

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

This Mutual Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is entered into on December 4, 2019 (“Effective Date”) by and between the Parties comprised of:

1. Plaintiff BALI HAI JV LLC (“Plaintiff”), and SHAWN KALETA, (“Owner”)
2. Defendant WEST MANATEE FIRE & RESCUE DISTRICT, (the “District”),

RECITALS

3. WHEREAS, all Parties (Plaintiff, Owner and District) are executing this Agreement with respect to the following matters:

4. WHEREAS, there is a pending action in the Circuit Court of the 12th Judicial Circuit in and for Manatee County, Florida, Case No. 2019 CA 005240 (the “Litigation”) in which Plaintiff has asserted claims against the District for declarative and injunctive relief associated with permit # BFE 19-00044.

5. WHEREAS, there is a pending administrative appeal to the Manatee County Fire Prevention Code Board of Appeals (the “Admin. Appeal”) in which Plaintiff has requested relief from the District’s rulings contained in Transmittal Letters issued by the District relating to permit # BFE 19-00044.

6. WHEREAS, all Parties are declaring their intent to use all means of professional assistance to allow and to actively assist in the construction, inspection and completion of the construction project (the “Project”) known as the Bali Hai Beach Resort (the “Resort”) with a permit # BFE 19-00044 in the most expeditious manner possible, pursuant to all terms described herein.

7. WHEREAS, the Parties contemplate a completion date for the Project and an opening date for the Resort to be on or before December 16, 2019 pursuant to all terms described herein.

8. WHEREAS, the Parties now desire to compromise and settle the claims between them and to agree to specific assistance, and actions in the future as described herein.

9. WHEREAS, with no Party admitting any liability, the Plaintiff and Owner agree to dismiss the pending Litigation and Admin. Appeal.

10. WHEREAS, the District agrees to use all professional assistance and all efforts in its power to inspect, assist in inspection and completion of the Project.

11. WHEREAS, upon approval of this Agreement by all Parties, Plaintiff will cause the Litigation to be dismissed with prejudice and withdraw its Admin. Appeal. However, the Court shall keep and retain jurisdiction over the subject matter of, and over the Parties to, this action for the purpose of enforcement of the terms, conditions, obligations, and stipulations set forth herein.

12. WHEREAS, all Parties therefore enter into this Agreement to set forth their mutual and shared understandings and agreements for terms for resolving these claims and disputes.

NOW, THEREFORE, in exchange for good and valuable consideration, including the mutual recitations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

13. Recitals adopted. All Parties have read the above Recitals and agree that the same are correct and are hereby adopted into this Agreement.

14. Plaintiff's and Owner's Release. Except for the obligations required by this Agreement, Plaintiff and Owner hereby presently, fully and finally, release, acquit, satisfy and forever discharge the District relating to and/or arising out of the actions or inactions generating this Litigation or the Admin. Appeal.

15. Plaintiff's and Owner's Assurances. The Plaintiff and the Owner promise, pledge and assure that they will abide by all professional requests of the District for the installation of fire suppressive mechanisms, including a sprinkler system (the "System"), a fire alarm system ("Fire Alarm") and successfully complete the requested fire separation issues in the interior walls of the Resort, the entirety of which is comprised of the following: (a) install a System in compliance with NFPA 13(R) requirements, (b) install a Fire Alarm in compliance with NFPA 72 requirements, and (c) complete the 1-hour fire wall interior fire separation issue(s) currently enumerated.

16. District's Assurances. The District promises, pledges and assures that, as the Plaintiff and Owner begin, progress and complete 15 a-c, above, then District will provide inspection services during routine business hours (7:00 am – 5:00 pm, Monday through Friday) pursuant to their professional duty, with immediate turn around for approval or notification of additional work. Such immediate turn around is defined as the following: (a) immediate and punctual attendance for a written appointment or review of documents made at least 48-hours prior to the appointment, or (b) 12-hour turn around for a request for inspection or review of documents preceded by 48-hour written notice of

the request, or (c) 24-hour turn around for a simple request for inspection, or a request to approve documents. Upon completion of paragraph 15 a-c, the District shall allow, and not resist, the issuance of a Certificate of (Temporary) Occupancy or Certificate of Completion.

a. Temporary Occupancy or Completion. Should the System be installed in the Resort in compliance with 13R, but not be fully operational through no fault of the Plaintiff or the Owner or the Owner's agent, (i.e. due to testing and/or inspections issues arising out of permitting by the City of Holmes Beach or by action or inaction of Manatee County Utilities), then the District will agree to the issuance of a temporary certificate of occupancy ("TCO") for the Project for period of 30 days and/or a Certificate of Completion ("CO").

b. Fire Watch and Extension Period. In order to receive the assurance of TCO and/or CO pursuant to this paragraph, Plaintiff or Owner must tender to the District proof of engagement of prior-approved professional security to serve as Fire Watch on a 24-hour/7-day-a-week basis to ensure an additional level of safety. The Plaintiff or Owner may request additional 10-day extensions and the District may grant such requests if the delay is experienced through no fault of the Plaintiff or Owner or Owner's agent. Extensions shall not exceed an additional 60 days without a modification to this Settlement Agreement by the parties.

17. Fees. The Parties agree to bear their own attorney's fees and costs in this action, except as otherwise provided herein.

