

## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release (“Agreement”) is made and entered into this 27th day of August, 2017 (the “Effective Date”) by and between SETAI HOTEL ACQUISITION LLC, its predecessors, successors, assigns, including any subsidiaries, parent corporations, affiliates, divisions, joint employers, joint ventures, and the current and former employees, officers, directors, owners, and agents thereof (“SHA”), on the one hand, and MIAMI BEACH LUXURY RENTALS INC. (“MBLR”), ALLEN TULLER (“TULLER”), and their respective agents, brokers, sales associates, predecessors, successors, assigns, including any subsidiaries, parent corporations, affiliates, divisions, joint employers, joint ventures, insurers, and the current and former employees, officers, directors, owners, and agents thereof (collectively the “MBLR PARTIES”), on the other hand. Collectively, SHA and the MBLR PARTIES may sometimes hereinafter be referred to as the “Parties” or individually as a “Party.”

### **RECITALS**

A. SHA alleges that it is the sole and exclusive licensee within the applicable territory of Trademark Registration Number 2,506,974 for “The Setai” (the “Setai Mark”), used in connection with, *inter alia*, hotel and resort services, pursuant to a License Agreement from BPI LUX S.a.r.l. and Alexandre von Furstenberg Living Trust, dated February 27, 2015 (the “License”).

B. SHA has filed a trademark application, Serial Number 86897460, for “Jaya” (the “Jaya Mark” and together with the Setai Mark, collectively the “Marks”), used in connection with, *inter alia*, restaurant services.

C. The Setai Resort & Residences is a condominium-hotel comprised, *inter alia*, of two buildings and a Hotel Unit (as such term is defined in the Declaration of Condominium of the Setai Resort & Residences, the “Hotel Unit”). One of the buildings has a mailing address at 2001 Collins Avenue, Miami Beach, Florida 33139 (the “Deco Building”) and the other building has a mailing address at 101 20<sup>th</sup> Street, Miami Beach, Florida 33139 (the “Tower Building”). Certain of the units in the Deco Building and the Tower Building are owned by third party unit owners.

D. SHA is the owner of the Hotel Unit and certain units in the Deco Building. SHA operates a hotel at the Setai Resort & Residences known as “The Setai, Miami Beach,” “The Setai Hotel,” or “The Setai” (the “Hotel”), which is comprised of, *inter alia*, the units owned by SHA (including the Hotel Unit) and certain units in the Deco Building and Tower Building that participate in the official rental program operated by SHA.

E. MBLR and TULLER are real estate agents that lease or sell, on behalf of third party unit owners, certain units in the Tower Building.

F. A dispute has arisen between the Parties concerning, *inter alia*, allegations of trademark counterfeiting, trademark infringement, trademark dilution, and unfair competition with respect to MBLR’ and TULLER’s alleged use of the Setai Mark without permission.

G. This Agreement shall not be construed as an admission by the Parties of any liability whatsoever. On the contrary, MBLR and TULLER expressly deny any liability or wrongdoing.

H. This agreement shall not be construed as an admission by any Party that there was a violation of any right, order, law, statute, duty, or contract against any other Party or any other person and the Parties specifically disclaim any liability or wrongful acts in connection with this

Agreement.

I. SHA initiated a civil action against MBLR and TULLER, styled *Setai Hotel Acquisition LLC v. Miami Beach Luxury Rentals, Inc. and Allen Tuller; Case No. 16-cv-21296-SCOLA/OTAZO*, pending in the United States District Court for the Southern District of Florida (the “Litigation”).

J. The Parties wish to avoid the expenses and risks of litigation and resolve to settle their differences without resort to further litigation between the Parties.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Recitals**: Each of the foregoing “WHEREAS” clauses is true and correct and is incorporated herein as material parts to this Agreement.

2. **Settlement Terms**: MBLR and TULLER, on their own behalf and on behalf of the MBLR PARTIES, but not as representatives or agents of any other parties, hereby agree to the following settlement terms:.

