

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between Palmetto Beach Hospitality LLC (“Palmetto”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively “the Parties”).

### I. BACKGROUND

WHEREAS, by letter dated July 5, 2017, IER notified Palmetto in writing that it had initiated an independent investigation, DJ# 197-67-56 (“IER Investigation”), to determine whether Palmetto preferred hiring temporary, nonimmigrant, visa holders over U.S. workers based upon their citizenship status in violation of the Immigration and Nationality Act’s anti-discrimination provision, 8 U.S.C. § 1324b (“Act”).

WHEREAS, IER concluded based on the IER Investigation that reasonable cause exists to believe that from at least December 15, 2016, to at least March 11, 2017, Palmetto engaged in a pattern or practice of discriminatory recruitment and hiring based on citizenship status by preferring to hire H-2B visa workers for housekeeping positions instead of qualified, available U.S. workers, in violation of 8 U.S.C. § 1324b(a)(1).

WHEREAS, IER and Palmetto wish to resolve IER’s reasonable cause findings without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the below mutual promises, and to fully and finally resolve the IER Investigation as of the date of this Agreement, IER and Palmetto agree as follows:

### II. TERMS OF AGREEMENT

1. This Agreement shall become effective as of the date the last party signs the Agreement, referred to as the “Effective Date.” The term of this Agreement is three (3) years following the Effective Date.
2. Palmetto shall pay a civil penalty to the United States Treasury in the amount of forty-two thousand dollars (\$42,000.00). Palmetto shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalties no later than five (5) business days from the Effective Date.
3. The monies discussed in Paragraph 2 shall be paid in eight (8) quarterly payments of five thousand, two hundred fifty dollars (\$5,250) via the FedWire electronic fund transfer system. Palmetto shall make the first payment by September 28, 2018, or within ten (10) days of receipt of fund transfer instructions from IER, whichever is later. Palmetto shall make seven (7) subsequent payments by the last business day of every three-month period thereafter, with the final payment due by June 30, 2020. On the day of each

payment, Palmetto shall confirm payment via email to Erik Lang at [erik.lang@usdoj.gov](mailto:erik.lang@usdoj.gov) and Craig Fansler at [craig.fansler@usdoj.gov](mailto:craig.fansler@usdoj.gov). Nothing in this Paragraph shall prevent Palmetto from making any or all payments earlier, and no penalty shall be assessed for early payment.

4. The provisions of Paragraph 2 notwithstanding, IER shall not seek from Palmetto any additional civil penalty for the pattern or practice of discriminatory hiring and recruiting based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1) that is the subject of the IER Investigation through the Effective Date.
5. Respondent shall set aside a back pay fund of thirty-five thousand dollars (\$35,000) to compensate Qualified Individuals who sought employment, as described below:
  - a. A “Qualified Individual,” as described in this Paragraph, shall include any U.S. citizen, U.S. national, lawful permanent resident, asylee, or refugee who (i) applied for a position as a Housekeeper with Palmetto through the South Carolina Workforce Agency from December 15, 2016 through March 11, 2017 either through the South Carolina On-line Job Bank (SCWorks On-line Services) or by contacting Respondent directly; (ii) met the minimal qualifications; and (iii) did not decline and/or withdraw from consideration or receive an offer of employment from Palmetto.
  - b. Within fifteen (15) calendar days from the Effective Date, Palmetto shall provide IER with the name and contact information (including e-mail addresses), for all individuals who applied for housekeeping positions with Palmetto between December 15, 2016, and March 11, 2017, and whom Palmetto did not make an offer of employment. In providing this information, Palmetto shall also inform IER whether the individual declined and/or withdrew from consideration for employment and provide any documentary evidence of such declination or withdrawal that it possesses.
  - c. Within thirty (30) calendar days from the Effective Date, IER will send a written notification of this Agreement (“Notice Letter”) and an Applicant Back Pay Claim Form (“Claim Form”) to all U.S. applicants Palmetto has identified pursuant to Paragraph 5(b), and to any other applicants of whom IER is aware, to determine if they are Qualified Individuals entitled to receive compensation for lost wages due to Palmetto’s alleged unfair employment practices.
  - d. Applicants who wish to be considered for back pay relief will have forty-five (45) calendar days from the date of the Notice Letter to return the Claim Form to IER, unless an Applicant can demonstrate good cause (as determined by IER) for the failure to return or postmark a Claim Form by the specified deadline.

