

## **MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

**THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT** (“Agreement”) is by and between **NIPPO USA, INCORPORATED** (“Nippo”), whose mailing address for the purpose of this agreement is P.O. Box 23545 GMF, Barrigada, GU 96921, and **THE GUAM ENVIRONMENTAL PROTECTION AGENCY OF THE GOVERNMENT OF GUAM** (“Guam EPA”), whose address, for the purpose of this agreement, is c/o the Office of the Attorney General, 590 S. Marine Corps Drive, Suite 706, Tamuning, Guam 96913.

### **RECITALS**

A. Nippo, among other contractors, is engaged in the construction of a hotel identified in permit documentation as the “Tsubaki Hotel” in the village of Tumon at 345 Gun Beach Road, under the authorization of Building Permit Number B15000970. Nippo is listed as the permittee under Permit No. B15000970, and is responsible for civil construction on the site. On the basis of a January 28, 2019, site inspection, Guam EPA served Nippo with a Notice of Violation and Compliance Order (“NOV/CO”) on February 26, 2019, citing Nippo with five violations of the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152, as follows: (1) failure to conduct earth moving activities in a manner that prevents accelerated land erosion (22 GAR §10104(A)(1)); (2) failure to conduct earth moving activities in accordance with the erosion and sediment control plans approved as part of Permit No. B15000970 (22 GAR §10104(C)(1)); (3) failure to conduct earth moving activities in a manner that prevents siltation of marine waters (22 GAR §10105(A)(1)); (4) failure to provide erosion and

sediment control measures adequate to trap sediments prior to disturbance (22 GAR §10105(A)(8)); and (5) failure to adequately protect storm sewer inlets (22 GAR §10105(B)(5)(c)).

B. The parties agree that the terms and conditions set forth herein is sufficient consideration as settlement in full for any administrative action and any civil claims or actions arising from the February 26, 2019, NOV/CO.

C. This Agreement shall become operative upon execution hereof. In the event this Agreement is deemed void, all administrative and civil remedies will be available and may be pursued by Guam EPA.

**NOW THEREFORE**, for and in consideration of the mutual promises set forth herein, the parties agree as follows:

1. **Purpose of Agreement.** The Parties acknowledge and agree that this Agreement is a settlement and compromise of the February 26, 2019, NOV/CO. The parties intend by the execution of this Agreement to fully, finally and completely resolve all disputes between them regarding the February 26, 2019, NOV/CO as set forth in this Agreement.
2. **Nippo's Obligations.**
  - 2.1 Nippo admits the allegations of the February 26, 2019 NOV/CO.
  - 2.2 Nippo shall stipulate to a dismissal of the appeal of the February 26, 2019, NOV/CO with prejudice.
  - 2.3 Nippo agrees to pay forty five thousand (\$45,000.00) ("Settlement Payment") to Guam EPA no later than fourteen (14) days after the date Guam EPA executes this agreement and serves Nippo with a copy.
  - 2.4 If Guam EPA does not receive the Settlement Payment in full on or before the dates determined by Subsection 2.3 above, then Guam EPA, in its sole discretion, shall

have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

- 2.4.1 Extend the period of time for the Settlement Payment in writing, and include interest accruing from the due date determined by Subsection 2.2 above, through the date of payment at a rate calculated at 5 percent (5%) per annum; or
- 2.4.2 Enforce this Agreement, in which event Nippo agrees to jurisdiction in the courts of Guam; or
- 2.4.3 Terminate the Agreement and move to vacate any dismissal, to which Nippo consents and agrees that Guam EPA shall re-institute any administrative or civil legal action on Guam EPA's claims concerning the February 26, 2019, NOV/CO. Nippo further agrees to waive any defense based on any statute of limitations that would bar any of Guam EPA's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or
- 2.4.4 Seek any other relief available to it in law or equity.
- 2.4.5 Any extension of time granted by Guam EPA under this Agreement for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice Guam EPA's rights to take any of the actions set forth in Sections 2.3.2 through 2.3.4 at any time prior to

receipt of Settlement Payment (including any and all accrued interest) in full.

3. **Guam EPA Obligations.**

3.1 Guam EPA shall settle the pending administrative matter regarding the February 26, 2019, NOV/CO for the sum of \$45,000.00 for the violations alleged under the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152.

3.2 Upon receipt of confirmation of the payments specified in section 2.2, Guam EPA will dismiss with prejudice any action against Nippo regarding the February 26, 2019, NOV/CO.

4. **Independent Advice of Counsel.** Each party has had the opportunity to receive independent advice from its respective attorneys with respect to the advisability of this settlement and the advisability of executing this Agreement. Each party further represents and declares that it has not relied upon any statement or representation by the other party or of any of its partners, agents, employees, or attorneys in executing this Agreement or in making this settlement, except as expressly provided for herein. This Agreement shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.

5. **Voluntary Agreement.** The parties represent and declare that they have carefully read this Agreement, know the contents of this agreement, and that they have signed the same freely, voluntarily and knowingly.

6. **Release.** Except for the rights and obligations created by this Agreement, the parties hereby fully release and forever and irrevocably discharge all claims of any nature related

to or arising from the February 26, 2019, NOV/CO whether known or unknown, asserted or unasserted, whenever and howsoever arising, that have been or could have been or may in the future be asserted, against any party, including that parties' employees, agents and similar persons.

**7. Exceptions from Releases by Guam EPA.**

**7.1** Notwithstanding any other provision of this Agreement, Guam EPA does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

**7.1.1** Against Nippo or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any check, promissory note or indebtedness payable or owed by them to Guam EPA, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by Guam EPA based on a failure of consideration by Nippo; and

**7.1.2** Against any person or entity not expressly released by Guam EPA in this Agreement.

**7.2** Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of Guam EPA in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person for incidents or occurrences separate from the February 26, 2019, NOV/CO.

- 7.3 Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed to prevent Guam EPA from considering the allegations arising out of the February 26, 2019, NOV/CO to be prior violations for the purposes of any enforcement action arising out of any incident occurring subsequent to the February 26, 2019, NOV/CO.
- 7.4 Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6.
8. **Parties to Bear Own Attorneys' Fees and Costs.** Each Party shall bear its own attorneys' fees and costs incurred with respect to the February 26, 2019, NOV/CO and this Agreement.
9. **Use of This Agreement in Court.** This Agreement may be pleaded as a full and complete defense to any causes of action that may be instituted, prosecuted or attempted for, upon, or in respect of any and all parts of the February 26, 2019, NOV/CO, so long as neither Party is in breach of the terms of the Agreement.
10. **Severability.** If any portion or term of this Agreement is held unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date  
written by their respective names.

  
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**DAIJIRO MEGURO**  
President, Nippo USA, Inc.

  
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**WALTER LEON GUERRERO**  
Administrator, Guam Environmental Protection Agency

Date: 10/3/19

Date: 10/11/2019

**APPROVED AS TO FORM:**

  
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**THOMAS STERLING**  
Attorney for Nippo USA, Inc.

Date: 10/3/19

**OFFICE OF THE ATTORNEY GENERAL**

  
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**KRISTAN K. FINNEY**  
Assistant Attorney General

Date: 10/7/19