

TOWN OF GOLDEN BEACH, FLORIDA

RESOLUTION NO. 2484.17

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, APPROVING THE SETTLEMENT AGREEMENT WITH FORMER TOWN POLICE OFFICER MICHELLE SANTINELLO; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Michelle Santinello a/k/a Kelly Cabot (“Santinello”) was employed by the Town of Golden Beach (the “Town”) as a police officer until May 2005;

WHEREAS, Santinello suffered an injury while on duty on or about September 19, 2003, which injury she alleges entitled her to benefits under the Alu-O’hara Act, Florida Statute Section 112.19, as of November 7, 2005 (“Alu-O’hara Benefits”);

WHEREAS, on or about September 3, 2014, Santinello first requested Alu-O’hara Benefits from the Town;

WHEREAS, on or about October 28, 2014, the Town agreed to provide Santinello with Alu-O’hara Benefits going forward;

WHEREAS, on September 27, 2016, Santinello filed a complaint against the Town in the action captioned Santinello v. City of Golden Beach, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. CACE-2016-024489 (the “Action”);

WHEREAS, Santinello claims in the Action that she was entitled to retroactive payment of Alu-O’hara Benefits from the date when she was deemed permanently and totally disabled;

WHEREAS, the Town denies that Santinello is entitled to any recovery, but has settled Santinello’s claims to resolve the controversy between them amicably and

expeditiously and avoid the costs relating to litigation of the Action pursuant to the Confidential Settlement Agreement and General Release (the "Agreement") attached hereto as Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. Approval. The Town Council hereby approves resolving Santinello's claims brought in the Action according to the terms described in the Agreement attached hereto as Exhibit "A."

Section 3. Authorization. The Town Council hereby authorizes the Town Mayor and Manager to take all steps necessary to execute and implement this Resolution.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

The Motion to adopt the foregoing Resolution was offered by Councilmember Rojas, seconded by Councilmember Lusskin and on roll call the following vote ensued:


Mayor Glenn Singer	<u>Aye</u>
Vice Mayor Kenneth Bernstein	<u>Aye</u>
Councilmember Amy Isackson-Rojas	<u>Aye</u>
Councilmember Judy Lusskin	<u>Aye</u>
Councilmember Bernard Einstein	<u>Aye</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida this 28th day of February, 2017.

ATTEST:




LISSETTE PEREZ
TOWN CLERK



MAYOR GLENN SINGER

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



STEPHEN J. HELFMAN
TOWN ATTORNEY

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

The Town of Golden Beach ("Golden Beach") and Michelle Santinello a/k/a Kelly Cabot, her heirs, executors, administrators, successors, and assigns (collectively referred to throughout this Confidential Settlement Agreement and General Release as "Santinello") hereby enter into this Confidential Settlement Agreement.

WHEREAS, Santinello was employed by Golden Beach as a police officer until May 2005;

WHEREAS, Santinello suffered an injury while on duty on or about September 19, 2003, which injury she alleges entitled her to benefits under the Alu-O'hara Act, Florida Statute Section 112.19, as of November 7, 2005 ("Alu-O'hara Benefits");

WHEREAS, Golden Beach alleges on or about September 3, 2014, Santinello first requested Alu-O'hara Benefits from Golden Beach;

WHEREAS, on or about October 28, 2014, Golden Beach agreed to provide Santinello with Alu-O'hara Benefits going forward;

WHEREAS, on or about September 27, 2016, Santinello filed a complaint against Golden Beach in the action captioned Santinello v. City of Golden Beach, pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. CACE-2016-024489 (the "Action");

WHEREAS, Santinello claims in the Action that she was entitled to retroactive payment of Alu-O'hara Benefits from the date when she was deemed permanently and totally disabled;

WHEREAS, Golden Beach denies that Santinello is entitled to any recovery, but has settled Santinello's claims to resolve the controversy between them amicably and expeditiously and avoid the costs relating to litigation of the Action;

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by entering into this Agreement, it is hereby

STIPULATED AND AGREED by and between the Parties that Santinello's claims are resolved as follows:

1. **Consideration.** In consideration for signing this Confidential Settlement Agreement and General Release (the "Agreement"), and complying with its terms, Golden Beach agrees to pay the total gross sum of Twenty-Two Thousand, Five Hundred Dollars and Zero Cents (\$22,500.00), as follows:

- i. a check payable to the order of Michelle Santinello in the amount of Fifteen Thousand, One Hundred and Twenty Dollars and Seven Cents (\$15,120.07), for which a 1099 will be issued; and
- ii. a check payable to the order of Velasquez, Dolan, Arias, P.A. in the amount of Seven Thousand, Three Hundred and Seventy-Nine Dollars and Ninety-Three Cents (\$7,379.93) representing attorneys' fees and costs, for which a Form 1099 will be provided.

The checks described above shall be delivered to Velasquez, Dolan, Arias, P.A. within thirty (30) days of receipt by Golden Beach's counsel of the last of the following: (1) this Agreement with Santinello's original signature; (2) signed IRS W-9 form from Santinello's counsel; (3) a signed IRS W-9 form from Santinello; (4) a resolution approving this Agreement enacted by Golden Beach's Town Council; and (5) Plaintiff's e-filing of a Notice of Settlement and Dismissal with Prejudice with the Court.

The sums detailed above are in full and final settlement and resolution of any and all claims which Santinello had, has, or may have against Golden Beach arising out of or in any way connected with her employment or separation of employment with Golden Beach as of the date of the execution of this Agreement. Each Party shall bear her or its own fees and costs, except as provided for herein.

2. **Tax Responsibility.** Santinello agrees that she will be exclusively responsible for the payment of any taxes owed on any amounts paid to her under the terms of this Agreement. Golden Beach makes no representation as to the taxability of the amounts paid to Santinello or her counsel. Santinello agrees to pay her portion of federal, state, or local taxes, if any, which are required to be paid with respect to this Agreement. Moreover, Santinello agrees to indemnify Golden Beach and hold it harmless from any interest, taxes, or penalties assessed against it by any governmental agency as the result of the non-payment of taxes on any amounts paid to Santinello or her counsel under this Agreement.

3. **No Consideration Absent Execution of this Agreement.** Santinello understands and agrees that Santinello would not receive the monies and/or benefits specified in paragraph "1" above, except for Santinello's execution of this Agreement and the fulfillment of the promises contained herein.

4. **General Release, Claims Not Released and Related Provisions**

a. **Mutual General Release of All Claims.** Santinello knowingly and voluntarily releases and forever discharges Golden Beach, its affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and their administrators and fiduciaries, (collectively referred to throughout the remainder of this Agreement as "Releasees"), of and from any and all claims, known and unknown, asserted or unasserted, which Santinello has or may have against Releasees as of the date of execution of this Agreement. Santinello's

spouse, Leo Santinello, releases and forever discharges Releasees of and from any claims he has or may have against Releasees as of the date of execution of this Agreement for Alu-O'hara Benefits resulting from Michelle Santinello's injury.

Golden Beach knowingly and voluntarily releases and forever discharges Santinello of and from any and all claims, known and unknown, asserted or unasserted, which Golden Beach has or may have against Santinello as of the date of execution of this Agreement.

b. **Claims Not Released.** Santinello is not waiving any rights she may have to: (a) her own vested accrued employee benefits under Golden Beach's health, welfare, retirement or other benefit plans; and (b) benefits and/or the right to seek benefits under applicable workers' compensation and/or unemployment compensation statutes. Neither party is waiving any rights they may have to (a) pursue claims which by law cannot be waived by signing this Agreement; (b) enforce or demonstrate a breach of this Agreement; and/or (c) challenge the validity of this Agreement.

5. **Confidentiality; Non-Disparagement.** In response to any inquiry regarding this Agreement or if asked if a settlement was reached between the parties, Santinello may only say that "the matter has been resolved." Santinello agrees that the terms of this Agreement shall be held in strict confidence by Santinello and all such information shall not be disclosed to any third party or entity (including current or former employees of Releasees, but excluding state, federal and local agencies). Except nothing herein shall limit Santinello in her communications: a) with her spouse or legal, accounting and tax advisors of the terms of this Agreement, provided, however, that before such disclosure is made, that person or entity that will be receiving the disclosure is informed of and agrees to be bound by this confidentiality provision; b) if subpoenaed by a party, required by law, or ordered by court, Santinello may testify freely regarding any subject matter including this Agreement or may produce the Agreement; c) with a court of competent jurisdiction in order to enforce or demonstrate a breach of this Agreement, and/or d) with any federal, state, or local government administrative agency. Santinello agrees that if a request for information subject to this confidentiality provision is made by any agency of the federal, state or local government, or pursuant to a valid subpoena or court order, Santinello shall advise Golden Beach of such request not later than five (5) days after such request.

Santinello agrees that Santinello will not engage in any activity which is intended to defame Releasees and agrees that Santinello will not make any disparaging comments about Releasees (orally or in writing). Any disclosure or dissemination by Santinello other than as described herein will be regarded as a breach of this Agreement. Santinello shall be liable to Releasees for damages for each violation proven in a court of competent jurisdiction, plus a reasonable attorney's fee and court costs for enforcing this provision. Golden Beach agrees to direct the Town Manager not to engage in any activity which is intended to defame Santinello and agrees to direct the Town Manager not to make any disparaging comments about Santinello (orally or in writing). Golden Beach shall be liable to Santinello for damages for each violation proven in a court of competent jurisdiction, plus a reasonable attorney's fee and court costs for enforcing this provision.

6. **Acknowledgments and Affirmations.**

Santinello affirms that she has not filed, caused to be filed, or presently is a party to any claim against Golden Beach, except current dispute regarding calculation and possible underpayment of pension benefits, other than the Action, which Santinello has agreed to dismiss under this Agreement.

Santinello affirms that she has been granted any leave to which she was entitled under the Family and Medical Leave Act or related state or local leave or disability accommodation laws.

Santinello affirms that all of Golden Beach's decisions regarding Santinello's pay and benefits through the date of Santinello's execution of this Agreement were not discriminatory based on age, disability, race, color, sex, religion, national origin or any other classification protected by law.

7. **Governing Law and Interpretation.** This Agreement shall be governed and conformed in accordance with the laws of the state of Florida without regard to its conflict of laws provision. In the event of a breach of any provision of this Agreement, either party may institute an action specifically to enforce any term or terms of this Agreement and/or to seek any damages for breach. The parties agree that such dispute shall be heard by a judge, not a jury, exclusively in Miami-Dade County, Florida. The Parties agree that the prevailing party to any such action or dispute shall be entitled to recover her/its reasonable attorney's fees and costs from the non-prevailing party. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release and consideration language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

8. **Non-admission of Wrongdoing.** The Parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by Releasees of wrongdoing or evidence of any liability or unlawful conduct of any kind.

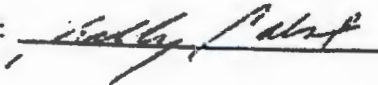
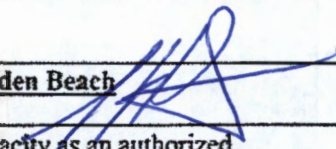
9. **Amendment.** This Agreement may not be modified, altered or changed except in writing and signed by both Parties wherein specific reference is made to this Agreement.

10. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties. Santinello acknowledges that she has not relied on any representations, promises, or agreements of any kind made to her in connection with her decision to accept this Agreement, except for those set forth in this Agreement.

SANTINELLO FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE,

**SETTLE AND RELEASE ALL CLAIMS SHE HAS OR MIGHT HAVE AGAINST
RELEASEES EXCEPT AS LIMITED OR STATED HEREIN.**

The Parties knowingly and voluntarily sign this Agreement as of the date(s) set forth below:

<u>Michelle Santinello a/k/a Kelly Cabot</u> Signed: <u></u> Date: <u>02-23-2017</u>	<u>Town of Golden Beach</u> By: <u></u> in her/his capacity as an authorized representative of Town of Golden Beach Print: <u>Glenn Singer</u> Title: <u>Mayor</u> Date: <u>3/02/2017</u>
<u>Leo Santinello</u> Signed: <u>Leo P. Santinello</u> Date: <u>02/23/17</u>	