- e. No later than ninety (90) calendar days from the date of the Notice Letter, IER will initially calculate and notify Palmetto of the amount of back pay owed to each claimant IER determines to be a Qualified Individual. IER will perform this initial calculation using a formula that multiplies the hourly rate specified in the relevant labor certification application by the number of hours specified in the contract period, and subtracts the pay that the Qualified Individual earned from an alternate employer during the contract period (i.e., mitigation earnings). If the total amount of back pay that would be owed to Qualified Individuals exceeds thirty-five thousand dollars (\$35,000), IER shall initially calculate a *pro rata* amount of back pay for each Qualified Individual using the fraction that represents the amount of back pay owed to the Qualified Individual compared to the total back pay fund amount. The parties agree that Palmetto's total liability to Qualified Individuals under this Paragraph shall not exceed thirty-five thousand dollars (\$35,000).
- f. Within thirty (30) calendar days from the date on which IER notifies Palmetto of its initial determinations regarding the amounts owed to each Qualified Individual pursuant to Paragraph 5(e), Palmetto will notify IER in writing if Palmetto disagrees with any back pay determination, and provide an explanation for its position along with copies of any supporting documents.
- g. If Palmetto disagrees under Paragraph 5(f) with IER's back pay determination under Paragraph 5(e), IER will make, in its sole discretion, the final determination regarding the amount to be paid, if any, and will, within thirty (30) calendar days of receiving Palmetto's notice of disagreement under Paragraph 5(f), notify Palmetto in writing of its final determinations. If necessary, IER's final determination will re-calculate any *pro rata* back pay determinations, taking into account the final number of Qualified Individuals and amounts to be paid.
- h. If Palmetto does not notify IER of any disagreements under Paragraph 5(f), IER's back pay determinations will become final thirty (30) calendar days from its initial back pay determinations under Paragraph 5(e). If Palmetto notifies IER of any disagreements under Paragraph 5(f), IER's back pay determinations will become final thirty (30) calendar days from IER's final back pay determination under Paragraph 5(g). Palmetto shall, within thirty (30) calendar days of the date that IER's back pay determination becomes final, send each Qualified Individual by first class mail and email a Back Pay Determination Letter indicating the amount of back pay to be received. Palmetto may enclose with the Back Pay Determination Letter a release of liability for hiring discrimination claims arising from the 2017 hiring season and shall include all applicable tax forms. The Back Pay Determination Letter shall request that the Qualified Individuals return any release and tax forms to Palmetto within thirty (30)

calendar days and contain a self-addressed return envelope with sufficient postage. On the same day Palmetto mails out the Back Pay Determination Letters, Palmetto shall send IER by regular mail or e-mail (with attachments in .PDF format), copies of the letters and addressed envelopes it sends to Qualified Individuals.

