RESOLUTION NO. 96-12-17

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A SETTLEMENT AND MUTUAL RELEASE AGREEMENT BETWEEN THE TOWN AND PRABHJOT JYOTI BENISASIA A/K/A PRABHJOT KAUR BENISASIA A/K/A JODI BENISASIA (MRS. BENISASIA) AND THE VESSEL, M/Y "BENISASIA STAR" (VESSEL); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park ("Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, a dispute has arisen between the Town and Mrs. Benisasia as to an outstanding maritime lien against the Vessel for dockage and related services on the Vessel; and

WHEREAS, the Town Manager has negotiated the terms of the Agreement with the Parties to resolve all issues relating to dispute.

WHEREAS, the Town Manager has recommended to the Town Commission that it enter into the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The foregoing recitals are incorporated herein.

<u>Section 2.</u> The Mayor is hereby authorized and directed to execute the Settlement and Mutual Release Agreement; a copy of which is attached hereto and incorporated herein as **Exhibit "A"**.

Section 3. This Resolution shall be effective upon execution.

The foregoing Resolution was offered by Communication	· 1 0	
Λ	roner dynes	
who moved its adoption. The motion was seconded by	missioned Michael	
and upon being put to a roll call vote, the vote was as follows	:	
	AYE NAY	
MAYOR MICHAEL O'ROURKE	Alsent	
VICE-MAYOR KIMBERLY GLAS-CASTRO		
COMMISSIONER ERIN FLAHERTY		
COMMISSIONER ANNE LYNCH		
COMMISSIONER ROGER MICHAUD		
The Town Commission thereupon declared the foregoing Resolution NO. $96-12-17$		
duly passed and adopted this 6 day of bacon	lser, 2017.	
BY:	MICHAEL O'ROURKE MAYOR	
ATTEST:		
	form and legal sufficiency:	
(TOWNISEAT) BY:	HOMAS I. BAIRD OWN ATTORNEY	

SETTLEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made and entered into by and between TOWN OF LAKE PARK also known as LAKE PARK HARBOR MARINA ("TOWN"), as one party, PRABHJOT JYOTI BENISASIA A/K/A PRABHJOT KAUR BENISASIA A/K/A JODI BENISASIA (hereinafter "MRS. BENISASIA"), a second party, and the vessel, M/Y "BENISASIA STAR" (hereinafter the "Vessel") a Fairline manufactured, 52' motor vessel, (hereinafter the "Vessel"), (all parties together the "Parties"), on the date hereinafter set forth.

WHEREAS, a dispute has arisen between TOWN and MRS. BENISASIA as to an outstanding maritime lien against the Vessel for dockage and related services on the Vessel ("Transaction");

NOW, THEREFORE, in consideration of the mutual covenants herein, in addition to a personal guaranty concurrently executed by RICK KHOMAL BENISASIA, and a corporate guaranty concurrently executed by SEASPRAY RESORT, LTD., and other good and valuable consideration, the Parties hereto agree as follows:

In reliance on this Agreement, the Parties shall immediately notify the Court of this settlement, jointly move the Court to dismiss with prejudice the case styled Town of Lake Park v. "Benisasia Star," Case No. 9:17-cv-80657-RLR ("Case"), to approve and enforce the terms of the settlement, and retention of jurisdiction pending compliance with its terms

Except as otherwise provided herein, TOWN hereby and for itself, its administrators, heirs and assigns, releases, acquits and forever discharges MRS. BENISASIA, and the Vessel, none of whom admit any liability, but all of whom expressly deny any liability, from any and all claims, actions, causes of action (whether arising in contract, tort, by statute or otherwise), demands, debts, liabilities, rights, damages, costs, loss of services, expenses, compensation,

third-party actions, suits at law or in equity, including claims or suits for contribution and/or indemnity, of whatever nature, including any claims for attorneys' fees and costs and all consequential damages, that were brought or could have been brought in relation to the Transaction only or which relate to, arise out of, or in any way result from any matters in connection with the Transaction, or any other collection efforts on the Transaction, whether such claims are now known or unknown, excepting only those obligations imposed upon the Parties under this Agreement.

Except as otherwise provided herein, MRS. BENISASIA hereby and for herself, her administrators, heirs, assigns, any associated entities, and the Vessel, releases, acquits and forever discharges the TOWN, its elected and appointed officials, employees and agents, their collection agents, their attorneys, crew members, Substitute Custodian, and any other person or entity which is directly or indirectly related to Transaction, none of whom admit any liability, but all of whom expressly deny any liability, from any and all claims, actions, causes of action (whether arising in contract, tort, by statute or otherwise), demands, debts, liabilities, rights, damages, costs, loss of services, expenses, compensation, third-party actions, suits at law or in equity, including claims or suits for contribution and/or indemnity, of whatever nature, and all consequential damages, that were brought, could have been brought, or could be brought in relation to the Transaction, or any other collection efforts on the Transaction, whether such claims are now known or unknown, excepting only those obligations imposed upon the Parties under this Agreement.

In consideration for the mutual discharge and release as set forth above, MRS. BENISASIA shall issue to TOWN, payments in the sum amount of **Twenty-Nine Thousand**, and **Eight Hundred Dollars** (\$29,800.00 USD), with payments to be made out to Ludwin Law

Group, P.A., Trust Account, and received by Ludwin Law Group, P.A. at 1732 S Congress Ave, Suite 326, Palm Springs, Florida, 33461 on or before each corresponding payment date, with the payment schedule as follows:

- \$18,182.00 shall be immediately released from the Court's registry to Ludwin Law Group, P.A.;
- \$2,800.00 by November 27, 2017;
- \$3,000.00 by December 27, 2017;
- \$3,000.00 by January 27, 2018; and
- \$2,818.00 by February 27, 2018.

All payments made by or on behalf the individuals and entities identified herein, and any amounts received from the Court registry, shall first be applied to fees and costs associated with any collection efforts resulting from the Transaction, with maritime liens against the Vessel to be paid last. Furthermore, any partial payments shall be credited against the foregoing amount, and any partial payments accepted shall not serve as a waiver of TOWN to pursue its rights to recover any outstanding amounts provided herein.

The Parties agree that all outstanding amounts due under this Agreement are secured by a maritime lien against the Vessel, enforceable by the Court in the Case, and shall not be registered on title against the Vessel, provided that all payments are timely made.

In addition to the foregoing, it is agreed that the Vessel may not be removed from Palm Beach County, Florida until all payments called for hereunder have been made in full.

In the event of any default, TOWN is entitled to, and MRS. BENISASIA hereby consents to, a default final judgment for the balance due, plus any additional fees and costs which may become due and owing under this Agreement, against MRS. BENISASIA, and the Vessel,

jointly and severally.

The foregoing remedies are in addition to any remedies provided for in the personal guaranty and corporate guaranty identified herein and executed separately by the identified individual and entity.

Upon receipt of the all aforementioned funds, TOWN agrees to release any liens against the Vessel, MRS. BENISASIA, as well as liability against RICK KHOMAL BENISASIA, and SEASPRAY RESORT, LTD., from any other claims of any kind, including any claims under the respective guarantees.

The Parties understand and agree that by execution of this Agreement, no parties have made any admissions of any liability of any nature whatsoever and that this settlement is made entirely as a compromise and for the purpose of settlement of disputed claims.

This Agreement shall be governed by the laws of the State of Florida, Palm Beach County.

Moreover, the State and Federal courts in Palm Beach County shall serve as the exclusive venue concerning any future claims or disputes arising out of this Agreement.

The release provided herein shall not extend to the obligations created by this Agreement.

Should any paragraph, provision or clause in this Agreement be found to be ineffective, invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable, and the Parties shall negotiate, in good faith, a substitute, valid and enforceable provision which more clearly reflects the Parties' intent in entering into this Agreement.

This Agreement constitutes the entire written agreement between the Parties. There are no other agreements, whether oral or written, modifying its terms. This Agreement supersedes any and all prior written or oral agreements (including oral settlement agreements) between the Parties and their agents. The terms of the Agreement can only be modified by a writing and

signed by the Parties and expressly state that such modification are intended.

Time is of the essence concerning all terms stated herein.

This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing any and all claims by TOWN, the Vessel, and MRS. BENISASIA, as stated herein.

Furthermore, all Parties acknowledge that:

- (a) They have read this Agreement and are competent and each below signatory is an agent of each respective entity and duly authorized to execute this Agreement;
- (b) They have been represented in the preparation, negotiation and execution of this Agreement by legal counsel of their own choice or they have voluntarily declined to seek such counsel;
- (c) They understand the terms and consequences of this Agreement and of the releases and waivers it contains; and they have not relied upon any representations or statements made by the other party, which are not specifically set forth in this Agreement;
- (d) They are fully aware of the legal and binding effect of this Agreement;
- (e) To the extent this Agreement conflicts with any prior Agreements or terms agreed to between the Parties, the terms of this Agreement shall control;
- (f) Regardless of any applicable Federal and International Maritime Laws, any amounts due under this Agreement shall be secured by the Vessel; and
- (g) The Parties to this Agreement shall execute any and all further documents that may be required to effectuate the purposes of the Agreement.

This Agreement may be executed in any number of counterparts, and by facsimile, each of which shall constitute a duplicate original hereof.

The effective date of this Agreement shall be on the last date on which this Agreement is signed by the Parties.

Should TOWN determine, at its own discretion, that actions need to be taken to enforce any terms of this Agreement against MRS. BENISASIA, the Vessel, RICK KHOMAL BENISASIA, and SEASPRAY RESORT, LTD., then TOWN shall be entitled to recover attorney's fees and costs jointly and severable from any and all identified parties, which includes, but is not limited to, MRS. BENISASIA and the Vessel, regardless of whether a lawsuit is filed and whether such recovery is provided for under Federal Maritime Law.

The Parties have executed this Agreement on the dates set forth below.

Date: December 6, 2017 fo	MICHAEL O'ROURKE, as Mayor of the Town of Lake Park upon resolution by the Commission of the Town of Lake Park
Date:,	PRABHJOT JYOTI BENISASIA
STATE OF FLORIDA COUNTY OF	
Acknowledged before me,	, the undersigned authority, this day of December
2017, by PRABHJOT JYOTI BENISASIA,	, [] who is personally known to me or [] who has
produced identification.	
Signature	Notary Public, State of Florida
	My Commission Expires

The effective date of this Agreement shall be on the last date on which this Agreement is signed by the Parties.

Should TOWN determine, at its own discretion, that actions need to be taken to enforce any terms of this Agreement against MRS. BENISASIA, the Vessel, RICK KHOMAL BENISASIA, and SEASPRAY RESORT, LTD., then TOWN shall be entitled to recover attorney's fees and costs jointly and severable from any and all identified parties, which includes, but is not limited to, MRS. BENISASIA and the Vessel, regardless of whether a lawsuit is filed and whether such recovery is provided for under Federal Maritime Law.

The Parties have executed this Agreement on the dates set forth below.

Date:	
	MICHAEL O'ROURKE, as Mayor of the Town of Lake Park upon resolution by the Commission of the Town of Lake Park
Date: <u>Occ 11/17</u> ,	PRABHJOT JYOTH BENISASIA
STATE OF FLORIDA COUNTY OF PALM BEACH	<i>y</i> -
Acknowledged before me	e, the undersigned authority, this 11 day of November
2017, by PRABHJOT JYOTI BENISASIA	, [] who is personally known to me or [] who has
produced identification. FLUCENSE	
Signature Signature	Notary Public, State of Florida
	My Commission Expires 1292019 SALEY ASS. NOTARY PUBLIC STATE OF FLORIDA
SEAL	Comm# FF942384 Expires 12/9/2019

GUARANTY

THIS GUARANTY (this "Guaranty") made as of this __ day of November, 2017, by RICK KHOMAL BENISASIA ("Guarantor"), having an address at 123 S Ocean Avenue, Palm beach Shores, FL 33404 to TOWN OF LAKE PARK also known as LAKE PARK HARBOR MARINA. ("Town").

WITNESSETH:

WHEREAS, Guarantor has requested Town to enter into that settlement agreement, concerning Case # 9:17-cv-80657-RLR, filed in the West Palm Beach Division in Southern District of Florida (together with any modifications, amendments, and Court orders entered concerning same) ("Settlement Agreement")

WHEREAS, in order to induce Town to enter into the Settlement Agreement, Guarantor has agreed to guarantee the performance by PRABHJOT JYOTI BENISASIA ("Debtor") of each and every terms, covenants, conditions, obligations, indemnities, agreements contained in the Settlement Agreement (collectively, the "Covenants").

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged by the parties, Guarantor agrees with Town as follows:

- 1. The recitals set forth above are incorporated herein by reference. Guarantor, jointly and severally, unconditionally guaranties to Town the prompt payment when due of the Covenants other charges payable by Debtor under the Settlement Agreement, and full and faithful performance and observance of all of the other Covenants (including, without limitation, the indemnities contained in the Settlement Agreement); and Guarantor, jointly and severally, unconditionally covenants to Town that if (a) default or breach shall at any time be made by Debtor in the Covenants in the Settlement Agreement or any other charges payable under the Settlement Agreement or in the performance of any of the other Covenants and (b) notice of any such default or breach shall have been given by Town to Debtor and Debtor shall not have cured such default or breach after the expiration of applicable notice and grace periods, if any, provided for in the Settlement Agreement (except that the foregoing clause (b) shall be inapplicable if Debtor shall be bankrupt or insolvent), then Guarantor shall well and truly perform (or cause to be performed) the Covenants, and pay (or cause to be paid) any amounts due to Town, and also all damages that may arise in consequence of the non-performance of the Covenant(s). Guarantor shall pay to Town, within five (5) days after notice, all expenses (including, without limitation, reasonable attorneys' fees and disbursements) of. or incidental to, or relating to the enforcement or protection of Town's rights hereunder or under the Settlement Agreement. This Guaranty is a guaranty of payment, not collection.
- 2. The liability of Guarantor hereunder shall not be impaired, abated, deferred, diminished, modified, terminated or discharged, in whole or in part, or otherwise affected, by any event, condition, occurrence, circumstance, proceeding, action or failure to act, with or without notice to, or the knowledge or consent of Guarantor, including, without limitation:
- (a) any amendment, modification or extension of the Settlement Agreement or any Covenant;

- (b) any extension of time for performance, whether in whole or in part, of any Covenant given prior to or after default under the Settlement Agreement;
- (c) any exchange, in whole or in part, of any security which may be held by Town at any time for or under the Settlement Agreement;
- (d) any other guaranty now or hereafter executed by Guarantor or anyone else;
- (e) any waiver of or assertion or enforcement or failure or refusal to assert or enforce, in whole or in part, any Covenant, claim, cause of action, right or remedy which Town may, at any time, have under the Settlement Agreement or with respect to any guaranty or any security which may be held by Town at any time for or under the Settlement Agreement or with respect to Debtor;
- (f) any act or thing or omission or delay to do any act or thing which (i) may in any manner or to any extent vary the risk of Guarantor or (ii) would otherwise operate as a discharge of Guarantor as a matter of law;
- (g) the release of any other guarantor from liability for the performance or observance of any Covenant, whether by operation of law or otherwise;
- (h) the failure to give Guarantor any notice whatsoever, other than any notice that Town is required to give pursuant to this Guaranty;
- (i) any right, power or privilege that Town may now or hereafter have against any party or collateral; or
 - (j) the bankruptcy or insolvency of Debtor or another guarantor.
- 3. To charge Guarantor under this Guaranty, no demand shall be required, Guarantor hereby expressly waiving any such demand. Town shall have the right to enforce this Guaranty without pursuing any right or remedy of Town against Debtor or any other party, or any security Town may hold. Town may commence any action or proceeding based upon this Guaranty directly against Guarantor without making Debtor or anyone else a party defendant in such action or proceeding. Any one or more successive and/or concurrent actions may be brought hereon against Guarantor either in the same action, if any, brought against Debtor and/or any other party or in separate actions, as often as Town, in its sole discretion, may deem advisable.
- 4. This Guaranty shall be binding upon Guarantor and his heirs, successors and assigns, and shall inure to the benefit of and may be enforced by the successors and assigns of Town.
- 5. Guarantor hereby expressly waives and releases (a) notice of the acceptance of this Guaranty and notice of any change in Debtor's financial condition; (b) the right to interpose any substantive or procedural defense of the law of guaranty, indemnification or suretyship, except the defenses of prior payment or prior performance (whether before or during any applicable notice and grace periods) by Debtor (of the obligations which Guarantor is called upon to pay or perform under this Guaranty); (c) all rights and remedies accorded by applicable

