, HAVING MET THIS 5th DAY OF APRIL, 2005, AGREE AS FOLLOWS:

1) As to the second level of the parking garage appurtenant to and part of that project known as Navona At The Colony, a Condominium to be created pursuant to the Declaration of Condominium to be recorded in the Public Records of Lee County, Florida, WCI hereby agrees to the following design elements.

a) Subject to Code Requirements and regulations, all parking spaces on the second level of the garage other than along the North wall of the parking structure will be covered with trellis or canvas, in approximately equal proportions, provided, however, that if specific parking spaces must be left uncovered due to traffic flow requirements, that will not violate this agreement. The parking aisles will not be covered by trellis, canvas, or other covering.

b) The lighting for the Navona parking garage shall be consistent with the minimum standards required by Lee County Code and shall be subdued and angled downward to the extent possible, unless otherwise required by governmental rules and regulations or insurance requirements, and such lighting shall accommodate the reasonable use and enjoyment of the parking garage.

c) The colors of the concrete deck, trellises, and canvas of the parking garage shall be selected by the WCI design team and shall be compatible with one another and consistent with the color scheme used in the The Colony in general. The deck floor of the second level shall be non-reflective coating, such as a matte paint finish.

2) As part of the consideration for this agreement, the Plaintiff also agrees they/it will not file or present any claim or action in any jurisdiction, any court, or before any administrative agency or political entity including but not limited to Lee County which alleges that any aspect of the Navona at the Colony Condominium project, including but not limited to the parking garage, violates the Lee County Comprehensive Plan or the Land Development Code, and the Plaintiff shall not contest the issuance of the building permit for the construction of the parking garage. In addition, it is agreed by Plaintiff that neither the Board of Directors

of Plaintiff, or the Directors individually, or the Plaintiff will solicit, encourage, or support, financially or otherwise, any other person or entity to do so. It is understood by Plaintiff that if this provision is violated, the cost of defending such suit, including the attorney's fees in doing so, shall be deemed one of the elements of damage recoverable by Defendant and Intervenor for breach of this provision.

3) Should either party find it necessary to seek judicial enforcement of this agreement, the prevailing party in said enforcement proceeding shall be entitled to an award of attorney's fees incurred in said enforcement proceeding. Except as provided for herein, each party shall bear their own costs and attorney's fees.

4) This agreement shall not be deemed effective until approved by the Board of County Commissioners. If approval is not obtained within 30 days, this agreement shall be deemed null and void. Upon approval, the parties will execute a Stipulation for Entry of an Order of Voluntary Dismissal With Prejudice, providing for a retention of jurisdiction for enforcement of this agreement.

Ann Karen Donat-Escobedo, J. M. Jarama, Assit Co. Atty
The Sorrento At the Colony Condominium Association, Inc., Plaintiff *Treasurer* Lee County, Defendant
Donat

David W. Rynders
Counsel for Plaintiff

John Jarama Assit Co. Atty
Counsel for Defendant

[Signature]
WCI Communities, Inc., Intervenor

[Signature]
Counsel for WCI

[Signature]
Mediator

The above agreement is approved by me on this _____ day of _____, 2005.

Judge