- i. Within fifteen (15) calendar days from Palmetto's receipt of a signed release of liability and applicable tax forms from a Qualified Individual, Palmetto shall send the individual the back pay amount (as determined by IER) in the form of a check via certified mail or reliable courier service, accompanied by a payment transmittal notice. On the same day, Palmetto shall send a copy of the check and payment transmittal notice to [Erik.Lang@usdoj.gov](mailto:Erik.Lang@usdoj.gov). Palmetto shall withhold applicable taxes based on the rates of the current year and shall provide each Qualified Individual with all applicable income tax reporting forms. Palmetto is responsible for paying any employer-side taxes or contributions due to the federal or state government based on the payments made Qualified Individuals pursuant to this Settlement Agreement. Palmetto shall follow the applicable instructions contained in IRS Publication 957 and credit the Qualified Individuals' back pay award to calendar quarters of the year when the back wages would have been earned.
  - j. All written communications from Palmetto to Qualified Individuals relating to this Agreement, including a release of liability, shall be submitted to IER for prior review and approval, and any release must be limited to the claims referenced in this Agreement.
  - k. Any remaining amount of the thirty-five thousand dollar (\$35,000) back pay fund that has not been distributed to Qualified Individuals pursuant to the process set forth in this paragraph shall revert to Palmetto.
6. For the term of this Agreement, Palmetto shall engage in required and supplemental recruitment of U.S. workers for all available positions before employing H-2B visa workers for those positions. These required and supplemental recruitment activities shall include, at a minimum, the following:
- a. Unless Palmetto identifies to IER in writing sufficient facts to support that it is not a job contractor under the H-2B regulations (20 C.F.R. § 655 Subpart A), Palmetto shall comply with all job contractor filing requirements.
  - b. With respect to job orders, and electronic, on-line platforms, including state workforce agency job banks, Palmetto shall:
    - i. Ensure that each job order is accessible and visible to job seekers in each area of intended employment;

- ii. Contact all applicants who express interest on-line and give each full consideration for employment;
  - iii. Enable any functionality of the electronic, on-line platform that allows a job seeker to apply on-line;
  - iv. Enable any notifications available as part of the electronic, on-line platform that indicate that there is a new applicant;
  - v. Not close any of its H-2B related job orders until seven (7) business days before the work start date.
- c. Palmetto shall respond within 72 hours to all U.S. applicants who express interest in an advertised position directly, through a state workforce agency job bank, or in any other manner and give each job seeker full consideration for employment.
- d. Palmetto shall maintain a list of all print or online locations where it places job advertisements. Within fourteen (14) calendars of any request, Palmetto shall provide this list to IER during the term of this Agreement.
- e. Palmetto shall post a job advertisement (or comparable notice of employment opportunity) on a job posting website and in at least two (2) physical locations no earlier than one month before the projected start date of work, and not remove such postings sooner than ten (10) business days before the start date of work, or until all positions are filled by U.S. workers, whichever is earlier. The job announcement shall list each hotel or physical address where Palmetto intends to supply workers. Palmetto shall also arrange for and describe a procedure for applicants to apply in person.
- f. Palmetto shall cause to be published two print advertisements in a newspaper of general circulation that serves the public in the area where the work is located. The first shall be posted no earlier than one month before the projected start date of work. The second shall be posted no earlier than ten (10) business days before the projected start date of work. The help wanted advertisements shall list each hotel or location where Palmetto intends to supply workers. Palmetto shall also arrange for and describe a procedure for applicants to apply in person.
- g. Palmetto must also continue to update each recruitment report after submitting it to DOL (as required by 20 C.F.R. §655.48(b)), and send a copy of each one to IER fourteen (14) business days after the actual start date of the work described in each job order.
- h. Palmetto shall assess the results of its efforts to recruit U.S. workers within fourteen (14) business days after the start date of the work associated with each job posting, and, during the next recruiting period, shall document and undertake any additional appropriate recruitment

efforts it determines are likely to be effective to increase applications from qualified U.S. workers. If requested by IER, Palmetto shall make its assessment and any additional recruitment efforts available to IER within thirty (30) calendar days.