law to guarantors or sureties, including, without limitation, any extension of time conferred by any law now or hereafter in effect; (d) the right to trial by jury, in any action or proceeding of any kind arising on, under, out of, or by reason of or relating, in any way, to this Guaranty or the interpretation, breach or enforcement thereof; (e) the right to interpose any defense (except as allowed under (b) above), set off or counterclaim of any nature or description in any action or proceeding; and (f) any right or claim of right to cause a marshalling of Debtor's assets or to cause Town to proceed against Debtor and/or any collateral held by Town at any time or in any particular order.

- 6. Without limiting Guarantor's obligations elsewhere under this Guaranty, if Debtor, or Debtor's trustee, receiver or other officer with similar powers with respect to Debtor, rejects. disaffirms or otherwise terminates the Settlement Agreement pursuant to any bankruptcy, insolvency, reorganization, moratorium or any other law affecting creditors' rights generally. Guarantor shall automatically be deemed to have assumed, from and after the date such rejection, disaffirmance or other termination of the Settlement Agreement is deemed effective, all obligations and liabilities of Debtor under the Settlement Agreement to the same extent as if Guarantor had been originally named instead of Debtor as a party to the Settlement Agreement and the Settlement Agreement had never been so rejected, disaffirmed, or otherwise terminated, and shall be entitled to all benefits of Debtor under the Settlement Agreement. Guarantor, upon such assumption, shall be obligated to perform and observe all of the Covenants whether theretofore accrued or thereafter accruing, and Guarantor shall be subject to any rights or remedies of Town which may have theretofore accrued or which may thereafter accrue against Debtor on account of any default under the Settlement Agreement, notwithstanding that such defaults existed prior to the date Guarantor was deemed to have automatically assumed the Settlement Agreement or that such rights or remedies are unenforceable against Debtor by reason of such rejection, disaffirmance or other termination, provided that Guarantor shall have a reasonable time after such assumption to cure non-monetary defaults existing as of the date of such assumption. Guarantor shall confirm such assumption at the request of Town upon or after such rejection, disaffirmance or other termination, but the failure to do so shall not affect such assumption. Guarantor, upon the assumption of the Settlement Agreement, shall have all of the rights of Debtor under the Settlement Agreement (to the extent permitted by law). Neither Guarantor's obligation to make payment in accordance with this Guaranty nor any remedy for the enforcement thereof shall be impaired, modified, changed, stayed, released or limited in any manner by any impairment, modification, change, release, limitation or stay of the liability of Debtor or its estate in bankruptcy or any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or other statute or from the decision of any court interpreting any of the same, and Guarantor shall be obligated under this Guaranty as if no such impairment, stay, modification, change, release or limitation had occurred.
- 7. This Guaranty and all rights, obligations and liabilities hereunder shall be construed according to the substantive laws of Florida without reference to choice of law principles. Any legal action, suit or proceeding against Guarantor with respect to this Guaranty shall be brought in Palm Beach County, Florida.

