

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of billing practices of
KW Resort Utilities Corp. in Monroe County

Docket No.: 20170086-SU

KW RESORT UTILITIES CORP.'S NOTICE OF FILING

PLEASE TAKE NOTICE that KW RESORT UTILITIES CORP., by and through undersigned counsel, hereby files:

1. Settlement Agreement and Release between Safe Harbour, LLC and KW Resort Utilities Corp., executed May 12, 2016; and
2. Settlement Agreement and Release between Sunset Marina, LLC and KW Resort Utilities Corp., executed October 23, 2018.

Respectfully submitted this 26th day of October, 2018,
by:

SMITH HAWKS, PL
138 Simonton Street
Key West, FL 33040
Telephone: (305) 296-7227
Fax: (305) 296-8448
E-mail: bart@smithhawks.com

/s/ Barton W. Smith
Barton W. Smith, Esquire
For the Firm
FL Bar No. 20169

and

FRIEDMAN & FRIEDMAN, P.A.
600 Rinehart Road, Suite 2100
Lake Mary, FL 32746
Telephone: (407) 830-6331
Fax: (407) 878-2178
E-mail: mfriedman@ff-attorneys.com

/s/ Martin S. Friedman
Martin S. Friedman, Esquire
For the Firm
FL Bar No.: 199060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

E-Mail to the following parties this 26th day of October, 2018:

Stephanie Morse, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Morse.Stephanie@leg.state.fl.us

Robert Scheffel Wright, Esquire
John T. LatVia, III, Esquire
Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
schef@gbwlegal.com
jlavia@gbwlegal.com

Jennifer Crawford, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
jcrawfor@psc.state.fl.us

Respectfully submitted,

SMITH HAWKS, PL
138 Simonton Street
Key West, Florida 33040
Telephone: (305) 296-7227
Facsimile: (305) 296-8448
By: /s/ Barton W. Smith
BARTON W. SMITH, ESQ.
FL Bar No.: 20169
Email: Bart@SmithHawks.com

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is entered into by and between SAFE HARBOUR MARINA LLC, a Florida limited liability company, ("Safe Harbour"), whose address is 6810 Front Street, Stock Island, FL 33040 and K W RESORT UTILITIES, INC., a Florida corporation ("KWRU"), whose address is 6630 Front Street, Stock Island, FL 33040. From time to time hereinafter, the parties to the Settlement Agreement will be collectively referred to as the "Parties" and individually as a "Party."

RECITALS

- A) WHEREAS the Parties have a disagreement regarding the amount of additional Service Availability Fees and Charges that Safe Harbour owes to KWRU; and
- B) WHEREAS the parties desire to resolve any disputes between them including, but not limited to the appropriate amount of Service Availability Fees and Charges;

NOW, THEREFORE, the Parties have agreed to enter into this Settlement Agreement under the following terms:

TERMS

1. **RECITALS.** The above Recitals are true and correct, incorporated herein by reference, and are made part of this Settlement Agreement.

2. **AGREEMENTS.** For and in consideration of the mutual promises and covenants made in this Settlement Agreement, Safe Harbour shall pay to KWRU the amount of Forty-Four Thousand Nine Hundred Seventy-Eight Dollars and Ninety-One Cents (\$44,978.91), within ~~Five (5)~~ ^{Fifteen (15)} days of the execution of this Settlement Agreement.

3. **RELEASE.** Upon full payment of (\$44,978.91) as provided for above, KWRU hereby settles, compromises, releases, remits, acquits, discharges, any and all claims, demands, causes of action, rights, remedies, obligations, damages, costs, expenses, attorneys' fees and liabilities arising out of or directly related to Service Availability Charges due to KWRU; including all claims or potential claims that KWRU had or may now have, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, against Safe Harbour related to Service Availability Fees and Charges ("Released Claims"). However, the Settlement Agreement is not intended to and does not release the Parties from any of their obligations under this Settlement Agreement.