- a. The MBLR PARTIES shall not challenge, oppose, or take any action with respect to SHA’s rights in, to, or under the Marks and shall not challenge, oppose, or take any action with respect to the validity or enforceability of the Marks.
- b. Upon execution of this Agreement by all Parties, the MBLR PARTIES, shall immediately and forever:
  - (i) Refrain from any and all direct or indirect uses of the Marks and

any and all derivations thereof and any and all marks that are confusingly similar with the Marks, without the prior express written consent of SHA; provided, however, that SHA hereby consents to the MBLR PARTIES' use of the term Setai to describe the location of the units being rented. Specifically, SHA consents to use of "Private residence at the Setai", "at the Setai Residences," or other similar uses describing location;

- (ii) Refrain from making, on any website or advertisement, any reference to the Hotel (including any portions thereof), the Hotel's pricing or rates, the accolades and/or awards received by SHA or the Hotel, the Hotel's travel partners (including The Leading Hotels of the World), and/or the Hotel's website, except to accurately describe the facilities and amenities to which the guests renting the unit would have access;
- (iii) Visibly display on any website or advertisement a disclaimer that the units being rented are not managed by or affiliated with SHA or with the Hotel. The parties agree that a disclaimer which states - "This unit is managed by Miami Beach Luxury Rentals. We are not affiliated with the hotel in any way" - satisfies this subsection. This disclaimer must be included on the homepage of the MBLR PARTIES' business websites and on any page through which a customer of the MBLR PARTIES can book a unit at the Setai or Setai Residences;

- (iv) Refrain from any and all direct or indirect uses of any photographs copyrighted by, owned by or licensed to SHA and permanently remove any and all photographs of the inside of the Spa at the Setai from the MBLR website.
- (v) Upon request by SHA, the MBLR PARTIES shall provide any marketing materials distributed to third parties so that SHA may confirm compliance with the above-stated terms; provided however, that such request by SHA shall be limited to once per year unless SHA has evidence of non-compliance by the MBLR PARTIES.

3. **Compliance with Laws, Rules and Regulations.** The MBLR PARTIES acknowledge that SHA, as the owner of the Hotel Unit, may promulgate Rules and Regulations governing the Shared Components (as such term is defined in the Setai's Declaration of Condominium). The MBLR PARTIES shall continue to comply with any and all laws, ordinances and duly promulgated rules and regulations (including the Setai's Declaration of Condominium and Rules and Regulations, as may be amended from time to time) generally applicable to short-term rentals at the Setai. Nothing herein shall make the MBLR PARTIES to the Declaration of Condominium

4. **Release of Claims by SHA:** For and in consideration of the promises, agreements, representations, and terms set forth herein and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, SHA hereby releases, waives, and forever discharges MBLR and TULLER and all of their respective (as applicable) current and former officers, directors, predecessors, successors, heirs, owners, assigns, executors,

administrators, affiliates, subsidiaries, associates, representatives, partners, principals, employees, trustees, attorneys, agents and insurers (collectively, the “MBLR Released Parties”), from any and all past claims, demands, causes of action, suits, debts, liabilities, and damages whatsoever, from the beginning of time up through the Effective Date of this Agreement that relate to the Marks or the Litigation. However, nothing herein shall release MBLR and TULLER from their obligations to comply with the terms of this Agreement.

5. **Release of Claims by MBLR and TULLER:** For and in consideration of the promises, agreements, representations, and terms set forth herein and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, MBLR and TULLER, individually and jointly, hereby release, waive, and forever discharge SHA and all of its respective current and former officers, directors, predecessors, successors, heirs, owners, assigns, executors, administrators, affiliates, subsidiaries, associates, representatives, partners, principals, employees, trustees, attorneys, agents (collectively, the “SHA Released Parties”), from any and all past claims, demands, causes of action, suits, debts, liabilities, and damages whatsoever, from the beginning of time up through the Effective Date of this Agreement. However, nothing herein shall release SHA from its obligations to comply with the terms of this Agreement.

6. **Dismissal of the Litigation:** Within five (5) business days of this Agreement, the Parties shall file a Notice and/or Stipulation of Dismissal With Prejudice in the Litigation, with all Parties to bear their own fees and costs. The federal Court in the Litigation shall retain jurisdiction and power to enforce this Agreement and the Confidentiality Agreement.

7. **Remedies Available in Case of Breach:** Each Party acknowledges and agrees that any actual or threatened violation or breach by SHA or by MBLR and TULLER of their respective obligations under this Agreement may result in irreparable harm to the non-breaching

Party for which remedies other than injunctive relief may be inadequate, and that the Parties shall be entitled to receive from a court of competent jurisdiction temporary or permanent injunctive or other equitable relief to restrain any such violation in addition to other appropriate remedies without the necessity of proving damages or posting bond, which all Parties hereby waive.

8. **Remedies Cumulative.** No Party's rights hereunder shall in any way be construed to limit or restrict its right to seek or obtain other damages or relief under this Agreement or under applicable law, but shall be in addition to all other remedies available at law or in equity. In the event of a breach of this Agreement, the non-breaching Party shall immediately notify the breaching Party of the alleged breach. The notice shall be made by sending an email to the breaching Party's counsel of record in the Litigation and the notice shall be made within a reasonably prompt time of the non-breaching Party learning of the breaching Party's conduct. If the breach of this Agreement is not cured by the breaching Party within seven (7) calendar days of notice being provided by the non-breaching Party, the non-breaching Party shall be entitled, in addition to injunctive relief, to liquidated damages in the amount of Five Thousand and 00/100 Dollars (\$2,500.00) and an additional One Hundred and 00/100 Dollars (\$100.00) *per diem* for every subsequent day the breach goes uncured and/or the breach continues.

9. **Non-Disparagement:** Each Party agrees that he/she/it shall not publish any disparagement of any other Party. For purposes of this Section, "disparagement" shall include, but not be limited to, any false statement, whether written or oral. This shall not prevent either Party from documenting or testifying to anything that is factually correct concerning anything related to this Agreement or to the amenities and services provided to short-term rentals at the Setai.

10. **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 that any Party breaches any provision of this Agreement, the Parties affirm that they may institute an action to specifically enforce any term or terms of this Agreement. The prevailing party shall be entitled to recover attorneys' fees and costs from the non-prevailing party in any enforcement action, which includes paralegal fees and appellate fees. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. The Parties agree that enforcement of the terms of this Agreement may be sought in a court of competent jurisdiction in Miami-Dade County, Florida. .

11. **Integration:** This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof. This Agreement, the exhibits and other writings referred to herein, constitute the entire understanding of the Parties with respect to the subject matter hereof.

12. **Amendment:** This Agreement may not be modified, altered or changed except upon express written consent of all Parties, wherein specific reference is made to this Agreement.

13. **Successor and Assigns:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and upon their respective officers, directors, employees, legal representatives, administrators, representatives, heirs, executors, divisions, parents, subsidiaries, parents' subsidiaries, affiliates, partners, limited partners, successors, licensees, and assigns.

14. **Selective Enforcement:** The Parties agree that the failure of any Party to enforce or exercise any right, condition, term or provision of this Agreement shall not be construed as or



deemed to be a waiver or relinquishment thereof, and the same shall continue in full force and effect.

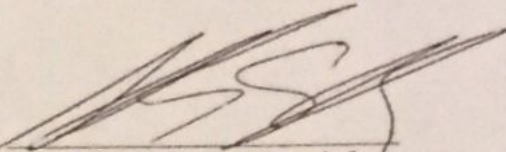
15. **Joint Preparation With Counsel**: The Parties hereto participated jointly in the negotiation and preparation of this Agreement, and each Party has obtained the advice of legal counsel to review and comment upon the terms and conditions contained herein. Accordingly, it is agreed that no rule of construction shall apply against or in favor of any Party. This Agreement shall be construed as if it was jointly prepared by the Parties and any uncertainty or ambiguity shall not be interpreted against one Party and in favor of the other.

16. **Authority**: The Parties hereby represent and warrant that they each have the authority to enter into this Agreement and to carry out its provisions. The signatories to this Agreement hereby represent and warrant that they each have the authority to bind the Party for which they are signing to the terms of this Agreement. All Parties hereto have entered this Agreement voluntarily and of their own free will and without any undue influence, incapacity or otherwise and have had the opportunity to consult with the legal counsel of their choice.

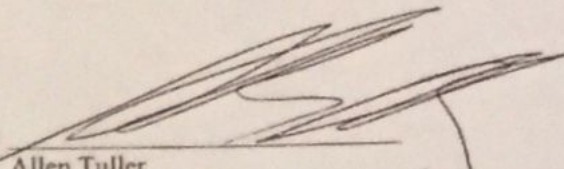
17. **Counterparts**: This Agreement may be executed in any number of counterparts, by facsimile or email, and by the different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and each of which shall constitute but one and the same Agreement. This Agreement will become effective upon the exchange of signature pages executed by the Parties.

ACCEPTED AND AGREED:


Dated: 8/27/17

By:   
Miami Beach Luxury Rentals Inc.

Dated: 8/27/17

By:   
Allen Tuller

Dated: 8/27/17

By:   
Setai Hotel Acquisition LLC