

**SETTLEMENT AGREEMENT
AND MUTUAL RELEASE OF CLAIMS**

This Settlement Agreement and Mutual Release of Claims (“Agreement”) is executed on this ____ day of February 2024 (the “Effective Date”) by Shawn T. Kaleta, personally and as principal/authorized corporate representative of Bali Hai JV, LLC, 3605 Gulf Dr., LLC, 100 73rd LLC, 100 73rd 203A LLC, and 100 73rd St. Unit 202C LLC (“Plaintiffs”), and the City of Holmes Beach, Florida (“Defendant” or “City”). Plaintiffs and Defendant shall hereinafter be referred to collectively as the “Parties.” The Parties stipulate and agree that all issues asserted, or which might be asserted, between the Parties have been resolved pursuant to the following terms and conditions:

RECITALS

WHEREAS, Plaintiffs filed a claim and civil action against the Defendant on October 31, 2022 in the United States District Court for the Middle District of Florida styled as *Shawn Thomas Kaleta, an individual, Bali Hai, JV, LLC, a Florida limited liability company, 3605 Gulf Dr., LLC, a Florida limited liability company, 100 73rd, LLC, a Florida limited liability company, 100 73rd 203A, LLC, a Florida limited liability company, and 100 73rd St. Unit 202C, LLC, a Florida limited liability company, v. City of Holmes Beach*, Case No. 8:22-cv-02472. This case shall hereinafter be referred to as the “Action”; and

WHEREAS, the Parties and their legal counsel have reviewed this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement to settle and discharge any and all claims brought or which could have been brought which arise out of or relate in any way to Action except as set forth herein; and

WHEREAS, both Parties assert their claims and defenses, as applicable, to the Action and all other cases herein being settled/dismissed, and agree this Agreement does not represent an admission of fault in connection with the events described in the Action and in all other cases herein being settled/dismissed, nor does this Agreement represent a conclusion that any such claims therein would not be successful, but rather the Parties enter into this Agreement on the advice of counsel in the interest of avoiding the expense and inconvenience of litigation and not out of any fear or apprehension of an unfavorable result, and that the considerations herein agreed to are made for the purpose of settling and compromising a disputed claim.

NOW, THEREFORE, in consideration of the promises, covenants, warranties, representations, and conditions set forth herein and for other valuable consideration, the adequacy of which is acknowledged, the Parties agree as follows:

I. Recitals Incorporated. The Recitals set forth above are incorporated into and shall constitute a part of this Agreement.

II. Consideration.

A. Claim Abandonment and Dismissals.

1. The Parties agree that Plaintiffs Shawn Kaleta, Bali Hai JV, LLC, 3605 Gulf Dr., LLC, 100 73rd LLC, 100 73rd 203A LLC, and 100 73rd St. Unit 202C LLC 6 will permanently abandon all claims based upon or related to the “anti-Kaleta policy” which forms the basis of the Action, including as to all properties owned or managed in part or in whole by Shawn T. Kaleta or entities owned in part or in whole by him for all events occurring prior to and up to the execution hereof.

Within the earlier of (1) seven (7) days of the issuance by the City of the approval of the Site Plan Application, the After-the-fact Building Permit Applications, and the Beachfront Building Permit Applications or (2) ninety (90) days from the date of the full execution of this Agreement, Plaintiffs will voluntarily dismiss the Action with prejudice.

2. Within the earlier of (1) seven (7) days of the issuance by the City of the approval of the Site Plan Application, the After-the-fact Building Permit Applications, and the Beachfront Building Permit Applications or (2) ninety (90) days from the date of the full execution of this Agreement, Plaintiff Bali Hai JV, LLC will voluntarily dismiss with prejudice its Petition for Writ of Certiorari presently pending in *Bali Hai JV, LLC v. City of Holmes Beach*, Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, Appellate Division, Case No. 2021-CA-4753.
3. Within the earlier of (1) seven (7) days of the issuance by the City of the approval of the Site Plan Application, the After-the-fact Building Permit Applications, and the Beachfront Building Permit Applications or (2) ninety (90) days from the date of the full execution of this Agreement, Plaintiff Bali Hai JV, LLC and the City will voluntarily dismiss with prejudice all claims and counterclaims presently pending in *The City of Holmes Beach, Florida v. Bali Hai JV, LLC*, Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, Case No. 2020-CA-001842.
4. Within 5 days of the full execution of this Agreement, both Parties agree to file a joint stipulated motion with the Court and all tribunals at the State of Florida level (having jurisdiction in items 1 through 4 above), that based upon this settlement Agreement to toll all deadlines and order issuances for ninety (90) days until the conditions of items 2-3 above are met pursuant to this Agreement.
5. In exchange for and following dismissal of the Action and actions set forth in Section II herein, the Parties agree to bear their own attorney’s fees and costs waive and abandon any claim they may have to recover attorney’s fees or costs from the other party in such actions.