Safe Harbour hereby settles, compromises, releases, remits, acquits, discharges, any and all claims, demands, causes of action, rights, remedies, obligations, damages, costs, expenses, attorneys' fees and liabilities arising out of or directly related to Service Availability Charges due to KWRU and invoices for prior wastewater service; including all claims or potential claims that Safe Harbour had or may now have, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, against KWRU related to Service Availability Fees and Charges, and prior invoices for wastewater service ("Released Claims"). Safe Harbour

specifically and expressly waives any right to any refund of amounts paid to KWRU for prior wastewater service and shall advise the Florida Public Service Commission accordingly. However, the Settlement Agreement is not intended to and does not release the Parties from any of their obligations under this Settlement Agreement. Further, Safe Harbor agrees to not object to any State or County agencies with regard to KWRU's construction of the new .350 MGD AAF treatment train to increase the existing capacity to .849MGD as described in the Florida Department of Environmental Protection Permit Number FLA014951, including but not limited to Zoning, and Permitting. This latter provision shall not prohibit Safe Harbour from making any complaints relating to odor emanating from the wastewater treatment plant.

4. CONFIDENTIALITY. The Parties agree that the terms and conditions of this Settlement Agreement, the terms of the settlement, all offers or counteroffers, all non-publicly disclosed facts, information, documents and/or details, and all other aspects of negotiations between the Parties are confidential and shall not be disclosed or revealed by them, except as specified below. The Parties agree that except as specifically provided for herein, neither shall transmit any press release or other information to the media or governmental agencies about the Settlement Agreement or its terms. The Parties expressly agree that the terms and conditions of this Settlement Agreement may be disclosed as follows:

- (a) By the Parties to their predecessors, successors, assigns, parent corporations subsidiaries, affiliates, holding companies, divisions, unincorporated business units, joint venturers, partners, investors, insurers, officers, directors, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates, auditors and/or regulators in the event that such disclosure is required;
- (b) By the Parties to their tax return preparers, the IRS, accountants and/or auditors;
- (c) By any of the Parties if necessary to enforce or litigate over any provision of this Settlement Agreement; and
- (d) To the extent required by law. In the event a court or other legal body shall compel disclosure or production of this Settlement Agreement or any part hereof, the Party compelled to disclose will provide immediate written notice to the non-disclosing Party or its attorney.

5. NO OTHER CONSIDERATION. The Parties affirm that the only consideration received for entering into this Settlement Agreement is as stated herein, and that no other promise, representation, or agreement of any kind has been made to or relied upon by the Parties in connection with the execution of this Settlement Agreement. The Parties further acknowledge that they have read the entire Settlement Agreement and fully understand the meaning and intent of the Settlement Agreement, including, but not limited to, its final and binding effect in relation to the Released Claims.

6. NO ADMISSION. The Parties acknowledge that this Settlement Agreement is made as a compromise of disputed liability, and that neither of the Parties acknowledges any liability to any other Party. The Parties expressly dispute any liability or any acts of wrongdoing in violation of

any federal, state, or local law, ordinance, or regulation, nor shall it be considered as evidence of any such alleged liability, wrongdoing, or violation of any federal, state, or local law, ordinance, or regulation. The Parties agree that this Settlement Agreement may be used as evidence only in a subsequent proceeding in which any of the Parties allege a breach of this Settlement Agreement.

7. GENERAL PROVISIONS.

(a) **Entire Agreement.** The Parties agree that this Settlement Agreement contains the entire agreement between the Parties, and therefore supersedes any prior agreements of the Parties, with respect to the issues addressed herein. The terms of this Settlement Agreement are contractual and shall survive the execution of this Settlement Agreement.

(b) **Amendments.** No modification, amendment, or waiver of any provision of this Settlement Agreement, nor consent to any departure by any Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Parties, and same shall be effective only in the specific instance and for the specific purpose for which given.

(c) **Severability.** If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect as such invalid clause or provision shall be deemed severable, unless such severance should materially affect the intent of the parties in entering into this Settlement Agreement.

(d) **Capacity.** The Parties warrant and represent that, prior to the execution of this Settlement Agreement, they have not sold, assigned, granted, conveyed, or transferred to any other entity or person any of the rights, obligations, claims, demands, actions, or causes of actions described herein. The Parties have full legal and mental capacity to enter into, execute, and perform the terms and conditions contained in this Settlement Agreement and have entered into the Settlement Agreement voluntarily. Any person executing this Settlement Agreement in a representative capacity, represents and warrants that that person is duly authorized to execute this agreement on behalf of the represented party.

(e) **Binding Effect.** This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

(f) **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, at different times and places. When all parties have executed a counterpart of this Settlement Agreement, it shall be binding on all parties notwithstanding that all of them may not have signed the same counterpart. A facsimile or other copy of an executed counterpart hereof, such as an e-mailed PDF copy, shall have the same effect as an original.