18. Dismissal of the Pending Litigation and Admin. Appeal. In addition to the terms set forth in this Agreement, upon receipt of a fully executed Agreement, Plaintiff will cause to be filed with the Court a dismissal with prejudice and the Court will retain jurisdiction to enforce this Agreement. Similarly, and in addition to the terms set forth in this Agreement, upon receipt of a fully executed Agreement, Plaintiff will cause to be filed with the Board of Appeals a withdrawal or dismissal with prejudice, and the Court will retain jurisdiction to enforce this Agreement.

19. No other actions. With the exception of the Litigation and Admin. Appeal, the Parties hereby represent and warrant that they have not filed any other lawsuit(s) or complaint(s), or initiated any other action(s) or proceeding(s) (legal, administrative, or otherwise) against the other Party and that the Parties have no other pending lawsuit(s), complaint(s), action(s) or proceeding(s) against any other Parties.

20. No assignments. Each Party warrants and represents that it has not assigned any claims, asserted in the Action or otherwise, and covenants that it shall not assign any of the aforementioned claims.

21. [Removed]

22. Binding on Successors. This Agreement and the covenants and conditions contained herein shall apply to, and be binding upon or inure to the administrators, executors, legal representatives, heirs, assignees, successors, agents and assigns of the Parties hereto.

23. Entire Agreement. The Agreement constitutes the sole and entire agreement of the Parties with respect to the settlement of this action and fully supersedes any and all prior agreements or understandings, oral or written, regarding the settlement.

No modifications of this Agreement shall be binding unless in writing and signed by all Parties affected.

24. Headings. The headings of various sections of the Agreement are for convenience and for reference only and are not to be construed as defining or limiting in anyway the scope or intent of the provisions hereof.

25. Drafting. All Parties have participated in the drafting of this Agreement, and the Agreement shall not be construed against any Party. By signing below, each Party affirmatively states that he/she understands all of the terms of this Agreement, has had the opportunity to obtain and review same with counsel of he/she/its choosing and that each Party voluntarily agrees to the terms herein.

26. Severability. If any term, covenant, or condition of the Agreement is held invalid, illegal or unenforceable in any respect, the Agreement shall be construed without such provision.

27. Consent to Injunction, Consent to Specific Performance. A breach of any of the promises or agreements described herein will cause the Parties immediate and irreparable harm for which any remedy at law will be inadequate, and for which a resolution will be in the public interest. Accordingly, to the extent permitted by law, and without waiving any other rights or remedies at law or in equity, the Parties hereby agree and consent that any non-breaching-Party may seek enforcement of this Agreement by filing suit in Circuit Court to obtain an order in equity (injunction or specific performance) to enjoin a violation any of the terms, covenants, agreements or provisions of this Agreement. Such consent is intended to apply to a suit in equity for any breach or threatened breach and/or to specific performance of the duties described herein.

Therefore, the Parties explicitly agree that the elements of a temporary or permanent injunction are satisfied, except the element of clear legal right; such that, upon the showing to a court of a clear legal right based upon a breach or threatened breach, a non-breaching-Party shall be entitled to injunctive relief. Similarly, the Parties explicitly agree to all elements of Specific Performance except the element of a clear entitlement and the court's belief in its justice; such that, upon a showing to a court of clear entitlement and a requirement for justice, then the non-breaching-Party shall be entitled to specific performance by the breaching Party.

28. Choice of Law and Attorney's Fees. The Agreement shall be construed according to the laws of the State of Florida, without regard to its conflict of laws provision. In connection with any litigation, mediation, special proceeding or other proceeding arising out of or relating to this Agreement or its enforcement, the prevailing party shall be entitled to recover from the other party its costs and reasonable attorneys' fees, through and including any and all administrative, trial, bankruptcy and appellate proceedings.

29. Counterparts. This Agreement may be executed in multiple counterparts, and a facsimile or electronic copy signature shall have the same effect as an original.

30. Time is of the Essence. Time is of the essence of this Agreement.

31. Construction. Each party and their respective counsel confirms that they have reviewed, negotiated and approved this Agreement as the understanding of the parties hereto, and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. Neither party shall be construed to be the drafter of this Agreement or any of its provisions for the purpose

of any statute, case law or rule of interpretation or construction that would, or might cause, any provision to be construed against such party.

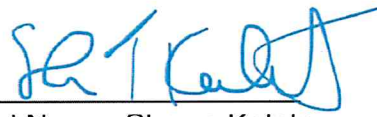
32. Authority. The Parties recognize that the District is an independent local government that is governed by a 5 member Fire Commission that employs the Fire Chief to administer all applicable fire and safety codes. This Agreement shall be forwarded to the Fire Commission for ratification at a meeting on January 21, 2020.

33. Signatures. Dated this December 4, 2019. Executed by the Parties on the date indicated below.

BALI HAI JV LLC, PLAINTIFF

SHAWN KALETA, OWNER

Date: 4 DEC 2019

By:  _____

Printed Name: Shawn Kaleta
As: BALI HAI JV LLC and Individually

Counsel for Plaintiff:
Najmy Thompson, PL.

By:  _____
Jason M. Miller, FBN 0624551

34. Signatures. Dated this December 1, 2019. Executed by the Parties on the date indicated below.

DEFENDANT/RESPONDENT WEST MANATEE FIRE & RESCUE DISTRICT

Date: 12/1/2019

By: *Ben Rigney*
Printed Name: Ben Rigney, Fire Chief
As: Authorized signatory

Counsel for District
Maggie D. Mooney, Esq.

By: *Maggie D. Mooney*
Maggie D. Mooney, Esq.