B. Conditions and consideration as to Bali Hai JV, LLC

1. Within seven (7) days of full execution of this Agreement, Plaintiff Bali Hai JV, LLC (“Bali Hai”) shall submit to the City Building Department what Bali Hai believes in good faith to be, a full, complete, and accurate site development plan for the property located 6900 Gulf Dr., Holmes Beach, FL (the Bali Hai Resort) in accordance with § 3.5, City of Holmes Beach

Land Development Code (“LDC”), which application shall include the conditions set forth in Exhibit “A” hereto (the site development plan together with the conditions are the “Site Plan Application”). The City agrees that the City shall timely receive, process, and approve such completed application as a minor site plan review pursuant to § 3.5.B & L, LDC, except that the application will not be distributed or reviewed by the City’s Development Review Committee. The City’s agreement to review and process the application as a minor site plan is made for the purpose of settling and compromising a disputed claim. The Parties agree that each one has a different interpretation as to whether the Bali Hai site plan is exempt from major site plan review as set forth in § 3.5.B, LDC, and the Parties disagree about whether the City Commission previously approved any such application for a major site plan. Nevertheless, as a result of this Agreement, the Parties acknowledge their different interpretations no longer need to be adjudicated by any court or other tribunal as the result of this Agreement.

2. If requested by Bali Hai, and provided such is not in contravention of any of the conditions contained in the Site Plan Application or any provision of Florida law or the City’s Code, the City agrees to review and sign off on any updated, new, or renewal liquor license for the Bali Hai without delay for the licensing by the Division of Alcoholic Beverages and Tobacco for the DBPR of the State of Florida.
3. Upon or prior to the City’s approval of the site development plan, the City must also submit to Bali Hai a written detailed list of all items whatsoever requiring after-the-fact permits resulting from adjudicated code enforcement proceedings (“ATF Permit Notice”). Bali Hai JV, LLC or its authorized representative shall then submit within thirty (30) days of its receipt of the ATF Permit Notice from the City all required applications for after-the-fact building permits from such AFT Permit Notice and pay all fees associated with such permits (“After-the-fact Building Permit Applications”). The City agrees to accept and promptly process on a priority basis all such applications and to issue such permits as are warranted by the applications in the sole and reasonable discretion of the City’s Building Official and Fire Marshall.
4. Within ten (10) days of its receipt of same, the City shall accept and promptly process on a priority basis Bali Hai’s permit applications for the demolition and remodeling of the beachfront building at the Bali Hai Resort (“Beachfront Building Permit Applications”), and the City shall issue such permits as are warranted by the applications in the sole and reasonable discretion of the Building Official and Fire Marshall. In no event shall such applications reflect or indicate the presence of more than forty-two (42) guest units in total at the Bali Hai. Because Bali Hai previously applied for and was issued a demolition permit and paid \$1,128.13 for such permit, such amount shall be credited by the City against the cost of the demolition permit required hereunder.

C. Conditions and consideration as to 100 73rd LLC, 100 73rd 203A LLC, and 100 73rd St. Unit 202C LLC

1. The properties owned by Plaintiffs 100 73rd LLC, 100 73rd 203A LLC, and 100 73rd St. Unit 202C LLC are known collectively as the “Coconuts Properties.” As to the Coconuts Properties, Plaintiffs 100 73rd LLC, 100 73rd 203A LLC, and 100 73rd St. Unit 202C LLC and the City disagree concerning the legally permissible length of stay at the Properties.
2. In Cases No. 2021-AP-000191, 2021-AP-000193, 2021-AP-000194, 2021-AP-000195, 2022-AP-000053, 2022-AP-000054, the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Appellate Division, determined in factually and procedurally indistinct cases that the Holmes Beach Code Compliance Special Magistrate’s orders finding the Coconuts Properties in violation of the City’s code should be remanded to the Special Magistrate for a determination of the “primary use” of the property as explained in the respective opinions.
3. As to the Coconuts Properties, the Parties agree that a hearing was held before the Code Compliance Special Magistrate on October 24, 2023 for a determination of the issues previously remanded to him by the Circuit Court as set forth in Section II.C.2 herein (“Remand Hearing”). The Special Magistrate ruled that the Coconuts Properties are legally permitted to be rented nightly. The City hereby agrees to promptly refund all the code enforcement fines and administrative costs previously paid (or waive all such fees if not yet paid) by the respective Plaintiff/owner, without interest, regarding these remanded cases. The respective Plaintiff/owner of the Coconuts Properties agree to dismiss with prejudice the appeals filed from the Remand Hearing within ten (10) days of receipt of all fines previously paid in connection with the City’s pursuit of code enforcement violations at the Coconuts Properties. The City agrees that such refund will include all fines associated with prior code enforcement hearings held in January 2022 regarding stays of 6 nights and 7 days.