- 8. Guarantor hereby waives any and all rights of subrogation (if any) which it may have against Debtor as a result of actions taken or amounts paid in connection with or relating to this Guaranty or to the Settlement Agreement.
 - 9. Guarantor represents and warrants to Town that as of the date hereof:
- (a) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally.
- (b) No action, suit or proceeding is pending or, to the best of Guarantor's knowledge, threatened against Guarantor that would materially affect Guarantor's ability to fully perform its obligations under this Guaranty.
- 10. If Town shall be obligated by reason of any bankruptcy, insolvency, or other legal proceeding, to pay or repay to Debtor or to Guarantor or to any trustee, receiver or other representative of either of them, any amounts previously paid by Debtor or Guarantor pursuant to the Settlement Agreement or this Guaranty, Guarantor shall reimburse Town for any such payment or repayment and this Guaranty shall extend to the extent of such payment or repayment made by Town, except to the extent, if any, that such payment or repayment is prohibited by law or that such payment or repayment constitutes merely a reimbursement of any overpayment. Town shall not be required to litigate or otherwise dispute its obligation to make such payment or repayment if in good faith and on written advice of counsel reasonably acceptable to Guarantor Town believes that such obligation exists.
- 11. All remedies afforded to Town by reason of this Guaranty or the Settlement Agreement, or otherwise available at law or in equity, are separate and cumulative remedies, and it is stipulated that no one remedy, whether or not exercised by Town, shall be deemed to be in exclusion of any other remedy available to Town and shall not limit or prejudice any other legal or equitable remedy which Town may have.
- 12. If any term, covenant, condition or provision of this Guaranty or the application thereof to any circumstance or to Guarantor shall be invalid or unenforceable to any extent, the covenant, condition or provision or its application(s) shall be limited so as to become valid and enforceable to the maximum extent permitted by law and the remaining terms, covenants, conditions and provisions of this Guaranty and the application(s) thereof to any circumstances or to Guarantor shall not be affected thereby and each remaining term, covenant, condition and provision of this Guaranty and the application(s) shall be valid and shall be enforceable to the fullest extent permitted by law. Moreover, the Parties shall negotiate, in good faith, a substitute, valid and enforceable provision which more clearly reflects the Parties' intent in entering into this Guaranty.
- 13. Any notice, confirmation or other communication hereunder (each, a "Notice") shall be in writing and shall be deemed to have been given when personally delivered, when transmitted by electronic mail or one business day after being deposited with the United States Postal Service or another recognized international courier, and addressed to the party to be notified at the address for such party specified in the first Paragraph of this Guaranty, or to such other place as the party

to be notified may from time to time designate.

14. The term "Guarantor" as used in this instrument shall refer to the undersigned parties jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this instrument are made by and shall be binding upon each and every undersigned party, jointly and severally.

Furthermore, all Parties acknowledge that:

- (a) They have read this Guaranty and are competent and each below signatory is an agent of each respective entity and duly authorized to execute this Guaranty;
- (b) They have been represented in the preparation, negotiation and execution of this Guaranty by legal counsel of their own choice or they have voluntarily declined to seek such counsel;
- (c) They understand the terms and consequences of this Guaranty and of the releases and waivers it contains; and they have not relied upon any representations or statements made by the other party, which are not specifically set forth in this Guaranty;
- (d) They are fully aware of the legal and binding effect of this Guaranty;
- (e) To the extent this Guaranty conflicts with any prior agreements or terms agreed to between the Parties, the terms of this Guaranty shall control; and
- (f) The Parties to this Agreement shall execute any and all further documents that may be required to effectuate the purposes of the Agreement.

This Guaranty may be executed in any number of counterparts, and by facsimile, each of which shall constitute a duplicate original hereof.

RICK KHOMAL BENISASIA

STATE OF FLORIDA

COUNTY OF PARM BEACH

Acknowledged before me, the undersigned authority, this 11 day of November

2017, by RICK KHOMAL BENISASIA, [] who is personally known to me or [] who has

produced identification. FL LYENSE

Signature

Notary Public, State of Florida

My Commission Expires 12 9

SEAL

Gaudy Quesada
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF942384
Evoiroe 12/0/2010

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