7. Within thirty (30) calendar days of the Effective Date, Palmetto shall review its employment policies and revise such policies to prohibit discrimination on the basis of citizenship, immigration status and national origin in the recruitment, hiring and firing processes.
8. During the term of this Agreement, Palmetto shall provide, for review and approval, any changes in employment policies as they relate to nondiscrimination on the basis of citizenship, immigration status and national origin to IER at least thirty (30) calendar days prior to the effective date of such revised policies.
9. During the term of this Agreement, Palmetto shall retain a copy of every job application and resume that is submitted to Palmetto, including but not limited to those accessible through a state workforce agency job bank that relate to a Palmetto job order.
10. During the Term of this Agreement, if Palmetto utilizes the H-2B program, Palmetto shall keep a written record of the action(s) it took with respect to each application and resume identified in the previous Paragraph, including whether or not the individual was successfully contacted, interviewed, offered a job, hired, or not selected, and the reason(s) for the non-selection.
11. During the Term of this Agreement, Palmetto shall keep a copy of all H-2B-related forms, documents, applications, petitions, letters, and responses to requests for more information that it submits to and/or receives from the U.S. Department of Labor and U.S. Citizenship and Immigration Services.
12. Within ninety (90) calendar days from the Effective Date, all of Palmetto's employees, contractors, and agents with any responsibility for recruiting and/or hiring workers employed by Palmetto, shall receive IER-provided free training on their obligation to comply with 8 U.S.C. § 1324b.
  - a. The trainings shall consist of viewing a remote IER employer webinar presentation, which IER shall provide on a date mutually agreeable to the parties.
  - b. All employees will be paid their normal rate of pay during the training, and the training will occur during their normally scheduled workdays and work hours. Palmetto shall bear all costs associated with these training sessions.
  - c. During the term of this Agreement, all new staff hired or promoted by Palmetto into positions with any responsibility for the activities listed

above, after the training described in this paragraph has been conducted, shall review a recorded version of the webinar within sixty (60) calendar days of hire or promotion.

- d. Palmetto shall confirm the initial webinar participation required in Paragraph 12(a), and subsequent viewings of the webinar training required by Paragraph 12(c), via email to [erik.lang@usdoj.gov](mailto:erik.lang@usdoj.gov) and [craig.fansler@usdoj.gov](mailto:craig.fansler@usdoj.gov) within ten (10) business days of completion of each training session.
13. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Palmetto as necessary to determine Palmetto's compliance with this Agreement. As a part of such review, IER may require written reports concerning compliance, inspect Palmetto's premises, examine witnesses, and examine and copy Palmetto's documents.
14. Nothing in this Agreement limits IER's right to inspect Palmetto's Forms I-9 within three (3) business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
15. If IER has reason to believe that Palmetto is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Palmetto of the potential violation without opening an investigation. Palmetto will then have thirty (30) calendar days from the date of IER's notification to cure the violation to IER's satisfaction before IER deems Palmetto to be in violation of this Agreement.
16. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Palmetto, IER's authority to investigate or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Palmetto's employment practices.
17. This Agreement resolves any and all differences between the parties with respect to Palmetto relating to the IER Investigation, DJ # 197-67-56 through the Effective Date.
18. This Agreement may be enforced in the United States District Court for the District of South Carolina. This paragraph, or the initiation of a lawsuit to enforce the Agreement under this paragraph, including any counterclaims asserted, does not constitute and should not be construed as a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement. For the purposes of an action to enforce this Agreement, the parties agree that the obligations set forth in each and every provision of Part II of this Agreement are material.

### **III. OTHER TERMS**

19. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and the term or provision shall be deemed not to be a part of this Agreement. Palmetto and IER shall not, individually or in combination with another, seek to have any

court declare or determine that any provision of this Agreement is invalid. For purposes of interpreting this agreement, both parties shall be deemed to have drafted it.

20. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER has reasonable cause to believe that Palmetto committed is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.
21. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
22. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. Any modifications to the Agreement must be in writing and signed or affirmed by both parties.
23. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The Parties shall be bound by facsimile signatures.

**Palmetto Beach Hospitality, L.L.C.**

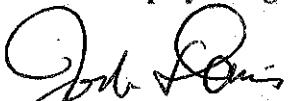
By:

  
\_\_\_\_\_  
Naseer Ahmed  
Owner

Dated: 9/17/2018

**Immigrant and Employee Rights Section**

By:

  
\_\_\_\_\_  
Jedi Danis  
Special Litigation Counsel

Dated: 9/18/18

C. Sebastian Aloom  
Special Litigation Counsel

Craig Fansler and Erik W. Lang  
Trial Attorneys