D. Other conditions and consideration

1. In further consideration of the foregoing, the City agrees to waive and release all outstanding code enforcement fines and liens, including administrative and other costs, on the properties owned by Plaintiffs Bali Hai JV, LLC, 3605 Gulf Dr., LLC, 100 73rd LLC, 100 73rd 203A LLC, and 100 73rd St. Unit 202C LLC as set forth in Exhibit “B” hereto, including causing to be recorded in the public records of Manatee County, Florida, bona fide releases of all such liens against all properties encumbered thereby.
2. The City has determined that 3605 Gulf Dr., LLC (“Islands West”) shall be considered legally nonconforming pursuant to the Land Development Code, which status allows Islands West to rent the existing eight (8) units (located on parcel numbers 7392500000 and 7392510009) on a nightly basis. The City has made such determination of a legally nonconforming use upon evidence provided by 3605 Gulf Dr., LLC of a type and quality less than the

City would require of others seeking similar nonconforming status, and has accepted such evidence solely for the purpose of compromising a disputed claim. The City agrees to waive all fines previously assessed and to refund and fines paid in connection with alleged violations Islands West incurred for renting nightly.

3. Within ninety (90) days of the date of full execution hereof Plaintiff Shawn T. Kaleta and the City will issue the joint statement attached hereto as Exhibit "C" in the two periodic newspapers circulated on Anna Maria Island, The Islander and the AMI Sun, in ¼ page view and at the City's expense ("Joint Statement").

III. Mutual Release and Discharge. In exchange for the consideration set forth in this Agreement and except as otherwise set forth herein, the Parties hereby release and forever mutually discharge each other Party and its respective heirs, executors, administrators as well as each of its respective past, present and future directors, officers, attorneys, employees, agents, servants, representatives, partners, members, vendors, independent contractors, parents, subsidiaries, affiliates, insurers, predecessors and successors in interests, and assigns with respect to any and all legal, equitable, or other claims, counterclaims, demands, setoffs, defenses, contracts, accounts, suits, debts, agreements, actions, causes of action, sums of money, reckonings, bonds, bills, specialties, covenants, promises, variances, trespasses, damages, extents, executions, judgments, findings, controversies, related to or stemming from the facts as set forth in the Amended Complaint.

IV. Benefit. This Agreement shall bind, apply to, and inure to the benefit of each of the Parties and their heirs, successors, and assigns, their past, present and future officers, directors, shareholders, attorneys, agents, servants, representatives, employees, administrators, subsidiaries, insurers, affiliates, partners, predecessors and successors in interest, including all firms, corporations, representatives, administrators with whom any of the foregoing have been, are now, or may hereafter be affiliated and also any other persons, partnerships, firms or corporations in privity therewith.

V. Attorneys' Fees and Costs. Each Party shall be responsible for its own attorneys' fees and costs arising out of this Action.

VI. Prevailing Party Attorneys' Fees and Litigation Expenses. Should any Party to this Agreement be declared the prevailing party in any action to enforce any term or condition of this Agreement, said prevailing party shall be entitled to an award of its reasonably incurred attorney fees, paralegal fees, litigation costs and expenses, and fees, costs, and expenses for appeals related thereto, to be assessed against the non-prevailing party or parties, as determined by the court, in such an action.

VII. Warranties and Covenants: Each Party represents, warrants, and covenants to the other Parties that on and after the date such Party executes this Agreement:

A. Such Party has the full power, authority, and legal right to engage in all the terms, warranties, and covenants contemplated by this Agreement.

1. Neither the execution nor delivery of this Agreement will conflict with or result in a breach of any of the provisions of any judgment, order, writ,

injunction or decree of any court, administrative agency or other governmental authority, or of any agreement or other instrument to which such Party or any of its Affiliates is a party or by which any of them is bound, or constitute a default under any thereof, or, to such Party's knowledge, conflict with or result in a breach of any applicable law, rule or regulation of any such governmental authority, or result in the creation or imposition of any lien, charge or encumbrance upon any property of such Party or any of its Affiliates;

2. No consent, approval, or other authorization not already detailed herein of or by any court, administrative agency, or other governmental authority or any other entity is required in connection with the execution, delivery, or compliance with the provisions of this Agreement by such Party that has not been delivered to the other Parties.
3. From and after the Effective Date, the Parties (including each elected official and any designated spokesperson of the City) will not make a public comment or statement that is intended to, or that reasonably can be expected to, negate the message of the Joint Statement by indicating directly or indirectly that it was made only as a means of or a result of settlement purposes of the Action and the related cases addressed herein at the State of Florida level. The Parties agree that this covenant is an important and essential part of the Agreement between the Parties and that a violation of any of these provisions would cause irreparable harm and damage to either Party. Accordingly, the Parties agree that each shall be entitled to equitable relief, including a preliminary and permanent injunction, to prevent or limit a Party's violation of any of these provisions.

B. Voluntary Agreement: The Parties acknowledge, agree, represent, warrant, and covenant that no Party has been pressured, coerced, compelled, or otherwise forced into entering into this Agreement. The Parties acknowledge that they have read this entire Agreement and that each is either represented by counsel, had the opportunity to seek counsel, and fully understands the terms of this Agreement. The Parties each had the opportunity to amend or revise this Agreement through counsel or individually and specifically waive any claims or defenses regarding the drafting of the Agreement. No Party is relying upon any statement, promise, or representation of fact other than what is contained in this Agreement, and that the Parties each have the legal capacity to enter into this Agreement. Each of the persons signing this Agreement declares and represents that the Party for which each is signing has taken all necessary action to approve the making and performance of this Agreement, is competent to execute this Agreement, and is duly authorized and has the full right and authority to execute this Agreement on such Party's behalf.

C. Entire Agreement: It is understood and agreed that this Agreement constitutes the entire agreement amongst the Parties and that the terms of this Agreement are contractual and are not mere recitals, and shall be binding upon the executors, administrators, successors, and assigns of all Parties. The terms of this Agreement may not be changed, modified, assigned, altered, interlineated, or supplemented, nor may any covenant, representation, warranty, or other provisions hereof be waived, except by agreement in writing signed by the party against whom enforcement of the change, modification, alteration, interlineation, or supplementation

is sought. Nor may any covenant, representation, warranty, or other provision hereof be waived, except by agreement in writing signed by the party against whom enforcement of the waiver is sought.

D. Controlling Law: Any dispute as to the provisions of this Agreement or the interpretation thereof shall be governed by Florida law. Further, the venue of any action brought by any Party related in any way to the interpretation or enforcement of this Agreement shall be in the state court of Manatee County, Florida or in the United States District Court, Middle District of Florida, Tampa Division.

E. Further Assurances: The Parties agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.

F. Severability: If for any reason any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall be construed, performed, and enforced as if the invalidated or unenforceable provision had not been included in the text of the Agreement.

ON BEHALF OF THE PLAINTIFFS

SHAWN T. KALETA

As an individual and on behalf of Bali Hai JV, LLC, 3605 Gulf Dr., LLC., 100 73rd, LLC, 100 73rd 203A, LLC, and 100 73rd St. Unit 202C, LLC

STATE OF _____)

COUNTY OF _____)

On this the ____ day of _____, 2024, before a Notary Public, within and for said County and State, personally appeared Shawn T. Kaleta, individually and on behalf of Bali Hai JV, LLC, 3605 Gulf Dr., LLC, 100 73rd, LLC, 100 73rd 203A, LLC, and 100 73rd St. Unit 202C, LLC, known to be the identical person described in and who executed the foregoing instrument and acknowledged that the same is true, and that after reading the same or having the same read to him, and with a full understanding of the terms and the effect thereof, and will full authority to bind those entities upon which he is acting on behalf of, executed the same.

NOTARY PUBLIC

My Commission Expires: _____

ON BEHALF OF THE CITY OF HOLMES BEACH

JUDY TITSWORTH
Mayor of the City of Holmes Beach

STATE OF FLORIDA)

COUNTY OF MANATEE)

On this the ____ day of _____, 2024, before a Notary Public, within and for said County and State, personally appeared JUDY TITSWORTH on behalf of the City of Holmes Beach, known to be the identical person described in and who executed the foregoing instrument and acknowledged that the same is true, and that after reading the same or having the same read to her, and with a full understanding of the terms and the effect thereof, executed the same.

NOTARY PUBLIC
My Commission Expires: _____