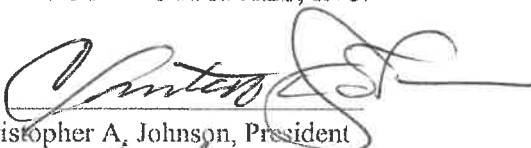
(g) **Headings.** The headings of the paragraphs herein are intended solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

(h) **Date of Execution.** The date of this Settlement Agreement shall be the date that the last Party executes this Settlement Agreement as shown below.

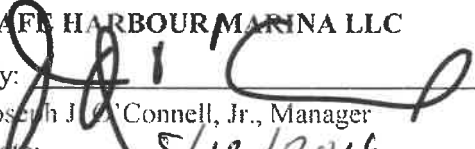
(i) **Venue/Costs & Attorneys' Fees.** Should any dispute arise out of this Agreement, venue for any suit shall be in Monroe County, Florida. The prevailing party will be entitled to recover from the non-prevailing party, its reasonable attorneys' fees and costs, including any appellate attorneys' fees.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the dates set forth below:

K W RESORT UTILITIES, INC.

By: 
Christopher A. Johnson, President
Date: 5/12/2016

SAFE HARBOUR MARINA LLC

By: 
Joseph J. Connell, Jr., Manager
Date: 5/12/2016

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is entered into by and between SUNSET MARINA LLC, a Florida limited liability company, ("Sunset Marina"), whose address is 5555 College Road, Key West, Florida 33040 and KW RESORT UTILITIES, INC., a Florida corporation ("KWRU"), whose address is 6630 Front Street, Stock Island, Florida 33040. From time to time hereinafter, the parties to the Settlement Agreement will be collectively referred to as the "Parties" and individually as a "Party."

RECITALS

- A) WHEREAS the Parties have a disagreement regarding the refund, if any, KWRU owes to Sunset Marina; and
- B) WHEREAS the parties desire to resolve any disputes between them including, but not limited to the appropriate amount of the refund, if any, from KWRU to Sunset Marina;

NOW, THEREFORE, the Parties have agreed to enter into this Settlement Agreement under the following terms:

TERMS

1. **RECITALS.** The above Recitals are true and correct, incorporated herein by reference, and are made part of this Settlement Agreement.
2. **AGREEMENTS.** For and in consideration of the mutual promises and covenants made in this Settlement Agreement, KWRU shall pay to Sunset Marina the amount of Forty-One Thousand Thirty Four Dollars and No Cents (\$41,034.00), within 180 days of the Execution of this Settlement Agreement.
3. **RELEASE.** Upon full payment of Forty-One Thousand Thirty Four Dollars and No Cents (\$41,034.00) as provided for above, Sunset Marina hereby settles, compromises, releases, remits, acquits, discharges, any and all claims, demands, causes of action, rights, remedies, obligations, damages, costs, expenses, attorneys' fees and liabilities arising out of or directly related to the refund due to Sunset Marina; including all claims or potential claims that Sunset Marina had or may now have, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, against KWRU related to the refund or related to in any way those factual issues as delineated in Public Service Commission Order No. PSC-2018-044-PAA-SU ("Released Claims").

KWRU hereby settles, compromises, releases, remits, acquits, discharges, any and all claims, demands, causes of action, rights, remedies, obligations, damages, costs, expenses, attorneys' fees and liabilities arising out of or directly related to Service Availability Charges and/or over-refunds due from Sunset Marina; including all claims or potential claims that KWRU had or may now have, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, against Sunset Marina related to Service Availability Charges and/or over-refunds due from Sunset Marina or related to in any way those factual issues as delineated in Public Service Commission Order No. PSC-2018-044-PAA-SU ("Released Claims").

However, the Settlement Agreement is not intended to and does not release the Parties from any of their obligations under this Settlement Agreement.

4. **CONFIDENTIALITY.** The Parties agree that the terms and conditions of this Settlement Agreement, the terms of the settlement, all offers or counteroffers, all non-publicly disclosed facts, information, documents and/or details, and all other aspects of negotiations between the Parties are confidential and shall not be disclosed or revealed by them, except as specified below. The Parties agree that except as specifically provided for herein, neither shall transmit any press release or other information to the media or governmental agencies about the Settlement Agreement or its terms. The Parties expressly agree that the terms and conditions of this Settlement Agreement may be disclosed as follows:
 - (a) By the Parties to their predecessors, successors, assigns, parent corporations subsidiaries, affiliates, holding companies, divisions, unincorporated business units, joint ventures, partners, investors, insurers, officers, directors, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates, auditors and/or regulators in the event that such disclosure is required;
 - (b) By the Parties to their tax return preparers, the IRS, accountants and/or auditors;
 - (c) By any of the Parties if necessary to enforce or litigate over any provision of this Settlement Agreement;
 - (d) By either of the Parties to the Public Service Commission to evidence the agreement of the Parties to resolve this issue; and
 - (e) To the extent required by law. In the event a court or other legal body shall compel disclosure or production of this Settlement Agreement or any part hereof, the Party compelled to disclose will provide immediate written notice to the non-disclosing Party or its attorney.
5. **NO OTHER CONSIDERATION.** The Parties affirm that the only consideration received for entering into this Settlement Agreement is as stated herein, and that no other promise, representation, or agreement of any kind has been made to or relied upon by the Parties in connection with the execution of this Settlement Agreement. The Parties further acknowledge that they have read the entire Settlement Agreement and fully understand the meaning and intent of the Settlement Agreement, including, but not limited to, its final and binding effect in relation to the Released Claims.
6. **NO ADMISSION.** The Parties acknowledge that this Settlement Agreement is made as a compromise of disputed liability, and that neither of the Parties acknowledges any liability to any other Party. The Parties expressly dispute any liability or any acts of wrongdoing in violation of any federal, state, or local law, ordinance, or regulation, nor shall it be considered as evidence of any such alleged liability, wrongdoing, or violation of any federal, state, or local law, ordinance, or regulation. The Parties agree that this Settlement Agreement may be used as evidence only in a subsequent proceeding in which any of the Parties allege a breach of this Settlement Agreement.

7. GENERAL PROVISION.

- (a) **Entire Agreement.** The Parties agree that this Settlement Agreement contains the entire agreement between the Parties, and therefore supersedes any prior agreements of the Parties, with respect to the issues addressed herein. The terms of this Settlement Agreement are contractual and shall survive the execution of this Settlement Agreement.
- (b) **Amendments.** No modification, amendment, or waiver of any provision of this Settlement Agreement, nor consent to any departure by any Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Parties, and same shall be effective only in the specific instance and for the specific purpose for which given.
- (c) **Severability.** If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect as such invalid clause or provision shall be deemed severable, unless such severance should materially affect the intent of the parties in entering into this Settlement Agreement.
- (d) **Capacity.** The Parties warrant and represent that, prior to the execution of this Settlement Agreement, they have not sold, assigned, granted, conveyed, or transferred to any other entity or person any of the rights, obligations, claims, demands, actions, or causes of actions described herein. The Parties have full legal and mental capacity to enter into, execute, and perform the terms and conditions contained in this Settlement Agreement and have entered into the Settlement Agreement voluntarily. Any person executing this Settlement Agreement in a representative capacity, represents and warrants that that person is duly authorized to execute this agreement on behalf of the represented party.
- (e) **Binding Effect.** This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.
- (f) **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, at different times and places. When all parties have executed a counterpart of this Settlement Agreement, it shall be binding on all parties notwithstanding that all of them may not have signed the same counterpart. A facsimile or other copy of an executed counterpart hereof, such as an e-mailed PDF copy, shall have the same effect as an original.
- (g) **Headings.** The headings of the paragraphs herein are intended solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.
- (h) **Date of Execution.** The date of this Settlement Agreement shall be the date that the last Party executes this Settlement Agreement as shown below.

- (i) Venue/Costs & Attorneys' Fees. Should any dispute arise out of this Agreement, venue for any suit shall be in Monroe County, Florida. The prevailing party will be entitled to recover from the non-prevailing party, its reasonable attorneys' fees and costs, including any appellate attorneys' fees.

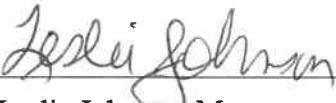
IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the dates set forth below:

KW RESORT UTILITIES, INC.

By: 
Greg Wright, Vice-President

Date: 10/23/18

SUNSET MARINA, LLC

By: 
Leslie Johnson, Manager

Date: 10/23/18