

TOWN OF GOLDEN BEACH, FLORIDA

RESOLUTION NO. 2553.18

A RESOLUTION OF THE TOWN OF GOLDEN BEACH, FLORIDA, APPROVING AND AUTHORIZING A RELEASE AND SETTLEMENT AGREEMENT BETWEEN THE TOWN, ZURICH AMERICAN INSURANCE COMPANY, AIG PROPERTY CASUALTY COMPANY AND METRO EQUIPMENT SERVICE, INC.; AUTHORIZING THE MAYOR TO EXECUTE THE SETTLEMENT AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Heather Bar-Zevulun and Nira Bar-Zevulun filed a personal/bodily injury lawsuit against the Town of Golden Beach (the "Town") in the 11th Circuit Court of Miami-Dade County, styled *Heather Bar-Zevulun and Nira Bar-Zevulun v. Corzo Castella Carballo Thompson Salman, P.A., Metro Equipment Service, Inc., the Town of Golden Beach and Florida Sol Systems, Inc.*, Case No. 11-05092 CA 27; and

WHEREAS, the Town seeks to avoid the expense, delay, and uncertainty of continued litigation, and wishes to resolve the personal/bodily injury lawsuit under the terms of the Release and Settlement Agreement, attached hereto as Exhibit "A;" and

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 and Execution of Settlement Agreement. The Town Council hereby approves and authorizes the Release and Settlement Agreement, including the Limited Release as described in the Settlement Agreement, in the form attached hereto as Exhibit "A." The Mayor is authorized to execute the Release and

Settlement Agreement on behalf of the Town once approved as to final form and legal sufficiency by the Town Attorney.

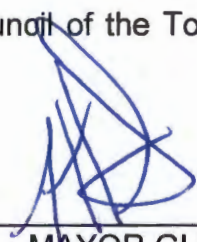
Section 3. Implementation. The Mayor and Town Manager are hereby authorized to take all steps reasonably necessary to implement the terms of the Release and Settlement Agreement and this Resolution.

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

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

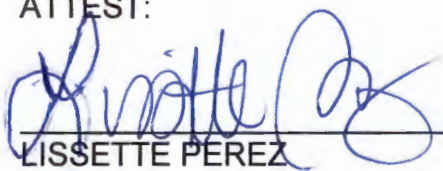
Mayor Glenn Singer	<u>Aye</u>
Vice Mayor Jaime Mendal	<u>Aye</u>
Councilmember Kenneth Bernstein	<u>Aye</u>
Councilmember Amy Isackson-Rojas	<u>Aye</u>
Councilmember Judy Lusskin	<u>Aye</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida this 13th day of March, 2018.



MAYOR GLENN SINGER

ATTEST:



LISSETTE PEREZ
TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



STEPHEN J. HELFMAN
TOWN ATTORNEY



TOWN OF GOLDEN BEACH

One Golden Beach Drive
Golden Beach, FL 33160

MEMORANDUM

Date: March 13, 2018

To: Honorable Mayor Glenn Singer &
Town Council Members

From: Alexander Diaz 
Town Manager

Subject: Resolution No. 2553.18 – Approving the Settlement with
Heather Bar Zevulun

Item Number:

7

Recommendation:

It is recommended that the Town Council adopt the attached Resolution No. 2553.18.

Background:

During the Capital Improvement Project there was a claim submitted for damages. During the last few years the Town, through our Insurance provider has been trying to resolve the matter.

The Towns Insurance Carrier has resolved this matter with a settlement. There is no exposure to the Town and the settlement is covered by our carrier.

Please refer to the email from the Attorneys that are attached as back-up to this item, along with the settlement agreement, referenced as "Exhibit A".

Fiscal Impact:

\$20,000.00 by our insurance carrier.

EXHIBIT "A"

(Attach Agreement between the Town and Heather Bar Zevuelen)

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Agreement") is entered into between the **TOWN OF GOLDEN BEACH**, a Florida municipality, ("**TOWN**" or "**RELEASOR**") and **ZURICH AMERICAN INSURANCE COMPANY ("ZAIC")**, **AIG PROPERTY CASUALTY COMPANY ("AIG")** and **METRO EQUIPMENT SERVICE, INC. ("METRO")** (collectively, the "**RELEASED PARTIES**"), out of the desire to finally and fully resolve all disputes as between the **RELEASOR** and **RELEASED PARTIES** as set forth below.

Now, therefore, in consideration of the below referenced sums and the promises contained herein:

1. **Release.** **RELEASOR** agrees that for and in consideration of the payment of fifteen thousand dollars and zero cents (\$15,000.00) paid to the Florida Municipal Insurance Trust by **ZAIC** and fifteen thousand dollars and zero cents (\$15,000.00) paid to the Florida Municipal Insurance Trust by **AIG**, for the express purpose of funding, in part, the **TOWN's** settlement of its own alleged liability as well as any vicarious liability it is alleged to face from the acts of **METRO** in a personal/bodily injury lawsuit filed by Heather Bar-Zevulun and Nira Bar-Zevulun ("Plaintiffs") against **TOWN** in Miami-Dade County, styled *Heather Bar-Zevulun and Nira Bar-Zevulun v. Corzo Castella Carballo Thompson Salman, P.A., Metro Equipment Service, Inc., the Town of Golden Beach and Florida Sol Systems, Inc.*, CASE NO. 11-05092 CA 27 (the "Bodily Injury Lawsuit"), and for the dismissal with prejudice of the Plaintiffs' claims against the **TOWN** in the Bodily Injury Lawsuit, and the promises and covenants contained in this Agreement, the receipt and sufficiency of which is acknowledged, the **RELEASOR** hereby discharges, releases and remises the **RELEASED PARTIES**, and their predecessors in interest, successors in interest,

parent corporations, subsidiaries, affiliated entities, reinsurers, directors, officers, shareholders, members, managers, principals, agents, heirs, employees, assignors, subrogors, trustees and attorneys, from all claims, including, without limitation, all claims based in statute, contract, common law, and equity: (1) for any defense, indemnity, or insurance coverage associated with or in response to the bodily injury claims asserted by Heather Bar-Zevulun and Nira-Bar Zevulun; (2) for any alleged denial of any defense, indemnity, or insurance coverage associated with or in response to the bodily injury claims asserted by Heather Bar-Zevulun and Nira-Bar Zevulun; (3) for any actual or alleged breach of any obligation or obligations between an insurer and an insured associated with or in response to the bodily injury claims asserted by Heather Bar-Zevulun and Nira-Bar Zevulun; (4) for the matters set forth in the **TOWN'S** Third-Party Lawsuit against **ZAIC**, (5) for the matters set forth in the **TOWN'S** Cross-Claim against **METRO**; and, (6) for the matters set forth in the **TOWN's** request to **AIG** for a defense, indemnity, and insurance coverage associated with or in response to the bodily injury claims asserted by Heather Bar-Zevulun and Nira-Bar Zevulun.

2. **Fees and Costs.** The **RELEASOR** and the **RELEASED PARTIES** agree to bear their own attorney's fees and costs arising out of this dispute, the Bodily Injury Lawsuit, the Third-Party Lawsuit, the Cross-Claim, and the AIG Tender.

3. **Dismissal of the Third-Party Lawsuit and Cross-Claim.** Within ten (10) days of receipt of payment, **TOWN** shall dismiss with prejudice the presently abated Third-Party Lawsuit filed against **ZAIC** and the Cross-Claim

filed against **METRO**, with the **RELEASOR** and the **RELEASED PARTIES** to bear their own fees and costs.

4. **Reservation of Rights.** Participation in this Agreement is fully without prejudice to the rights of either of the parties. All of the conditions, exclusions or other provisions of **ZAIC** policy(ies) and **AIG** policy(ies) at issue in the Bodily Injury Lawsuit, the Third-Party Lawsuit and the Cross-Claim, and all claims, rights, counts, and causes of action of any of the parties, including the right to seek coverage or contribution from other involved insurers, which are not expressly released by the Agreement, are preserved for each of the parties to pursue.

5. **Not Evidentiary.** Neither the Agreement nor any part hereof shall be used as evidence in any other matter, dispute resolution, or other proceedings to create, prove, or interpret the respective rights, duties or obligations of the parties. This restriction shall not apply to any litigation or proceeding brought to enforce the terms of this Agreement.

6. **Amendments.** This Agreement may be amended only in writing, signed by or on behalf of all parties.

7. **Construction.** It is acknowledged that all parties participated in the drafting of this Agreement and this language shall not be presumptively construed either in favor or against the **RELEASOR** or the **RELEASED PARTIES**. This Agreement shall be construed in accordance with the laws of the State of Florida.

8. **Headings.** Section headings serve the purpose of organization only and shall not constitute part of the Agreement.

9. **Execution.** The parties to this Agreement may execute the Agreement by facsimile and/or in counterparts, all of which shall constitute one agreement and be deemed an original.

10. **Representations and Warranties.** The **RELEASOR** further warrants and represents that: (1) it has full authority to settle these claims/lawsuits; (2) no promise, inducement or agreement not expressed in this Agreement has been made; (3) it is the sole owner of all respective claims, rights, counts, causes of actions, obligations, debts and demands which are intended to be released, and are in fact released; (4) the foregoing Agreement has been carefully read and it knows the contents thereof; (5) it has either consulted with counsel or chosen not to do so; (6) it is competent to execute the Agreement; and (7) in making this settlement and signing this Agreement, it has not been influenced by any representation of any of the **RELEASED PARTIES**.

[Signature Pages Follow]

IN WITNESS WHEREOF, I hereunto set my hand this _____ day of _____, 2018.

TOWN OF GOLDEN BEACH, a Florida municipality.

By: _____
(name)

Its: _____
(title)

WITNESS:

Print Name: _____

STATE OF FLORIDA)
) ss:
COUNTY OF)

BEFORE ME, the undersigned, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____, to me well known to be the person described in and who executed the foregoing or who produced _____ as identification and he acknowledged that he executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have here unto set my hand and official seal on this _____ day of _____, 2018.

NOTARY PUBLIC-State of Florida
At Large

Print Name

My Commission Expires:

My Commission Number:

IN WITNESS WHEREOF, I hereunto set my hand this _____ day of _____, 2018.

AIG PROPERTY CASUALTY

By: _____

(name)

Its: _____

(title)

WITNESS:

Print Name: _____

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

BEFORE ME, the undersigned, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____, to me well known to be the person described in and who executed the foregoing or who produced _____ as identification and he acknowledged that he executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have here unto set my hand and official seal on this _____ day of _____, 2018.

NOTARY PUBLIC-State of New York
At Large

Print Name

My Commission Expires:

My Commission Number:

IN WITNESS WHEREOF, I hereunto set my hand this _____ day of _____, 2018.

ZURICH AMERICAN INSURANCE CO.

By: _____
(name)

Its: _____
(title)

WITNESS:

Print Name: _____

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

BEFORE ME, the undersigned, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____, to me well known to be the person described in and who executed the foregoing or who produced _____ as identification and he acknowledged that he executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have here unto set my hand and official seal on this _____ day of _____, 2018.

NOTARY PUBLIC-State of California
At Large

Print Name

My Commission Expires:

My Commission Number: