



**Town of Surfside
Special Town Commission Meeting
Quasi-Judicial Hearing
AGENDA
February 26, 2019
6:00 p.m.**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

Rule 7.05 Decorum. Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the commission shall be barred from further appearance before the commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the commission members present. No clapping, applauding, heckling or verbal outbursts in support or opposition to a speaker or his or her remarks shall be permitted. Signs or placards may be disallowed in the commission chamber by the presiding officer. Persons exiting the commission chambers shall do so quietly.

Any person who received compensation, remuneration or expenses for conducting lobbying activities is required to register as a lobbyist with the Town Clerk prior to engaging in lobbying activities per Town Code Sec. 2-235. "Lobbyist" specifically includes the principal, as defined in this section, as well as any agent, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, officer or employee. The term "lobbyist" specifically excludes any person who only appears as a representative of a not-for-profit corporation or entity (such as charitable organization, a trade association or trade union), without special compensation or reimbursement for the appearance, whether direct, indirect, or contingent, to express support or opposition to any item.

Per Miami Dade County Fire Marshal, the Commission Chambers has a maximum capacity of 99 people. Once reached this capacity, people will be asked to watch the meeting from the first floor.

1. Opening

- A. Call to Order
- B. Roll Call of Members
- C. Pledge of Allegiance

2. Quasi-Judicial Hearings

Please be advised that the following items on the agenda are quasi-judicial in nature. If you wish to object or comment upon an item, please complete a Public Speaker 's Card indicating the agenda item number on which you would like to comment. You must be sworn before addressing the Town Commission and you may be subject to cross-examination. If you refuse to submit to cross-examination, the Town Commission will not consider your comments in its final deliberation. Please also disclose any ex-parte communications you may have had with any members of the Town Commission. Town Commission members must also do the same.

- A. **9300-9380 Collins Site Plan & Conditional Use Application – Guillermo Olmedillo, Town Manager**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A SITE PLAN AND CONDITIONAL USE APPLICATION TO PERMIT THE DEVELOPMENT OF PROPERTY LOCATED ON THE WEST SIDE OF COLLINS AVENUE BETWEEN 93RD STREET AND 94TH STREET WITH THE ADDRESSES OF 9300-9380 COLLINS AVENUE FOR A 205 HOTEL DEVELOPMENT WITH THREE ROOFTOP POOLS WITH CONDITIONS OF APPROVAL; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

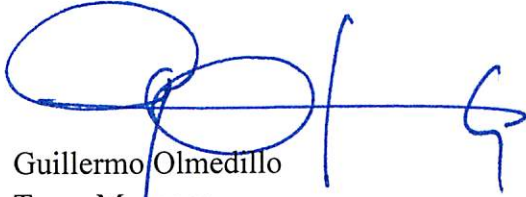
3. Resolutions

- A. **Channel 93 Closed Captioning System– Guillermo Olmedillo, Town Manager**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE GENERAL TERMS AND CONDITIONS, CUSTOMER CARE SERVICE AGREEMENT, SOFTWARE LICENSE AGREEMENT AND ADDENDUM (COLLECTIVELY, AGREEMENT) WITH AUDIO VISUAL INNOVATIONS, INC./SIGNAL PERFECTION, LTD. FOR A CLOSE CAPTIONING SYSTEM FOR THE TOWN'S PUBLIC BROADCASTING CHANNEL; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AUTHORIZING EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

4. Adjournment

Respectfully submitted,

A handwritten signature in blue ink, consisting of a large loop on the left, a horizontal line across the middle, and a vertical line on the right that ends in a small hook.

Guillermo Olmedillo
Town Manager

THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS THAT ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-861-4863 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING.

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 286.0105, FLORIDA STATUTES, ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE TOWN OF SURFSIDE COMMISSION, WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD SHALL INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

AGENDA ITEMS MAY BE VIEWED AT THE OFFICE OF THE TOWN CLERK, TOWN OF SURFSIDE TOWN HALL, 9293 HARDING AVENUE. ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM SHOULD CONTACT THE TOWN CLERK AT 305-861-4863. A COMPLETE AGENDA PACKET IS ALSO AVAILABLE ON THE TOWN WEBSITE AT www.townofsurfsidefl.gov.

TWO OR MORE MEMBERS OF OTHER TOWN BOARDS MAY ATTEND THIS MEETING.

THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY, A TELEPHONE CONFERENCE CALL. THE LOCATION 9293 HARDING AVENUE, SURFSIDE, FL 33154, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT FOR SUCH COMMUNICATION.



To: Honorable Mayor, Vice-Mayor and Members of the Town Commission

From: Guillermo Olmedillo, Town Manager

Date: **02/26/2019**

Subject: 9300-9380 Collins Site Plan & Conditional Use Application

REQUEST:

The agent for the applicant, Neisen Kasdin of Akerman, LLP on behalf of the owner, Eden Surfside, LLC is proposing a site plan for the construction of 205 hotel rooms located on the west side of Collins Avenue between 93rd Street and 94th Street with the addresses of 9300-9380 Collins Avenue. On January 19, 2017 a site plan for the construction of 68 townhouse units was approved by the Town Commission.

BACKGROUND:

There were approximately 100 multifamily units within this property that have either already been demolished or will be demolished. The façade of the building at 9340 Collins Avenue, which is within this site, has been designated historic by Miami Dade County. The façade will remain and will be located at the vehicular entrance and exit of the property. The 2016 staff report from the Miami Dade Office of Historic Preservation detailing the conditions of approval from the County is included in this report. The applicant requested the County to review the revised application; the County found that the changes relating to the historic structure were not significant and were approved administratively.

The prior application, which is currently still in effect, proposed a 68 unit, three story townhouse development with roof top amenities and forecourts in the fronts of the units. The application was heard by the Planning and Zoning Board on July 18, 2016 and was recommended for approval by the Board, however, the Board did request that the Applicant meet with neighbors to address their concerns. The neighboring property owners who attended the Planning and Zoning Board meeting expressed concerns over the proposed development. The neighbors had serious concerns about the limitation of air flow due to the building length, the potential of glass reflecting into their properties, the potential of seismic impacts from the construction and numerous additional concerns. The design included one building spanning from 93rd Street to 94th Street with no separations of structures, which met the code requirements. This was ultimately approved

by the Town Commission and is still valid. Conditions, including seismic monitoring, were included in the resolution.

The Town's Planning and Zoning Board as well as the Town Commission shared the neighbor's concerns that buildings without breaks would restrict light and air. The Town Commission directed Staff to prepare an ordinance limiting building length.

The code was amended on May 8, 2018 to provide options, which include either providing no greater than 150 feet in length per building, or no greater than 250 feet in length per building by utilizing an equivalency of separations. Meaning, that an applicant could have a building of 250 feet in length, but the length of the separation of the two buildings on the site would need to be equivalent to the length of the separation that would be required in the 150 foot scenario. This results in a more substantial separation.

Utilizing the equivalency option, the required separation of buildings for this project is 51 feet 8 inches. The applicant is providing a 73 foot 8 inch separation, which exceeds the code by 22 feet. The code also allows for a one story connection of the buildings. The applicant is proposing to connect the two buildings at the third floor, which will require a 35 foot setback from Collins Avenue. The applicant is proposing a 45 foot 10 inch setback, which exceeds the minimum setback by 10 feet 10 inches.

The plans also include 348 parking spaces, 68 of which are tandem, with mechanical lifts. This requires a valet parking service. The applicant must enter into an agreement, recorded in the public records at the expense of the owner, which shall run with the land and shall bind the heirs, successors, and assigns of said owner providing 24-hour valet parking service.

Conditional Use

The project requires conditional use approval for the use of the hotel pools. The applicant is proposing three rooftop pools in connection with this site plan.

STAFF FINDINGS

The proposed project meets the requirements of the Town Code for approval of the site plan and conditional use applications. The Planning and Zoning Board reviewed the application at a hearing on November 29, 2018. The Board suggested numerous conditions. One of the conditions was to compare the room size of this proposed hotel to other hotels in the 33154 zip code. While staff does not have the resources to complete that task without a request through the Commission, the hotels that have been approved in the Town have been analyzed. Here are the findings relating to hotel room size:

9300 Collins (Site): 436-730 square feet – hotel room

Marriot:	354-490 square feet – hotel room, 625 square feet – suite hotel room
Grand Beach:	420 square feet – hotel room
Surf Club:	604 square feet – suite hotel room
Surf Club II:	1,100 square feet – suite hotel room

Staff finds that the proposed hotel room sizes are comparable to the other hotels approved in the past 10 years in the Town.

Staff proposes to the Town Commission that if this project is approved, the prior site plan approved on January 19, 2017, Resolution No. 2017-Z-2418, shall no longer be valid.

Budget Impact: The developer has proffered voluntary contributions listed in the attached letter of intent to mitigate off-site impacts. The total contribution is \$272,000.

Growth Impact: The proposed development will have a total of 310,652 gross square feet replacing 81,014 gross square feet that has or will be demolished for an overall increase of 229,638 gross square feet. The maximum density of the property will permit 135 dwelling units or 250 hotel rooms. The applicant is proposing 205 hotel rooms. 100 dwelling units were previously existing on this property. Of those units some have already been demolished and the remainder will be demolished during the construction of the hotel.

Staff Impact: The applicant has funded the review through the cost recovery process and the building permit review will be funded through the building permit fees.

Conditions of Approval

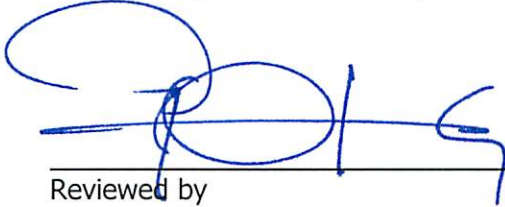
Staff proposed the following additional conditions:

1. All applicable conditions of approvals included in Resolution 17-Z-2418.
2. The Applicant's voluntary proffer to contribute \$272,000 to the Town, to be paid prior to the issuance of the first building permit.
3. The rooftop pools & deck hours of operation shall be limited from dawn until dusk.
4. The applicant shall enter into an agreement, recorded in the public records at the expense of the owner, which shall run with the land and shall bind the heirs, successors, and assigns of said owner provide 24-hour valet parking service.

The Planning and Zoning Board heard this application on November 29, 2018. The board modified staff's conditions, recommended approval to the Town Commission and proposed the following conditions:

1. All applicable conditions of approvals included in Resolution 17-Z-2418.
2. The Applicant's voluntary proffer to contribute \$272,000 to the Town, to be paid prior to the issuance of the first building permit.
3. The rooftop pools hours of operation shall be limited from 7am – 7pm.
4. The rooftop deck hours of operation shall be limited from 7am – 11pm.
5. The rooftop deck shall not have live or amplified music. No music can be permitted outside of the hours of 11am – 7pm.
6. The use of the garden shall conclude by 11pm. No amplified music shall be permitted in the garden at any time and any music is only permitted between the hours of 11am – 7pm.

7. Provide a hedge along the south property line of the garden which shall be a height of 10 feet within one year of the final inspection.
8. Provide a signed agreement with the two single family neighbors located south of the west side of the lot addressing their concerns.
9. Provide an analysis of square footage of the rooms in this hotel versus other hotels within 33154.
10. Provide landscaping and/or water feature in the valet drop off area.
11. The applicant shall enter into an agreement, recorded in the public records at the expense of the owner, which shall run with the land and shall bind the heirs, successors, and assigns of said owner provide 24-hour valet parking service.



Reviewed by



Prepared by

RESOLUTION NO. 19-Z-___

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A SITE PLAN AND CONDITIONAL USE APPLICATION TO PERMIT THE DEVELOPMENT OF PROPERTY LOCATED ON THE WEST SIDE OF COLLINS AVENUE BETWEEN 93RD STREET AND 94TH STREET WITH THE ADDRESSES OF 9300-9380 COLLINS AVENUE FOR A 205 HOTEL DEVELOPMENT WITH THREE ROOFTOP POOLS WITH CONDITIONS OF APPROVAL; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Eden Surfside, LLC (“Applicant”), Owner of the properties located at 9300, 9316, 9322, 9340, 9348, 9364, 9372, 9380 Collins Avenue, Surfside, FL 33154, and legally described as provided on Exhibit “A” attached hereto, with a general location of the west side of Collins Avenue between 93th Street and 94th Street, Surfside, FL, (the “Property”) submitted an “Application” on May 16, 2018, requesting site plan approval from the Town of Surfside, Florida for a 205 room hotel development with conditional use approval of 3 roof-top pools; and

WHEREAS, the Property was developed with 100 multifamily units which are proposed to be or have been demolished; and the building façade at 9340 Collins Avenue has been designated as historic by the Miami-Dade County Historic Preservation Board which will remain with the hotel development; and

WHEREAS, on November 29, 2018, the Planning & Zoning Board, at a duly noticed and televised quasi-judicial public hearing, after reviewing the Application and hearing from its professional staff, the Applicant, and members of the public, considered the requirements of the Town Zoning Code and the Application’s consistency with the Town of Surfside Comprehensive Plan and recommended the Application for approval with conditions; and

WHEREAS, on February 26, 2019, the Town Commission, at a duly noticed and televised quasi-judicial public hearing, reviewed the Application and hearing from its professional staff, the Applicant, and members of the public, and considering the recommendation of the Planning & Zoning Board, the requirements of the Town Zoning Code, the Application’s consistency with the Town of Surfside’s Comprehensive Plan, and the substantial competent evidence presented at the hearing.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPLICABLE TO APPLICANT, ITS SUCCESSORS AND/OR ASSIGNS, AS FOLLOWS:

SECTION 1. RECITALS AND FINDINGS OF FACT.

A. All recitals set forth above are incorporated into the body of this Resolution as if same were fully set forth herein.

B. The Town Commission finds that the proposed Site Plan and Conditional Uses, as conditioned, are in compliance with the requirements and criteria set forth in the applicable Town Code and the Comprehensive Plan.

SECTION 2. SITE PLAN APPROVAL. The request to approve a site plan is hereby granted as shown on the site plan submitted to the Building Department on May 31, 2018 and updated on November 7, 2018, by Arquitectonica, except as modifications are required by this approval or the Building Official.

SECTION 3. CONDITIONAL USE APPROVAL. The conditional use of the property for 3 rooftop hotel pools as shown on the site plan approved herein, is hereby granted.

SECTION 4. CONDITIONS. The APPROVALS granted herein are subject to the following conditions:

1. This approval incorporates the conditions of approval as provided in the staff report from the Miami-Dade Office of Historic Preservation, attached as Exhibit “B ” hereto and made a part hereof.
2. A recorded covenant that states that the landscaping material and design approved per the site plan shall not be modified without a site plan amendment. Materials may be changed out due to maintenance, but shall be reinstalled with the same materials per the approved site plan.
3. Any fencing or walls within the setback and along a right-of-way shall be reviewed by the Planning and Zoning Board but will not be subject to a site plan amendment.
4. The underground utilities on the approved site plan shall be installed per the plans on file and any change requires Town Commission approval.
5. The Applicant shall install a plaque on the exterior of the historic building notifying the public of the historic designated building.
6. Applicant shall meet with the neighboring property owners and provide a place to locate seismic monitors at their neighbors’ properties to measure the impact of construction on neighboring properties.

7. Applicant shall plant the shade trees closer to the sidewalk for the purpose of providing shade.

8. The Applicant's voluntary proffer to contribute \$272,000 to the Town, to be paid prior to the issuance of the first building permit.

9. The rooftop pools hours of operation shall be limited from 7am – 7pm.

10. The rooftop deck hours of operation shall be limited from 7am – 11pm.

11. The rooftop deck shall not have live or amplified music. Unamplified music is permitted only between the hours of 11am – 7pm. No music is permitted prior to 11 am or after 7 pm.

12. The use of the garden shall conclude by 11pm. No amplified music shall be permitted in the garden at any time and live or unamplified music is permitted only between the hours of 11am – 7pm.

13. Provide a hedge along the south property line of the garden which shall be a height of 10 feet within one year of the final inspection.

14. Provide a signed agreement with the two single family neighbors located south of the west side of the lot addressing their concerns.

15. Provide landscaping and/or water feature in the valet drop off area.

16. The applicant shall enter into an agreement, recorded in the public records at the expense of the owner, which shall run with the land and shall bind the heirs, successors, and assigns of said owner provide 24-hour valet parking service.

17. Applicant shall improve the public sidewalks with pavers with the design approved by the Town Manager or designee. Applicant shall provide a suitable transition between public and private sidewalks.

18. All voluntary proffers and commitments made to the Town of Surfside pursuant to the Resolution, including but not limited to those described in these Conditions, shall be binding upon Applicant, its heirs, successors and assigns, and, as to payments, shall be due and payable, or in the event of an action, shall be performed, in strict compliance with the manner and within the time frames set forth in these Conditions and any change in ownership, or modification of the site plan or design, whether substantial or minor in nature, shall not excuse the performance or the payments, all of which are part of the Conditions subject to which the Applicant's request for site plan approval were granted.

19. In the event the Applicant obtains a building permit and the permit expires, it shall be required to comply with Section 14.55 entitled "Vacant lots or buildings" of the Town of Surfside Code, including but not limited to the posting of a bond to defray the cost the Town may incur if required to secure and maintain the site, if necessary, and as may be required by the Building Official.

20. The Applicant for this purpose shall provide a bond not to exceed five percent of the construction cost, as required by the Building Official. These funds shall be used to secure property and the construction site in the event construction is abandoned, or ceases prior to completion.

21. A bond or equivalent amount of cash, in an amount not to exceed five percent of the construction cost, shall be posted to repair or replace public property damaged during the construction of the project, pursuant to the terms of Section 14.30 of the Town Code. The final determination regarding what property shall be replaced will be in the reasonable determination of the Director of Public Works. The Director of Public Works and the Building Official shall determine the amount jointly. The bond or cash equivalent shall be posted prior to the issuance of the foundation permit. The bonding requirements of this condition and the immediately preceding condition may be satisfied by posting one bond that covers both conditions.

22. The Applicant shall maintain an interactive website during construction and provide for a maximum of 24 hour response complaint/response mechanism for nearby property owners. The website URL will be advertised by the Applicant to Town residents.

23. The Applicant shall comply with calculating the cost of construction and auditing procedures pursuant to Town of Surfside Ordinance No. 16-1656.

24. The Applicant shall maintain all landscaping materials on site in good condition, replacing diseased, dying or dead plant material as necessary so as to present a healthy and orderly appearance at all times. A bond in the amount and duration determined by the Town Manager or designee shall be posted to ensure the survival of landscaping material for one or more years after the Certificate of Occupancy is issued.

25. The Applicant agrees to design the project to be LEED silver certifiable.

26. The Applicant shall submit plans for the construction of an appropriate barrier between the construction site and adjoining properties in order to minimize blowing of sand and dust and construction debris. The Applicant shall comply with the regulations of the Code of the Town of Surfside relating to construction site operations including construction hours and fencing. The Applicant will use its good faith efforts to minimize vibration and noise during construction of the project. Applicant and/or its contractors will assign personnel during construction to minimize sand, dust and debris from vehicles entering Collins Avenue and/or Harding Avenue from the construction site. Applicant shall ensure that contractors swing no heavy loads off property.

27. Sixty days prior to submittal of its request for a demolition permit, Applicant shall submit a demolition plan to Town Manager and Town Building Official that meets all Federal, State, and local requirements and that recycles a minimum of eighty percent (80%) of the demolition material.

28. The Applicant shall provide a structured or engineered construction fence with portals or windows, as required by the Town Code. The windscreen shall be approved by the Town Manager and shall display a rendering of the project and be maintained in good condition throughout the construction process until the Certificate of Occupancy is issued.

29. The Applicant shall meet all requirements of the Department of Public Works for the location and design of trash containers prior to the issuance of a building permit. All

service roll gates shall be at least 15 feet high and shall be of a decorative design to enhance the aesthetics of the building.

30. The Applicant shall meet all requirements of the Department of Public Works and Miami-Dade County for storm drainage services.

31. The Applicant shall present evidence of a Construction Parking Plan for the provision of off-street parking outside of Town limits or on Applicant's property within the Town, for construction workers during the period of construction of the approved project prior to the issuance of a building permit. The Applicant and the Applicant's general contractor shall direct all workers not to park their vehicles in residential neighborhoods or lease parking spaces from Town residents or park in Town parking lots and Town parking metered spaces. The Construction Parking Plan shall be reviewed and if found satisfactory and approved by the Town Manager prior to the issuance of a building permit.

32. The Applicant and the Applicant's contractors are responsible to enforce the Construction Parking Plan with all employees, contractors and subcontractors. The Applicant shall be fined five hundred dollars (\$500) for the first parking ticket and one thousand dollars (\$1,000) for each subsequent parking ticket issued to construction workers for parking in residential neighborhoods or Town public parking while working on the construction site (limit of one fine per vehicle per day). The construction parking plan shall provide the following:

33. (a) The Applicant agrees that all contractor and subcontractor agreements applicable to this development shall include a separate clause prohibiting construction workers from parking on residential streets or public parking lots and that Applicant shall submit the proposed clause for the approval of the Town Manager or designee within 45 days of the effective date of this Resolution.

34. (b) Applicant shall provide monthly reports to the Town Manager of any problems or complaints with regard to workers parking their vehicles in residential neighborhoods.

35. (c) If the Town Manager deems necessary, the Applicant shall provide more frequent reports and develop additional preventive measures to protect the residential neighborhoods.

36. Any change in ownership of the current property owner shall be fully disclosed in writing to the Town Manager and Town Attorney immediately upon said change occurring. Any change of ownership of the project shall not extend or modify any of the dates for payment or performance included in this Resolution or in any related agreements referenced in this Resolution nor shall any change of ownership modify or excuse or extend any of the payment obligations contained in this Resolution or in any related agreements referenced in this Resolution. All payment obligations and performance obligations of any kind set forth in this Resolution and in these Conditions are binding on the Applicant, its heirs, successors and assigns.

37. The Applicant shall only apply for a Certificate of Occupancy and Certificate of Use from the Town once compliance with all terms and conditions of this Development

Order are met and documented. The Certificate of Occupancy and Certificate of Use shall be subject to cancellation upon violation of any of the Conditions, in accordance with the law.

38. The applicant shall provide a Unity of Title in a form acceptable to the Town Attorney for all parcels included in the site plan to the Town prior to the issuance of the first foundation permit.

39. The Applicant shall provide water/sewer fees to the Town of Surfside in the amount prescribed in Town Code Section 78-83 and calculated using all fixtures in the buildings. Said fee shall be paid at the issuance of a Building Permit and there shall be no offset for existing fixtures if such offset is prohibited by law. The Applicant shall ensure the Town's water/sewer infrastructure is ready to receive the approved utility connections referenced in condition No. 4 above. At the option of the Town, the Town may allow the Applicant to construct improvements to the Town water/sewer infrastructure and provide a partial credit to the Applicant on the basis of one-half the reasonable cost of improvements.

40. The Applicant shall provide the Town with a detailed schedule for the construction of the project (the "Construction Schedule") within sixty (60) days of approval of the application by the Town Commission. Any modification shall be submitted in the same manner.

41. Applicant shall use its own lot for staging of construction to minimize lane closures.

SECTION 5. VIOLATION OF CONDITIONS. Failure to adhere to the terms and conditions of this Resolution shall be considered a violation of the Town Code and persons found violating the conditions shall be subject to the penalties prescribed by the Town Code, including but not limited to, the revocation of any of the approval(s) granted in this Resolution. The Applicant understands and acknowledges that it must comply with all other applicable requirements of the Town Code before it may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the Town at any time upon a determination by the Town Commission, following a public hearing, that the Applicant is in non-compliance with the Town Code or the conditions of this Approval and has failed to cure, or to provide an acceptable plan to timely cure, the non-compliance.

SECTION 6. SEVERABILITY CLAUSE. In the event any portion or section of this Resolution is determined to be invalid, illegal or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no way affect the remaining portions of this Resolution, which shall remain full force and effect.

SECTION 7. REPEAL. Resolution No. 17-Z-2418, adopted on January 19, 2017, pertaining to the Property, is hereby repealed in its entirety.

SECTION 8. EFFECTIVE DATE. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this _____ day of _____, 2019.

Motion by _____

Second by _____

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Daniel Gielchinsky	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

ATTEST:

Sandra Novoa, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR
THE TOWN OF SURFSIDE ONLY:**

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, Sandra Novoa, MMC, Town Clerk of the Town of Surfside, Florida, do hereby certify that the above and foregoing is a true and correct copy of Resolution No.19-Z-_____ adopted by the Town Commission at its meeting held on the 26th day of February, 2019.

Issued: _____

Sandra Novoa, MMC
Town Clerk

SITE PLAN REPORT

SITE PLAN INFORMATION:

Address	9300-9380 Collins Avenue
General Location	West side of Collins Avenue between 93 rd and 94 th Streets
Property Size	TOTAL: 2.89 gross acres
Zoning District	H40
Adjacent Zoning Districts	H40 & Municipal to the north, south and west H120 to the east
Future Land Use	Moderate Density Residential Tourist and Parking
Density Permitted	108 hotel units per acre X 2.73 acres = 294 hotel rooms X 15%(reduction in density based on aggregation) TOTAL PERMITTED= 250 hotel rooms
Density Proposed	TOTAL PROPOSED: 205 hotel rooms
Number of parking spaces	TOTAL Provided: 348 spaces TOTAL Required: 341 spaces

ZONING CODE, APPLICABLE REQUIREMENTS

Sec. 90.42

Minimum Unit Sizes	Minimum Required	Proposed
Hotel Rooms	350 square feet	436-730 square feet

Sec. 90.43

Maximum Building Heights	Maximum Required	Proposed
H40	40 feet maximum	40 feet

Sec. 90.44

Modification of Height	Maximum Permitted	Proposed	Must be of high architectural quality integral to the design of the building
H40	12 ft. 10% of roof area	9.5% of roof 10 feet, 8 inches	The mechanical equipment, rooftop decks and parapet walls meet these criteria.

Sec. 90.45(b)

Minimum Required Setbacks		Proposed
Front (Collins Avenue)	20 ft, with 5 additional feet above 30 feet.	20 ft with 25 ft setback for upper story
Side (93 rd and 94 th Streets)	10ft – H40 district	10 ft
Rear	10 ft	10 ft

Sec. 90.47.1 Yards generally, allowable projections

Required	Proposed
Every part of a required yard shall be open to the sky, except ordinary projections of sills, cornices, roof eaves and ornamental features may project not more than 24 inches into any required yard.	Projections not proposed

Sec. 90.49

Lot Standards	Required	Proposed
Minimum Lot width	50 feet	560 Feet
Minimum Pervious area	20%	21%

Sec. 90.50.1(2)

Architecture	Required	Proposed
All elevations for new structures and multi-story additions (additions greater than fifteen (15) feet in height)	Minimum of 10% wall openings including windows, doors or transitional spaces defined by porches, porticoes or colonnades.	Project meets or exceed 10% wall openings
Roof materials are limited as follows:	<ul style="list-style-type: none"> a. Clay Tile; or b. White concrete tile; or c. Solid color cement tile which color is impregnated with the same color intensity throughout, provided said color is granted approval by the Design Review Board; d. Architecturally embellished metal if granted approval by the Design Review Board; or 	Roof deck includes three pools.

	e. Other Florida Building Code approved roof material(s) if granted approval by the Design Review Board.	
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Sec. 90.50.2 (3)

Roof Deck Provisions	Required	Proposed
Roof Decks are limited to	a. Maximum 70% of the aggregate roof area;	38 %
	b. Shall not exceed the maximum roof height required by any abutting property's zoning designation;	40 feet
	c. Minimum setback of 10 feet from the roofline on all sides	13 feet with railing provided

Sec. 90.51(1)

Maximum frontage of buildings	Required	Proposed
H40	For every 75 feet, a minimum 6 foot change in wall plane.	After 75 feet there is a 6 foot horizontal change in wall plane

Sec. 90.61.1

Paving in front and rear yards in H30 & H40 Districts	Required	Proposed
Front setbacks, amount that may be paved with any type of material that is not readily permeable by rainwater and groundwater.	Maximum 50% paved	29% paved
Front Yard Landscaping	Minimum 30%	64%
Rear Yard Landscaping	Minimum 20%	96%

Sec. 90.67.2

	Required	Proposed

Underground utilities	All utilities including telephone, cable, and electrical systems shall be installed underground.	The lines will be installed underground.
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Sec. 90.77(c)

Off-Street Parking	Minimum Required	Proposed
	341 Spaces	348 Spaces

Sec. 90.83

Off-Street Loading	Minimum Required	Proposed
Multifamily building 20,000 – 100,000 square feet	2 space on site	2 spaces

Sec. 90.91

Vegetative Provisions	Minimum Required	Proposed
Xeriscape in pervious area	40%	40%

Sec. 90.91.2

Buffers	Application meets or exceeds all requirements.
Landscape buffer adjacent to streets and abutting properties	

Sec. 90.93

Open Space	Application meets or exceeds all requirements.
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APPLICATION AND LETTER OF INTENT

Permit # 18-610



DRB Meeting	___/___/20__
Application / Plans Due	___/___/20__


**TOWN OF SURFSIDE
MULTI-FAMILY AND NON-RESIDENTIAL SITE-PLAN APPLICATION**

A complete submittal includes all items on the "Multifamily and Non-Residential Site-Plan Application Submission Checklist" document as well as completing this application in full. The owner and agent must sign the application with the appropriate supplemental documentation attached. Please print legibly in ink or type on this application form.

<u>PROJECT INFORMATION</u>	
OWNER'S NAME	Eden Surfside, LLC.
PHONE / FAX	305-787-3998 / no fax
AGENT'S NAME	Neisen Kasdin, Akerman LLP
ADDRESS	98 SE 7th Street, Suite 1100, Miami, FL 33131
PHONE / FAX	305-374-5600 / 305-374-5095
PROPERTY ADDRESS	9380, 9372, 9364, 9348, 9340, 9332, 9316 and 9300 Collins Avenue
ZONING CATEGORY	H40
DESCRIPTION OF PROPOSED WORK	demolition of all existing improvements, construction of 3-story hotel building see enclosed letter of intent for further details

<u>INTERNAL USE ONLY</u>			
Date Submitted	_____	Project Number	_____
Report Completed	_____	Date	_____
Fee Paid	\$ _____		

<u>ZONING STANDARDS</u>	Required	Provided
Plot Size	_____	_____
Setbacks (F/R/S)	_____ _____ _____	_____ _____ _____
Lot Coverage	_____	_____
Height	_____	_____
Pervious Area	_____	_____



 SIGNATURE OF OWNER

5/16/18

 DATE



 SIGNATURE OF AGENT

5/21/18

 DATE



TOWN OF SURFSIDE
MULTI-FAMILY AND NON-RESIDENTIAL SITE-PLAN APPLICATION
PLANNING AND ZONING BOARD Rules and Procedures (June 2002)

The Planning and Zoning Board shall generally meet the last **Thursday** of each month at 7:00 pm. at Town Hall.

Plans and completed applications (including all supporting documentation) must be submitted to the Building Department at least 21 days prior to the meeting, with the payment of applicable fees (example: \$200.00 for Plan Review for Zoning), at which time they will be considered. Incomplete plans and applications will not be processed.

The applicant or duly authorized agent (per ownership affidavit) must be present at the meeting. If there are no applications for consideration by the Planning and Zoning Board, the monthly meeting may be cancelled at the discretion of the Chairman of the Board.

Please advise the name of the Representative who will attend the hearing on behalf of this application:

Neisen Kasdin

NAME OF REPRESENTATIVE

5/21/18

DATE



**TOWN OF SURFSIDE
SUBMISSION CHECKLIST
MULTI-FAMILY AND NON-RESIDENTIAL SITE-PLAN APPLICATION**

Project Name _____ Project Number _____

SUBMITTAL REQUIREMENTS FOR REVIEW:

- Completed "Multi-Family and Non-Residential Site Plan Application" form
- Application fee: \$12,000 made out to "Town of Surfside"
- Ownership Affidavit
- Recent photographs of the subject property and all abutting, diagonal and fronting properties visible from the street (to be provided prior to Design Review Board Meeting)

FOR THE FOLLOWING PLEASE PROVIDE:

- Two (2) full sized sets (24" x 36" sheets) of complete design development drawings signed and sealed
- One (1) CD, with site plan in PDF format, or other common windows based format.
- Provided prior to Design Review Board Meeting - Fifteen (15) reduced sized sets (11" x 17" sheets) of the complete design development drawings
- Site Plan (Minimum scale of 1" = 20').
Please show / provide the following:
 - A legal description, including the section, township, and range or subdivision lot and block.
 - Site boundaries clearly identified, and ties-to-section corners
 - Proposed uses
 - Location and height of all structures and total floor area with dimensions to lot lines, and designations of use
 - Building separations
 - Vehicular circulation system for cars, bicycles, and other required vehicle types, with indication of connection to public rights-of-way
 - Location of all parking and loading areas
 - All adjacent rights-of-way, with indication of ultimate right-of-way line, center line, width, paving width, existing median cuts and intersections, street light poles, and other utility facilities and easements
 - Location of all cross streets and driveways within three hundred fifty (350) feet of property limits
 - Pedestrian circulation system
 - Provider of water and wastewater facilities
 - Existing and proposed fire hydrant location
 - The following computations:
 - Gross acreage
 - Net acreage

Cont.



- Gross acreage covered by the property excluding road easements and rights-of-way, if any
 - Number of dwelling units and density for residential uses only
 - Square footage of ground covered by buildings or structures and designation of use.
 - Required number of parking spaces
 - Number of parking spaces provided
 - Pervious, impervious and paved surface, in square footage and percentage
 - Site Plan location sketch, including section, township, and range, showing adjacent property owners
 - Geometry of all paved areas including centerlines, dimensions, radii, and elevations
 - Location of trash and garbage disposal system and provisions for accessibility to garbage trucks
 - Loading areas and provisions for accessibility to vehicles of the required type
 - Areas for emergency vehicles and fire engines, and provisions for accessibility to vehicles of the required type
 - Number of sets required shall be determined by Town Staff.
 - Other such information as required by the Town.
- Survey. A survey less than one (1) year old (including owner's affidavit that no changes have occurred since the date of the survey). The survey shall be prepared by a Florida registered land surveyor, certified as to meeting the requirements of the applicable Section of the Florida Administrative Code, reflecting existing natural features, such as topography, vegetation, existing paving, existing structures, and water bodies
- Landscape Plan and Irrigation Plan
Please show / provide the following:
- landscape calculations (required and provided)
 - existing tree survey with indication of existing native vegetation that will be preserved
 - proposed and existing landscaping
- Lighting Plan
Please show / provide the following:
- photometric measurements
 - Lighting details and spillage onto adjacent properties and rights-of-way
- Sign Plan for all signs which will be on site
Please show / provide the following:
- Show dimensioned locations and mounting details of signs on building elevations and locations of signs on site plan
 - Note colors, materials, lighting and dimensions
 - Show dimensions and square footages (proposed and existing)
 - Identify materials and colors – background, trim/border, and copy
 - Show fonts and graphics
- Pavement markings and traffic signing plan
- Schematic water and sewer plan
Please show / provide the following:
- Location and size of all mains and lift stations



Cont.

- Paving and drainage plans
Please show / provide the following:
 - location of all drainage features and retention areas, if any

- Architectural Elevations (Minimum scale of 1/8" = 1')
Please show / provide the following:
 - Separate elevations of all sides of existing and proposed buildings with all dimensions, including height.
 - Label exterior materials, color, texture and trim, roof material, Roof color and pitch, windows, doors, screens, skylights and all exposed mechanical equipment and screening
 - Provide color elevations, showing all material finishes, textures and landscaping for all elevations of the proposed building(s) and structure(s), which should include at a minimum:
 - All exterior materials, colors and finishes, keyed to samples provided
 - Roof slopes and materials including specifications and color
 - Detail of doors, windows, garage doors
 - Dimensions of structure(s) - height, width, and length
 - Deck, railing, stairs details including materials, colors, finishes, and decorative details
 - Exposed foundation treatment
 - Gutters and eaves

- Provide samples of colors and/or materials mounted on a display board (to be provided prior to Design Review Board Meeting)

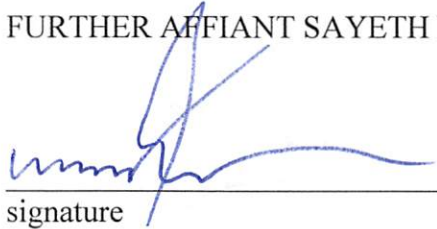
- Such additional data, maps, plans, or statements as the Town may require to fully describe and evaluate the particular proposed plan

Affidavit of Ownership

I, Menachem Boymelgreen, am over the age of 21 and otherwise am *sui juris*, and being duly sworn, allege and state:

1. I am the Manager of Eden Surfside, LLC.
2. Eden Surfside, LLC is the owner of the real properties located at 9380, 9372, 9364, 9348, 9340, 9332, 9316 and 9300 Collins Avenue (the "Properties").
3. The Properties are further identified by the Miami-Dade County Property Appraisers Office by Folio Numbers 14-2235-006-0300, 14-2235-006-0290, 14-2235-006-0280, 14-2235-006-0270, 14-2235-006-0260, 14-2235-006-0250, 14-2235-006-0240 and 14-2235-006-0220.
4. I understand that Eden Surfside, LLC is submitting an application to the Town of Surfside for approval of plans to redevelop the Properties.
5. I hereby authorize Eden Surfside, LLC and its designees, to take the steps necessary to obtain the development approvals for the Properties in accordance with said plans.

FURTHER AFFIANT SAYETH NAUGHT.



 signature

Menachem Boymelgreen, Manager of Eden Surfside, LLC

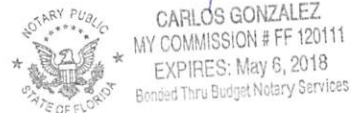
STATE OF FLORIDA
 COUNTY OF DADE

The foregoing instrument was acknowledged before me by MENACHEM BOYMELGREEN
 who is personally known to me or has produced FDL as
 identification.

My commission expires MAY 6, 2018



 Notary Public, State of FL



May 24, 2018

Guillermo Olmedillo
Town Manager
Town of Surfside
9293 Harding Avenue
Surfside, FL 33154

RE: Site plan review for proposed hotel project at 9300 – 9380 Collins Avenue

Dear Mr. Olmedillo,

Our firm represents Eden Surfside, LLC (the "Applicant"), the owner of the properties which span from 93rd to 94th Streets (9300 – 9380 Collins Avenue) facing Collins Avenue, located in Surfside (the "Property").

The Property is mostly located in the Moderate Density Residential / Tourist future land use category (2.73 acres), with a small portion (0.16 acres) that fronts onto Harding Avenue that is designated Parking on the future land use map. The entire Property is zoned H40. The use of the portion of the Property that fronts onto Harding Avenue will be passive open space that is landscaped.

The proposed use is a hotel with 207 rooms¹ in a 3-story building that is 38'-8" tall with 343 parking spaces provided below grade, which is 13 more spaces than required by the Town Code. The hotel will be operated as a kosher hotel, catering to Jewish clientele but open to the general public.

Kosher food is becoming increasingly more popular. People from all walks of life are embracing kosher foods for numerous reasons such as dietary and health reasons, food quality, purity and safety. Kosher certification appears on over 60% of America's manufactured foods. The hotel would be the first strictly kosher hotel in the United States. It is located less than one block away from one of the largest synagogues in Dade County, The Shul. In accordance with the laws

¹ The maximum allowable number of rooms is 2.73 acres x 108 rooms/acre x 85% reduction for aggregation = 250 rooms.

of Shabbat, observant Jews are prohibited to operate motor vehicles on Shabbat. The location of the hotel will serve the growing needs of the surrounding Jewish community.

The ground floor of the hotel is separated into two halves, divided by the historic façade of the 9340 Collins building, which is being preserved in place and will contain a publicly accessible exhibit space that will contain historical photographs, memorabilia, timelines and other materials to educate visitors on the history of the Town of Surfside. A driveway for valet drop-off and pick-up functions wraps around both sides of the historic façade, which allows a vehicle stacking distance of approximately 185 feet, enough to accommodate nine (9) cars, allowing 20 feet for each car. The provided stacking distance will allow for enough cars to queue in line without having the queue back up into the travel lanes of Collins Avenue as demonstrated in the traffic study.

The north half of the ground floor contains the lobby, lobby lounge and front desk, as well as a 1,790 square foot restaurant and 730 square foot kitchen. The far north end of the ground floor contains a mechanical room.

The south half of the ground floor contains a 9,395 square foot ballroom and pre-function space that is served by its own kitchen located at the far southern end of the ground floor. There are two loading spaces off of 93rd Street as well as the entrance and exit driveway down to the basement level where all of the parking spaces for the hotel are located.

The building has been designed to meet the regulations of the recently enacted Ordinance No. 1682 which limits the length of one continuous building. Under the new ordinance, the total required building separation area would be 51'. In accordance with the new ordinance, the project provides two building separation equivalency areas on both sides of the historic façade. The building separation equivalency area on the south side of the historic façade is 33'-8" wide and the building separation equivalency area on the north side of the historic façade is 40' wide for a total building separation area of 73'-8", which is 22'-8" more than what is required. The building separation equivalency areas are spanned at the third floor by a one-story connection which is setback 45'-10" from the front building line, which is 10'-10" more than the required setback of 35'. The break in the building is accentuated by the preservation of the historic façade in the middle of the break.

Until recently, with the demolition of some of the buildings on the Property, the Property had 101 multifamily units. As demonstrated in the traffic study, having the Property built out with 207 hotel rooms generates less PM peak hour traffic than the 101 residential units.

Furthermore, the prior and existing buildings on the Property had six (6) separate curb cuts onto Collins Avenue, including a few 90-degree parking spaces that back out directly onto Collins Avenue. The proposed project will consolidate the scattered curb cuts on Collins Avenue into two curb cuts for the valet drop-off and pick-up functions, thus greatly improving traffic flow, safety and the pedestrian environment on Collins Avenue.

The designated façade will serve as a visual focal point and organizing element for the proposed building. The juxtaposition of the historic façade, with its Streamline Moderne style of curving forms and long horizontal lines, against the proposed architecture that is based off of rectangular shapes, provides a visually interesting focal point and an affirmation of the significance

of the preceding historic architectural style of the Bougainvillea Apartments. For the previous incarnation of the project as a multifamily residential project the County HPB approved a certificate of appropriateness. Recently, the Applicant met with the Chief of Historic Preservation to review and discuss the proposed hotel project and the Chief of Historic Preservation indicated that the use and treatment of the historic façade for the hotel was similar enough that administrative approval of the certificate of appropriateness would be required for the hotel project.

All of the major features of the designated façade will be kept intact, including the eyebrows, the grid pattern above the upper corner windows, the rectangular concrete block vents, the portholes and the vertical fluting. The existing metal railings on the east facing façade are proposed to be matched with silver colored aluminum railings. The existing color scheme of the designated façade, which is not original, is proposed to be changed to a neutral, off-white color to be consistent with the color scheme of the proposed building.

The Applicant recognizes that there will be some impact to the Town from the new construction and the proposed project. Therefore, in order to mitigate off-site impacts of the proposed project the Applicant makes the following voluntary proffers, to be paid prior to the issuance of a building permit for the proposed project:

1. Replacement of two police vehicles at \$35,000 each for a total of \$70,000;
2. One, three-yard garage container, total of \$22,500;
3. One, new dog station at the Paws Up Dog Park, total of \$8,000;
 - a. The Town may reallocated up to \$30,500 from the voluntary proffers identified above to Parks and Recreation or the Community Center.
4. \$30,500 to be used for Parks and Recreation or the Community Center.
5. \$141,000 to be used at the Town Manager's discretion.

Total proffers of \$272,000.

We believe the proposed project will provide a much needed, family-oriented, kosher hotel that caters to the large Jewish population in the Town and surrounding area and will increase the functionality and safety of Collins Avenue for both pedestrians and motorists. It also incorporates the historic façade in a way that is respectful to the significance of the Bougainvillea Apartments, serves as a centerpiece for the proposed project and complies with the new ordinance regulating the maximum building length in the H40 district. We look forward to working with your professional staff during the review of the proposed project.

Sincerely,



Neisen O. Kasdin

**RESOLUTION NO: 2017-Z-2418
APPROVED JANUARY 19, 2017**

RESOLUTION NO. 17-Z- 2418

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A SITE PLAN TO PERMIT THE DEVELOPMENT OF PROPERTY LOCATED ON THE WEST SIDE OF COLLINS AVENUE BETWEEN 93RD STREET AND 94TH STREET WITH THE ADDRESSES OF 9300-9380 COLLINS AVENUE FOR 68 TOWNHOUSE UNITS WITH CONDITIONS OF APPROVAL; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

I. RECITALS.

WHEREAS, CATON REALTY HOLDING, LLC (“Applicant”), Manager of the properties located at 9300, 9316, 9322, 9340, 9348, 9364, 9372, 9380 Collins Avenue, Surfside, FL 33154, with a general location of the west side of Collins Avenue between 93th Street and 94th Street, Surfside, FL., (the “Property”) submitted an “Application” on February 17, 2016, requesting site plan approval from the Town of Surfside, Florida for a development of 68 townhouse units on behalf of multiple owners; and

WHEREAS, the Property is currently developed with 100 multifamily units which are proposed to be or have been demolished; and the building façade at 9340 Collins Avenue has been designated as historic by the Miami-Dade County Historic Preservation Board and it will remain and function as the lobby for the townhouse development; and

WHEREAS, plans are on file and may be examined in the Building Department entitled “9300-9380 Collins Avenue,” which plans may be modified at a public hearing (hereinafter referred to as the “Plans”) prepared by Arquitectonica consisting of Plan sheets A0.000, A0.101, A0.102, A0.103, A0.104, A0.105, A0.106, A1.100, A1.101, A1.102, A1.103, A1.104, A1.105, A2.101, A3.101, A4.101, R1.101, R1.102, R1.103, R1.104, R1.105, C-1, C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-11, TD-1, L-1, L-2, L-3, L-4, L-5, L-6, L-7, L-8, IRR-1, IRR-2, IRR-3.

Legal Description: See attached Attachment “A” “Legal Description”

ADDRESS: 9300, 9316, 9322, 9340, 9348, 9364, 9372, 9380 Collins Avenue, Surfside, FL 33154

WHEREAS, on May 23, 2016, the Town’s Development Impact Committee, after notice posted on the Town’s website, met in a televised meeting, reviewed the Application and discussed the application and provided guidance to the Applicant regarding the criteria set forth in the Town’s Zoning Code; and

WHEREAS, on July 18, 2016, the Planning & Zoning Board, at a duly noticed and televised quasi-judicial public hearing, after reviewing the Application and hearing from its professional staff, the Applicant, and members of the public, considered the

requirements of the Town Zoning Code and the Application's consistency with the Town of Surfside Comprehensive Plan and recommended the Application for approval with conditions by the Town Commission; and

WHEREAS, on January 19, 2017 the Town Commission, at a duly noticed and televised quasi-judicial public hearing, reviewed the Application from its professional staff, the Applicant, and members of the public, and considering the recommendation of the Planning & Zoning Board, the requirements of the Town Zoning Code, the Application's consistency with the Town of Surfside's Comprehensive Plan, and the substantial competent evidence presented at the hearing.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPLICABLE TO APPLICANT, ITS SUCCESSORS AND/OR ASSIGNS, AS FOLLOWS:

II. INCORPORATION OF RECITALS AND FINDINGS OF FACT.

A. All recitals set forth above are incorporated into the body of this Resolution as if same were fully set forth herein.

B. The Town Commission finds that the proposed Site Plan as conditioned is in compliance with the requirements and criteria set forth in the applicable Town Code and the Comprehensive Plan, and approves the Site Plan with conditions of approval as stated below.

III. APPROVAL AND CONDITIONS OF APPROVAL.

A. The Applicant's request for approval of the site plan, consisting of 68 townhouse units, is granted with conditions.

This approval incorporates the conditions of approval as provided in the staff report from the Miami-Dade County Office of Historic Preservation, attached as Attachment "B" hereto and made a part hereof.

B. The following are conditions of approval:

1. The Applicant, its successors and assigns shall comply with all Town laws, ordinances, and resolutions at the time of approval of the site plan.
2. A recorded covenant that states that the landscaping material and design approved per the site plan shall not be modified without a site plan amendment. Materials may be changed out due to maintenance, but shall be reinstalled with the same materials per the approved site plan.
3. The aluminum fence parallel to Collins Avenue approved on the site plan encroaching into the buffer shall not be modified without a site plan amendment.

4. The underground utilities on the approved site plan shall be installed per the plans on file and any change requires Town Commission approval. The Applicant shall demonstrate that the underground utilities will be accommodated in the configuration proposed prior to a foundation permit.
5. The Applicant shall install a plaque on the exterior of the historic building notifying the public of the historic designated building.
6. Applicant shall meet with the neighboring property owners and provide a place to locate seismic monitors at their neighbors' properties to measure the impact of construction on neighboring properties.
7. Applicant shall provide prominence to the historic building with paint treatments, landscaping and applicable fencing and utilize site triangles to improve the visual exposure of the historic structure.
8. Applicant shall emphasize articulation for the entire façade with the application of a revised contrasting paint scheme.
9. Applicant shall provide samples of glass, wood and materials to be used in this project prior to the Town Commission meeting.
10. Applicant shall provide updated perspective renderings which include the project and the location of neighboring properties for the Town Commission meeting.
11. Applicant shall improve the public sidewalks with pavers with the design approved by the Town Manager or designee. Applicant shall provide a suitable transition between public and private sidewalks. Applicant shall plant the shade trees closer to the sidewalk for the purpose of providing shade.
12. Applicant shall explore options for air flow from the ocean and through the building length.
13. The Applicant offers the following voluntary proffers to the Town, and the Town accepts the proffers, to be paid prior to the issuance of the foundation permit for the construction of the Project:
 - i. Replacement of two police vehicles at \$35,000 each for a total of \$70,000.
 - ii. Big Belly Solar trash receptacles, total of \$22,500.
 - iii. One new dog station at the Paws Up Dog Park, total of \$8,000.
 - iv. The Town may reallocate up to \$30,500 from the voluntary proffers as identified in Condition 13(i-iii) herein to Parks and Recreation or the Community Center.
 - v. Applicant proffers an additional \$30,500 to be used for Parks and

Recreation or the Community Center.

vi. Applicant proffers an additional \$141,000 to be used at the Town Manager's discretion.

14. All voluntary proffers and commitments made to the Town of Surfside pursuant to the Resolution, including but not limited to those described in these Conditions, shall be binding upon Applicant, its heirs, successors and assigns, and, as to payments, shall be due and payable, or in the event of an action, shall be performed, in strict compliance with the manner and within the time frames set forth in these Conditions and any change in ownership, or modification of the site plan or design, whether substantial or minor in nature, shall not excuse the performance or the payments, all of which are part of the Conditions subject to which the Applicant's request for site plan approval were granted.
15. In the event the Applicant obtains a building permit and the permit expires, it shall be required to comply with Section 14.55 entitled "Vacant lots or buildings" of the Town of Surfside Code, including but not limited to the posting of a bond to defray the cost the Town may incur if required to secure and maintain the site, if necessary, and as may be required by the Building Official.
16. The Applicant for this purpose shall provide a bond not to exceed five percent of the construction cost, as required by the Building Official. These funds shall be used to secure property and the construction site in the event construction is abandoned, or ceases prior to completion.
17. A bond or equivalent amount of cash, in an amount not to exceed five percent of the construction cost, shall be posted to repair or replace public property damaged during the construction of the project, pursuant to the terms of Section 14.30 of the Town Code. The final determination regarding what property shall be replaced will be in the reasonable determination of the Director of Public Works. The Director of Public Works and the Building Official shall determine the amount jointly. The bond or cash equivalent shall be posted prior to the issuance of the foundation permit. The bonding requirements of this condition and the immediately preceding condition may be satisfied by posting one bond that covers both conditions.
18. The Applicant shall maintain an interactive website during construction and provide for a maximum of 24 hour response complaint/response mechanism for nearby property owners. The website URL will be advertised by the Applicant to Town residents.
19. The Applicant shall comply with calculating the cost of construction and auditing procedures pursuant to Town of Surfside Ordinance No. 16-1656.

20. The Applicant shall maintain all landscaping materials on site in good condition, replacing diseased, dying or dead plant material as necessary so as to present a healthy and orderly appearance at all times. A bond in the amount and duration determined by the Town Manager or designee shall be posted to ensure the survival of landscaping material for one or more years after the Certificate of Occupancy is issued.
21. The Applicant agrees to design the project to be LEED silver certifiable.
22. The Applicant shall submit plans for the construction of an appropriate barrier between the construction site and adjoining properties in order to minimize blowing of sand and dust and construction debris. The Applicant shall comply with the regulations of the Code of the Town of Surfside relating to construction site operations including construction hours and fencing. The Applicant will use its good faith efforts to minimize vibration and noise during construction of the project. Applicant and/or its contractors will assign personnel during construction to minimize sand, dust and debris from vehicles entering Collins Avenue and/or Harding Avenue from the construction site. Applicant shall ensure that contractors swing no heavy loads off property.
23. Sixty days prior to submittal of its request for a demolition permit, Applicant shall submit a demolition plan to Town Manager and Town Building Official that meets all Federal, State, and local requirements and that recycles a minimum of eighty percent (80%) of the demolition material.
24. The Applicant shall provide a structured or engineered construction fence with portals or windows, as required by the Town Code. The windscreen shall display a rendering of the project and be maintained in good condition throughout the construction process until the Certificate of Occupancy is issued.
25. The Applicant shall meet all requirements of the Department of Public Works for the location and design of trash containers prior to the issuance of a building permit. All service roll gates shall be at least 15 feet high and shall be of a decorative design to enhance the aesthetics of the building.
26. The Applicant shall meet all requirements of the Department of Public Works and Miami-Dade County for storm drainage services.
27. The Applicant shall present evidence of a Construction Parking Plan for the provision of off-street parking outside of Town limits or on Applicant's property within the Town, for construction workers during the period of construction of the approved project prior to the issuance of a building permit. The Applicant and the Applicant's general contractor shall direct all workers not to park their vehicles in residential neighborhoods or lease parking spaces from Town residents or park in Town parking lots and Town parking metered

spaces. The Construction Parking Plan shall be reviewed and if found satisfactory and approved by the Town Manager prior to the issuance of a building permit.

28. The Applicant and the Applicant's contractors are responsible to enforce the Construction Parking Plan with all employees, contractors and subcontractors. The Applicant shall be fined five hundred dollars (\$500) for the first parking ticket and one thousand dollars (\$1,000) for each subsequent parking ticket issued to construction workers for parking in residential neighborhoods or Town public parking while working on the construction site (limit of one fine per vehicle per day). The construction parking plan shall provide the following:

(a) The Applicant agrees that all contractor and subcontractor agreements applicable to this development shall include a separate clause prohibiting construction workers from parking on residential streets or public parking lots and that Applicant shall submit the proposed clause for the approval of the Town Manager or designee within 45 days of the effective date of this Resolution.

(b) Applicant shall provide monthly reports to the Town Manager of any problems or complaints with regard to workers parking their vehicles in residential neighborhoods.

(c) If the Town Manager deems necessary, the Applicant shall provide more frequent reports and develop additional preventive measures to protect the residential neighborhoods.

29. Any change in ownership of the current property owner, up to and including the turnover of ownership to the condominium association, greater than twenty percent (20%) shall be fully disclosed in writing to the Town Manager and Town Attorney immediately upon said change occurring. Any change of ownership of the project shall not extend or modify any of the dates for payment or performance included in this Resolution or in any related agreements referenced in this Resolution nor shall any change of ownership modify or excuse or extend any of the payment obligations contained in this Resolution or in any related agreements referenced in this Resolution. All payment obligations and performance obligations of any kind set forth in this Resolution and in these Conditions are binding on the Applicant, its heirs, successors and assigns.

30. The Applicant shall only apply for a Certificate of Occupancy from the Town once compliance with all terms and conditions of this Development Order are met and documented. The Certificate of Occupancy shall be subject to cancellation upon violation of any of the Conditions, in accordance with the law.

31. The applicant shall provide a Unity of Title in a form acceptable to the Town Attorney for all parcels included in the site plan to the Town prior to the issuance of the first foundation permit.
32. The Applicant shall provide water/sewer fees to the Town of Surfside in the amount prescribed in Town Code Section 78-83 and calculated using all fixtures in the buildings. Said fee shall be paid at the issuance of a Building Permit and there shall be no offset for existing fixtures if such offset is prohibited by law. The Applicant shall ensure the Town's water/sewer infrastructure is ready to receive the approved utility connections referenced in Condition 4. At the option of the Town, the Town may allow the Applicant to construct improvements to the Town water/sewer infrastructure and provide a partial credit to the Applicant on the basis of one-half the reasonable cost of improvements.
33. The Applicant shall provide the Town with a detailed schedule for the construction of the project (the "Construction Schedule") within sixty (60) days of approval of the Application by the Town Commission. Any modification shall be submitted in the same manner.
34. Applicant shall use its own lot for staging of construction to minimize lane closures.

IV. SEVERABILITY CLAUSE.

In the event any portion or section of this Resolution is determined to be invalid, illegal or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no way affect the remaining portions of this Resolution, which shall remain full force and effect.

V. EFFECTIVE DATE.

This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 19th day of January, 2017.

Motion by Commissioner Gieldhensky
 Second by Vice Mayor Cohen

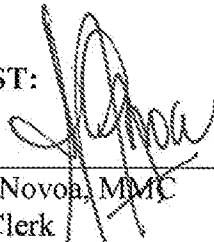
FINAL VOTE ON ADOPTION

Commissioner Daniel Gielchinsky
Commissioner Michael Karukin
Commissioner Tina Paul
Vice Mayor Barry Cohen
Mayor Daniel Dietch

yes
no
no
yes
yes


Daniel Dietch, Mayor

ATTEST:

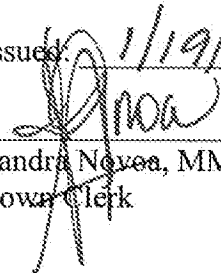

Sandra Novoa, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR
THE TOWN OF SURFSIDE ONLY:**


Linda Miller, Town Attorney

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, Sandra Novoa, MMC, Town Clerk of the Town of Surfside, Florida, do hereby certify that the above and foregoing is a true and correct copy of Resolution No.17-Z-2418 adopted by the Town Commission at its meeting held on the 19th day of January, 2017.

Issued 1/19/2017

Sandra Novoa, MMC
Town Clerk

Attachment "A"

Legal Description:

LOTS 1 THROUGH 12 AND LOT 19, INCLUSIVE, BLOCK 3, "ALTOS DEL MAR NO 5", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, PAGE 92, OR THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA.



miamidade.gov

Regulatory and Economic Resources Department
Office of Historic Preservation
111 NW 1st Street, Mailbox 114 • 12th Floor
Miami, Florida 33128
T 305-375-4958

February 26, 2016

9340 Collins Avenue LLC
3921 Alton Road, Suite 138
Miami Beach, FL 33140

RE: Renovation of Bougainvillea Apartments, Special COA #2016-03-S

Dear Property Owner:

On February 24, 2016, the Miami-Dade County Historic Preservation Board approved the Special Certificate of Appropriateness (COA) application for the renovation and incorporation of Bougainvillea Apartments, located at 9340 Collins Avenue, Surfside, FL, into a new development, provided the following conditions are met:

1. The Property Owner shall, in collaboration with County Historic Preservation Staff, produce a high-quality heritage tourism brochure focused on the history of the Town of Surfside, to be completed and available for distribution prior to the final Certificate of Occupancy of the development.
2. The Property owner shall provide a publically accessible gallery and interpretive exhibit space, either within the 9340 building or at another suitable, publically accessible space within the Town, including Town Hall or the Community Center. Exhibits shall include historical photographs, memorabilia, timelines, and other materials to adequately educate residents and visitors on Surfside's history and development. Property Owner shall collaborate with County Historic Preservation Staff as to the content of the exhibit.
3. If any discrepancy exists between the plans and the elevations or renderings, actual construction shall defer to the plans.
4. Project layout shall provide a minimum of 8 feet, and preferably 10 feet, between the outermost north and south edges of the historic structure and the enclosed forecourts/patios.

The Miami-Dade County Office of Historic Preservation thanks you for your submittal of the required COA application. COA approvals are valid for one year. If the work approved in this COA has not begun by February 24, 2017, contact our office to apply for an extension. Please do not hesitate to contact us with any additional questions.

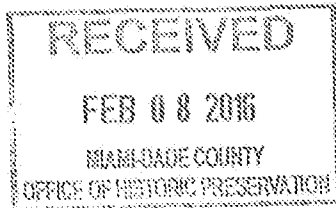
Sincerely,

A handwritten signature in black ink that reads "Sarah K. Cody".

Sarah K. Cody

Historic Preservation Planner
Miami-Dade County

Cc: Mr. Matthew A. Barnes, AICP, Akerman LLP
Sarah Sinatra Gould, Town Planner, Surfside



OFFICE OF HISTORIC AND ARCHAEOLOGICAL RESOURCES
 111 NW 1st STREET, MAILBOX 695
 MIAMI, FL 33128
 (305) 375-4958

APPLICATION FOR A
CERTIFICATE OF APPROPRIATENESS (COA)

For Historically Designated Properties, or Properties within Historic Districts

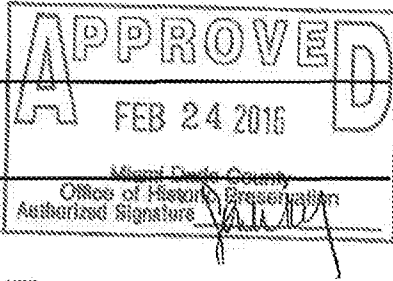
I. PROPERTY INFORMATION INFORMACIÓN DE LA PROPIEDAD

ADDRESS (Dirección) 9340 Collins Avenue CITY (Ciudad) Surfside ZIP (Zip) 33154

SITE DESIGNATION NAME (if applicable) (Nombre del Edificio) Bougainvillea Apartments

DISTRICT NAME (if applicable) (Nombre del Distrito) not applicable

FOLIO NUMBER (Numeración de Folio) 14-2235-006-0260



II. APPLICANT INFORMATION INFORMACIÓN DEL SOLICITANTE

NAME OF OWNER (Nombre de Dueño) 9340 Collins Ave, LLC PHONE (teléfono) 786-802-7980

ADDRESS (Dirección) 3921 Alton Road, Suite 138 Miami Beach, FL 33140 EMAIL (correo electrónico) mboymelgreen@gmail.com

NAME OF APPLICANT (if other than owner) (Nombre del Solicitante) Akerman, LLP - Neisen Kasdin

CONTACT PHONE (Teléfono) 305-374-5600 EMAIL neisen.kasdin@akerman.com

APPLICANT IS: (Solicitante es) OWNER (Dueño) RENTER/LEASEE (Inquilino) CONTRACTOR (Contratista) LEGAL AGENT (Representante legal)

FOR OFFICE USE ONLY
 Solamente por uso de oficina

APPLICATION# 2016-03-S DATE RECEIVED 2/18/16 STAFF INITIALS CKC
 ("R" for Regular, "S" for Special)

APPROVED DENIED APPROVED WITH CONDITIONS (see attached conditions sheet)

APPROVAL DATE 2/24/16
 BOARD DATE 2/24/16



OFFICE OF HISTORIC AND ARCHAEOLOGICAL RESOURCES
111 NW 1ST STREET, MAILBOX 695
MIAMI, FL 33128
(305) 375-4958

III. PROJECT TYPE TIPO DE PROYECTO

PLEASE CHECK ALL THAT APPLY:

(Por favor marque todos que aplican)

- | | |
|------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> New Construction <i>(construcción nueva)</i> | <input type="checkbox"/> Paint <i>(pintura)</i> |
| <input type="checkbox"/> Restoration/Rehabilitation <i>(restauración)</i> | <input type="checkbox"/> Repairing Existing <i>{reparación}</i> |
| <input checked="" type="checkbox"/> Relocation/Moving a Structure <i>(traslado)</i> | <input type="checkbox"/> Landscaping <i>(areas verdes)</i> |
| <input type="checkbox"/> Demolition <i>(demolición)</i> | <input type="checkbox"/> Interior Work Only
<i>(Únicamente el Interior)</i> |
| <input type="checkbox"/> Excavation/
Ground Disturbing Activities <i>(excavación)</i> | |

IV. PROJECT DESCRIPTION DESCRIPCIÓN DE PROYECTO

Please describe in detail the proposed project, including any new construction, demolition, the removal or replacement of existing materials, and all other proposed changes to the current structure. Attach an additional sheet if necessary.

Por favor describa el proyecto en detalle. Adjuntar página adicional si es necesario. Por favor describir el proyecto en inglés.

See enclosed cover letter.

CHECK ANY STRUCTURAL SYSTEMS OR ELEMENTS THAT WILL BE AFFECTED BY THIS PROJECT:

Marque el sistema estructural o componente que sera afectado por este proyecto:

- | | | |
|------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Roof
<i>(techo)</i> | <input checked="" type="checkbox"/> Foundation
<i>(cimiento)</i> | <input checked="" type="checkbox"/> Steps or Stairways
<i>(escaleras)</i> |
| <input checked="" type="checkbox"/> Windows
<i>(ventanas)</i> | <input type="checkbox"/> Porches or Porte Cochère
<i>(portal ó parche)</i> | <input checked="" type="checkbox"/> Painting/Finishes
<i>(pintura/acabado)</i> |
| <input checked="" type="checkbox"/> Doors
<i>(puertas)</i> | <input checked="" type="checkbox"/> Siding/Stucco/Façade Work
<i>(entablado de exteriores)</i> | <input checked="" type="checkbox"/> Walls/Structural
<i>(pared ó estructura)</i> |



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 111 NW 1ST STREET, MAILBOX 695
 MIAMI, FL 33128
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V. CHECKLIST OF REQUIRED ATTACHMENTS

NOTE: ALL APPLICATIONS MUST BE ACCOMPANIED BY AT LEAST ONE COLOR PHOTO OF THE BUILDING

PAINTING YOUR BUILDING

- _____ Color photos of each side of the building
- _____ Sample Paint Chips of Desired Colors

NEW FENCING/WALLS/POOL/LANDSCAPING

- _____ Site plan showing exact location(s) of fence, wall, pool or proposed landscaping
- _____ Elevation drawings of fence, including height dimensions
- _____ Color photographs of where fence, pool or landscaping is to go
- _____ Description of landscaping, including type and placement (if applicable)

NEW WINDOWS OR DOORS

- _____ A color photo of each side of the house
- _____ An existing elevation of each side of the house that will have doors or windows replaced
- _____ Elevations showing proposed changes. Be sure to draw the window configurations exactly as they will appear, include all proposed mullions
- _____ Manufacturer's brochure or a catalog picture of the requested window or door and NOA #

NEW ROOF

- _____ Color photos of the front of the building and existing roof
- _____ Manufacturer's brochure of requested roof showing color and material and NOA #

RENOVATIONS/ADDITIONS or NEW CONSTRUCTION

- _____ Color photos of each side of the building
- _____ Site plan
- _____ Landscape plan, including documentation of any proposed tree removal (if applicable)
- _____ Elevations of all affected facades showing Existing Conditions (11"x17" set of plans)
- _____ Elevations of all affected facades with Proposed Modifications or Additions (11"x17" set)
- _____ Floor Plans
- _____ Manufacturer's brochure or catalog pictures of any new or replacement materials being used in project

VI. OWNER ATTESTATION

I certify to the best of my knowledge that all the information provided within this application is correct and accurately portrays the proposed project.

 Signature of Owner (Firma del Dueño) 02/02/2016
 Date (Fecha)

 Signature of Applicant (if other than owner) 2/03/16
 (Firma del Solicitante) Date (Fecha)

CONDITIONAL USE REPORT

Request

Code section 90-41(c) requires a conditional use application to be reviewed for pools associated with hotels.

Conditional Use Criteria

Section 90-23 of the zoning code provides standards of review for Conditional Uses. Conditional Uses are generally compatible with the other land uses permitted in a zoning district but, because of their unique characteristics or potential impacts on the surrounding neighborhood and the Town as a whole, require individual review as to their location, design, configuration, and/or operation for the particular use at the particular location proposed, as well as the imposition of individualized conditions in order to ensure that the use is compatible with the surrounding neighborhoods and appropriate at a particular location.

All proposed Conditional Uses shall meet each of the following standards. The responses to the criteria are in italics below:

- (1) The proposed use shall be consistent with the Comprehensive Plan and the Zoning Code;

The proposed use of the property as a hotel with pools is consistent with the Comprehensive Plan and Zoning Code.

- (2) The establishment, maintenance or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare;

Pool are consistent with other properties within the zoning district and is not expected be a detriment to public health, safety or welfare.

- (3) The proposed use shall be compatible with the community character of the immediate neighborhood. In addition to compatibility there must be congruity between the subject development and neighboring improvements and surroundings including but not limited to form, spacing, heights, setbacks, materials, color, rhythm and pattern of architectural or aesthetic interest or value as well as with any overlays and other development schemes or legislation.

The proposed building characteristics and pools are compatible with the community character of the immediate neighborhood and zoning district. Multifamily buildings are located to the east and north of this site. Municipal facilities are to the south and west and two single family homes are also to the west. Staff is recommending the hours of operation of dawn until dusk for the roof top pools, which is consistent with all other conditional use applications for hotel pools on the west side of Collins Avenue. This limitation is intended to reduce noise to the neighboring buildings.

- (4) Adequate provisions shall be included for safe traffic movement, both vehicular and pedestrian, both internal to the use and in the area which will serve the use;

The pools are on the roof deck and will not generate additional traffic.

- (5) Adequate measures exist including landscaping or other buffering measures or shall be taken to mitigate any adverse effects of noise, light or other potential nuisances; and

The hotel pools are located on the roof top. They are setback further than the code requires in order to provide a greater buffer for the neighboring properties and are not expected to have negative impacts.

(6) The establishment of the Conditional Use shall not impede the development of surrounding properties for uses permitted in the zoning district; and

The other surrounding properties are developed. Therefore, granting the conditional use will not impede the development potential of the neighboring properties.

(7) Any other condition imposed by the Planning and Zoning Board.

This is at the discretion of the Board.

**MIAMI DADE OFFICE OF
HISTORIC PRESERVATION
STAFF REPORT**



miamidade.gov

Regulatory and Economic Resources Department

Office of Historic Preservation

111 NW 1st Street, Mailbox 114 • 12th Floor
Miami, Florida 33128
T 305-375-4958

February 26, 2016

9340 Collins Avenue LLC
3921 Alton Road, Suite 138
Miami Beach, FL 33140

RE: Renovation of Bougainvillea Apartments, Special COA #2016-03-S

Dear Property Owner:

On February 24, 2016, the Miami-Dade County Historic Preservation Board approved the Special Certificate of Appropriateness (COA) application for the renovation and incorporation of Bougainvillea Apartments, located at 9340 Collins Avenue, Surfside, FL, into a new development, provided the following conditions are met:

1. The Property Owner shall, in collaboration with County Historic Preservation Staff, produce a high-quality heritage tourism brochure focused on the history of the Town of Surfside, to be completed and available for distribution prior to the final Certificate of Occupancy of the development.
2. The Property owner shall provide a publically accessible gallery and interpretive exhibit space, either within the 9340 building or at another suitable, publically accessible space within the Town, including Town Hall or the Community Center. Exhibits shall include historical photographs, memorabilia, timelines, and other materials to adequately educate residents and visitors on Surfside's history and development. Property Owner shall collaborate with County Historic Preservation Staff as to the content of the exhibit.
3. If any discrepancy exists between the plans and the elevations or renderings, actual construction shall defer to the plans.
4. Project layout shall provide a minimum of 8 feet, and preferably 10 feet, between the outermost north and south edges of the historic structure and the enclosed forecourts/patios.

The Miami-Dade County Office of Historic Preservation thanks you for your submittal of the required COA application. COA approvals are valid for one year. If the work approved in this COA has not begun by February 24, 2017, contact our office to apply for an extension. Please do not hesitate to contact us with any additional questions.

Sincerely,

Sarah K. Cody

Historic Preservation Planner
Miami-Dade County



Cc: Mr. Matthew A. Barnes, AICP, Akerman LLP
Sarah Sinatra Gould, Town Planner, Surfside



OFFICE OF HISTORIC AND ARCHAEOLOGICAL RESOURCES
111 NW 1ST STREET, MAILBOX 695
MIAMI, FL 33128
(305) 375-4958

APPLICATION FOR A CERTIFICATE OF APPROPRIATENESS (COA)

For Historically Designated Properties, or Properties within Historic Districts

I. PROPERTY INFORMATION INFORMACIÓN DE LA PROPIEDAD

ADDRESS (Dirección) 9340 Collins Avenue CITY (Ciudad) Surfside ZIP (Zip) 33154

SITE DESIGNATION NAME (if applicable) (Nombre del Edificio) Bougainvillea Apartments

DISTRICT NAME (if applicable) (Nombre del Distrito) not applicable

FOLIO NUMBER (Numero de Folio) 14-2235-006-0260



II. APPLICANT INFORMATION INFORMACIÓN DEL SOLICITANTE

NAME OF OWNER (Nombre de Dueño) 9340 Collins Ave, LLC PHONE (teléfono) 786-802-7980

ADDRESS (Dirección) 3921 Alton Road, Suite 138 Miami Beach, FL 33140 EMAIL (correo electrónico) mboymelgreen@gmail.com

NAME OF APPLICANT (if other than owner) (Nombre del Solicitante) Akerman, LLP - Neisen Kasdin

CONTACT PHONE (Teléfono) 305-374-5600 EMAIL neisen.kasdin@akerman.com

APPLICANT IS: (Solicitante es:) OWNER (Dueño) RENTER/LEASEE (Inquilino) CONTRACTOR (Contratista) LEGAL AGENT (Representante legal)

FOR OFFICE USE ONLY		
Solamente por uso de oficina		
APPLICATION# <u>2016-03-S</u>	DATE RECEIVED <u>2/18/16</u>	STAFF INITIALS <u>SKC</u>
<input type="checkbox"/> APPROVED	APPROVAL DATE <u>2/24/16</u>	
<input type="checkbox"/> DENIED	BOARD DATE <u>2/24/16</u>	
<input checked="" type="checkbox"/> APPROVED WITH CONDITIONS (see attached conditions sheet)		



III. PROJECT TYPE TIPO DE PROYECTO

PLEASE CHECK ALL THAT APPLY:
(Por favor marque todos que aplican)

- New Construction** *(construcción nueva)*
- Restoration/Rehabilitation** *(restauración)*
- Relocation/Moving a Structure** *(traslado)*
- Demolition** *(demolición)*
- Excavation/
Ground Disturbing Activities** *(excavación)*
- Paint** *(pintura)*
- Repairing Existing** *(reparación)*
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- Interior Work Only**
(Únicamente el interior)

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Por favor describa el proyecto en detalle. Adjuntar pagina adicional si es necesario. Por favor describir el proyecto en ingles.

See enclosed cover letter.

CHECK ANY STRUCTURAL SYSTEMS OR ELEMENTS THAT WILL BE AFFECTED BY THIS PROJECT:

Marque el sistema estructural o componente que sera afectado por este proyecto:

- Roof** *(techo)*
- Foundation** *(cimiento)*
- Steps or Stairways** *(escaleras)*
- Windows** *(ventanas)*
- Porches or Porte Cochère** *(portal ó porche)*
- Painting/Finishes** *(pintura/acabado)*
- Doors** *(puertas)*
- Siding/Stucco/Façade Work** *(entablado de exteriores)*
- Walls/Structural** *(pared ó estructura)*



V. CHECKLIST OF REQUIRED ATTACHMENTS

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VI. OWNER ATTESTATION

I certify to the best of my knowledge that all the information provided within this application is correct and accurately portrays the proposed project.



Signature of Owner (Firma del Dueño)

02/02/2016

Date (Fecha)

Signature of Applicant (if other than owner)
(Firma del Solicitante)

2/03/16

Date (Fecha)

TRAFFIC STATEMENT

**SEE TRAFFIC STUDY PROVIDED BY DAVID PLUMMER &
ASSOCIATES**

**TRAFFIC STUDY
BACKUP IS AVAILABLE IN
THE TOWN CLERK'S
OFFICE .**

THANK YOU.

SITE PLAN PACKAGE

**AVAILABLE IN THE TOWN
CLERK'S OFFICE**



MEMORANDUM

ITEM NO. 3A

To: Honorable Mayor, Vice-Mayor and Members of the Town Commission
From: Guillermo Olmedillo, Town Manager
Date: February 26, 2019
Subject: Channel 93 Closed Captioning System

In order to meet the accessibility requirements mandated by the Americans with Disabilities Act, and the FCC mandates for closed captioning of online video, the Town must invest in a closed captioning solution for both Channel 93 and the online video stream for all Town meetings. Adding a closed captioning solution will allow the Town to become compliant.

Audio Visual Innovations (AVI-SPL), the Town's current vendor for the Commission Chambers audio-visual systems, will provided the required device and configuration. Utilizing AVI-SPL ensures seamless compatibility with the existing broadcasting system.

Three quotes were obtained for this service. AVI-SPL was deemed the lowest responsible and responsive proposal and the most advantageous to the Town as there are no annual fees, subscriptions, or renewals.

As this is an unbudgeted item, the \$12,440 one-time charge will be covered under the current fiscal year's contingency line item.

The Town Administration is seeking Town Commission direction on this item.

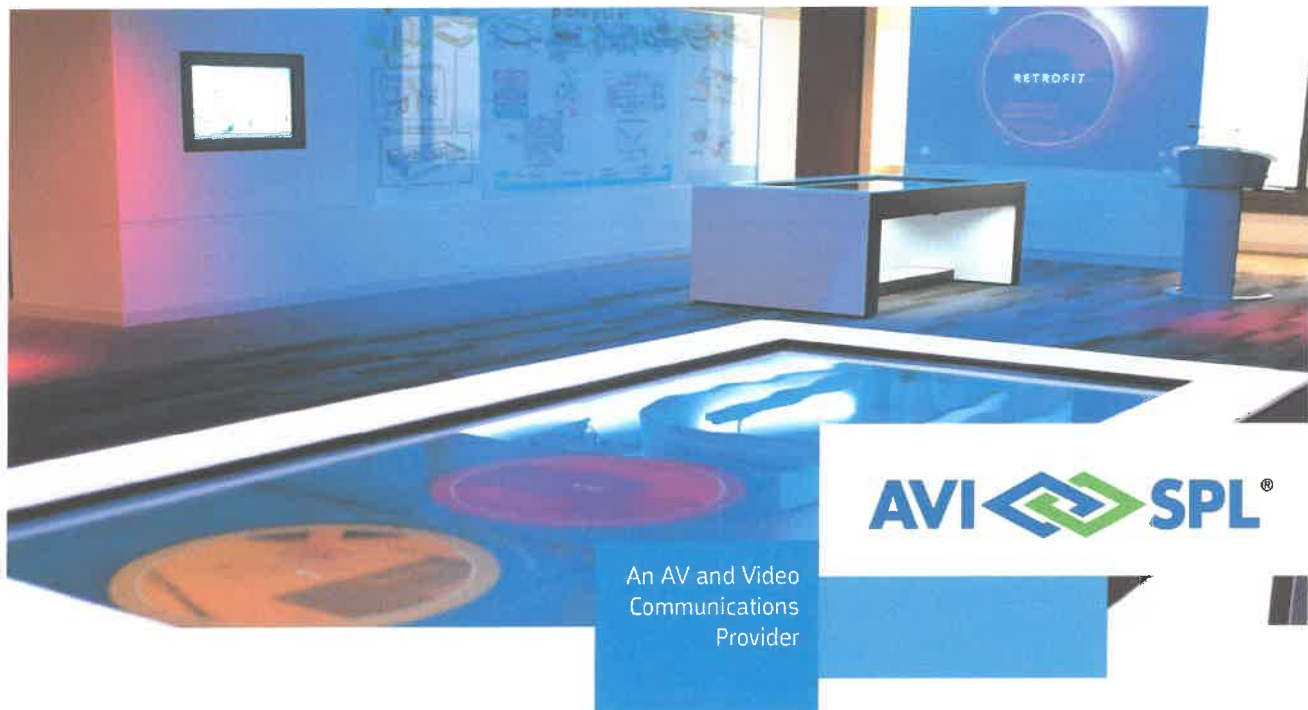
Reviewed by *DET*

Prepared by *EW*

AudioVisual Solutions Proposal For

TOWN OF SURFSIDE

Close Captioning



Audio Visual Innovations, Inc. - A wholly owned subsidiary of AVI-SPL, Inc.

772 South Military Trail
Deerfield Beach, FL 33442
(954) 938-9382
Fax: (954) 776-4772
www.avispl.com

Prepared By: Debra Blanco
Debra.Blanco@avispl.com

Proposal No: 302282-1



Executive Summary

AVI-SPL is pleased to present you with the following audiovisual solutions proposal for your project.

At AVI-SPL, we are experts in applying the industry's most advanced audiovisual technologies. We translate this expertise into value for our clients through highly-customized systems integration solutions, equipment sales and services. We are proud to serve as the industry's largest global integrator, delivering comprehensive AV technology, presentation and collaboration solutions worldwide.

With nearly 40 offices nationwide, as well as international locations in Canada, United Kingdom and Dubai, AVI-SPL's Systems Integration Division is the largest and best trained in the industry, providing custom design and installation services for meeting rooms, boardrooms and collaboration spaces, network operation centers, government commission chambers, computer classrooms and distance learning facilities. We also provide incredible audiovisual enhancements to venues such as sports stadiums, casinos, theme parks, museums and houses of worship. Our portfolio also includes more than 40 professional sports stadiums and arena installations.

As part of our many levels of differentiation when compared to our competitors, large and small, is AVI-SPL's commitment to the professional development of our engineering technical staff. We accomplish this by holding our staff accountable to the highest quality solutions delivery standards that we reinforce through ongoing and consistent training.

In addition, we have established an open feedback loop with our customers and partners to continuously assess and identify the best technology and solutions.

We have applied this experience and expertise to build this custom proposal. This proposal document is based on our understanding of your specific needs and business objectives and includes a summary of the solution elements, installation requirements, investment summary and terms and conditions.

We would like to thank you for considering AVI-SPL for your project.



The AVI-SPL Process

AVI-SPL has developed a comprehensive integration process designed to meet our customer expectations. Our process begins with system design and carries through to post-installation training to ensure technology adoption. Our goal at AVI-SPL is to work with you every step of the way to ensure that your project is completed within scope, on schedule and within budget.

Proposal and Systems Design

AVI-SPL will conduct an initial detailed consultation and needs analysis with key customer stakeholders to gain a thorough understanding of needs, objectives and success criteria. This information is used to develop a proposed system solution for acceptance. This step provides Account Management and applicable Engineering Design support the ability to design a technically sound and functional solution where we will:

- Verify initial design concepts through examination of the desired capabilities, architectural and environmental considerations.
- Define scope of work criteria.
- Select the appropriate equipment, hardware and software to allow system design performance.
- Provide any value engineering and performance enhancement recommendations.

The result of the proposal and systems design phase is a system designed specifically to meet the requirements that are unique to your application.

AVI-SPL Project Delivery Process Flow

Upon award, the project is turned over to the AVI-SPL Project Integration Team. This phase is critical in ensuring a seamless integration of the specified system. During project delivery, the AVI-SPL System Integration (SIG) Operations Workflow contains distinct process steps start to finish upon award as noted below.

During project delivery AVI-SPL will (as applicable to the specific project):

- Complete internal and external kick off requirements to review:
 - Scope of Work and Design
 - Contract Parameters, including Terms and Conditions
 - Stakeholder Reporting and Communication
 - Schedule (including all WBS project tasks and timelines)
 - Submittal requirements
 - Procurement Plan
 - Risk Identifiers
 - Site Safety and Security
 - Change Management Procedures
 - Acceptance Test Plan Parameters
- Create all final construction/field coordination requirements including:
 - Floor, reflected ceiling, riser diagrams and furniture requirements.
 - AV Design drawings including audio/video/control signal flow and equipment rack elevations.
- Provide a user interface design requiring client sign off; this is a critical project success factor without it additional charges may apply.
- Create the source code for the system based on the design as agreed upon.
- Test and Commission AV systems in AVI-SPL shop, based upon acceptance test plan parameters.

Audio Visual Innovations Inc. and Signal Perfection Ltd are wholly owned subsidiaries of AVI-SPL, Inc. This Entire Document and all information (including drawings, specifications and designs) presented by any subsidiary are the property of AVI-SPL Inc. Proprietary information provided to potential customers, clients or agents is for the sole purpose of demonstrating solutions delivery capabilities and shall be held in confidence. These Materials may not be copied, distributed or disclosed in any way without the sole written permission of an authorized representative of AVI-SPL. © Copyright AVI-SPL. All Rights Reserved



- Complete all field installation of cable and equipment, based on project scope and schedule requirements.
- Test and Commission the completed system in the field, based upon acceptance test plan parameters.
- Document and address any punch list items, upon client inspection, following final commissioning.
- Demonstrate full operation of the system to the Customer and train the Customer support staff on the proper use, care and basic troubleshooting of the systems provided.
- Provide final close out (as-built) documentation including:
 - As-Built Drawings
 - Final Acceptance Test Plan Document
 - Programming Source Code
 - Project Serial Numbers and Equipment information
- Acquire the applicable sign off on system for final invoicing and start of the applicable service term.

During project delivery the Customer will:

- Adhere to any client required tasks/milestones as noted in the agreed to project schedule.
- Coordinate with AVI-SPL regarding any network requirements and information.
- Provide any and all the Customer logos and specific color requirements for the control system user interface.
- Sign-off on the user interface design.
- Upon completion of the system installation and testing, inspect the system and provide conditional and/or final acceptance of the system, based upon the agreed upon scope of work.
- Provide final sign off of the system upon completion.

Project Coordination and Site Installation:

AVI-SPL will designate a Project Manager, who will be the main contact for directing and managing all project coordination with all project stakeholders; both externally and internal to the AVI-SPL project team.

The AVI-SPL Project Manager is responsible for attending project calls/ meetings for the project duration and consistent communication. AVI-SPL is committed to keeping you informed from the beginning to the end of your project. Initial communication will include contact information and organization of the AVI-SPL team that will be working with you. Shortly thereafter, you will begin receiving project status reports from the technical project team member responsible for routine contact throughout the entire project.

The onsite installation effort is coordinated by the Project Manager and Lead Installer. The Lead Installer will be on site directing the installation teams. Prior to delivery and installation of pre-assembled systems, AVI-SPL will field verify conformance of installed cabling and other conditions necessary to assure efficient integration of systems and devices. The Project Manager will determine the correct resources required for the specific installation tasks. In cases where AVI-SPL will utilize vetted and approved subcontractors on the project, the Project Manager and Lead Install provides proper supervision to ensure policies and procedures are being adhered to.

All installation work is thoroughly checked prior to 'turn on'. Errors or problems are corrected as detected and all equipment is adjusted for optimal performance in accord with the project specifications. By adhering to strict engineering policies and standards, the final punch list for projects of this type is typically limited to just a few items.

- Adherence to our quality assurance program.
- Installation of fully tested and "burned in" electronic hardware.
- Termination into fully tested and verified cabling and far end connections.

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- Correcting site specific problems as they are detected.

The Customer shall provide an environment that is 'clean and ready' to receive the equipment and services described herein. The environment shall be secure and free of dust, debris and conditions that might prove detrimental to the equipment provided or personnel on site.

Customer required or provided items (Owner Furnished Equipment - "OFE") and client required scope are detailed in this proposal. Any charges for return trips required of AVI-SPL based on insufficient or incomplete client milestones/deliverables will be the responsibility of the Customer.

The Customer must provide an internal IT contact to assist with any network coordination where required.

Change Management

The AVI-SPL change management process provides a mechanism for changes to the agreed upon scope of work of the project. Change requests can be initiated by authorized client requestors to the Project Manager of record at any time. Unless otherwise indicated, the AVI-SPL Change Management Process includes the following stages:

- Client requests a specific change
- AVI-SPL reviews change request compared to approved Scope of Work for potential impact of:
 - Budget
 - Schedule / Time
 - Programming / Function
- AVI-SPL provides written change order response / proposal
- Client executes approval of proposed change order
 - A formal change to contract / purchase order (if applicable) required.
- AVI-SPL proceeds with applicable performance requirements of change order (equipment order, resource time and appropriate scheduling)

All change requests must be made in writing or discussed with the Project Manager of record by the Customer (or client representative with authority to approve changes of agreed upon scope of work) for review and impact considerations. Written authorization to proceed, which may include formal changes to the contract or purchase order, must be provided to AVI-SPL prior to the release of any resources, time or equipment acquisition for a requested change order.

Project Managers may also leverage the change management process to notify the Customer of necessary change in system components or design if required.

Training, System Turnover and Project Completion

An integral part of the delivered system is user training. AVI-SPL is committed to providing you with clear and concise instructions on the use of each system. Training and associated documentation will provide operational and maintenance personnel with information to support the daily use of the system. This training will consist of demonstration, instruction and hands-on experience with each system.

System Turnover will occur when all user training has been completed and the users have obtained beneficial use of the systems. At this point, AVI-SPL will request client sign off on the provided systems. Conditional Project Sign-Off will apply if outstanding punch list items exist. AVI-SPL will set forth a plan to address these items accordingly.

Project Completion will occur when all outstanding punch list items are complete and all As-Built documentation has been provided to the Customer in the decided upon delivery method including; Project drawings, functional system diagrams, applicable equipment lists, back up control system and DSP code. At this time, Final Project Sign-Off will be requested.

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Global Service Coverage

AVI-SPL is uniquely qualified to offer a single source of equipment, system provisioning and support services for customer facilities globally.

The scope of today's technology solutions can make support a daunting task for any organization to respond to. AVI-SPL has established an infrastructure of support resources that is available to provide a timely response to trouble calls, no matter where a problem occurs.

Customer CARE Services

AVI-SPL's Customer Care Service Programs help Customers achieve maximum return-on-investment for installed collaboration technology investments. With the industry's largest technical help desk, flexible service levels, global field support, and more than thirty years' experience with over 700 manufacturer technologies – AVI-SPL has a support solution to meet a variety of needs and budgets. AVI-SPL illustrates its commitment to service excellence by delivering its support in accordance with ITIL best practices, managing formal customer satisfaction programs, articulating and measuring performance to defined service objectives, and committing to continuous service improvement.

Customer Care Service Programs offer unlimited access to the AVI-SPL Help Desk. Whether engaging with an end user of the technology or a collaborations systems administrator, the Help Desk personnel are trained to provide the appropriate experience. AVI-SPL understands that support needs vary by technology, location, or even room. Customer Care support options can be tailored to fit these specific needs. The following table summarizes AVI-SPL's primary offers:

Customer Care Support Features	Office Warranty	T&M Only	Preferred	Preferred On-Site	Exclusive On-Site
24x7 Global Help Desk Support	✓	✓	✓	✓	✓
Web Portal Access	✓	✓	✓	✓	✓
Service Level Guarantee	None	None	✓	✓	✓
Onsite Tech Dispatch	✓ Included as required	Billable at non-contract rates	Billable at reduced contract rate	Unlimited	Unlimited
Assigned Service Management	Not Available	Not Available	Not Available	Not Available	✓
Available Terms	90 Days	None	1 or 3 year	1 or 3 year	1 or 3 year
In MFTG Warranty Support	✓	✓	✓	✓	✓
Out of MFTG Warranty Support	Billable	Billable	Billable	Billable	Billable
Consumables Replacement	Billable	Billable	Billable	Billable	Billable

Table 1: Advanced parts replacement and warranty repair subject to manufacturer's policies and programs



90-Day Office Warranty

All projects performed by AVI-SPL are provided a standard 90-day warranty on all workmanship from date of project completion. 90-Day Office Warranties cover any defects in the installation or craftsmanship portion of a professional audio visual (ProAV) integration project. Details of 90-Day Office Warranties include:

- * **Warranty Parts Repair/Replacement:** Some equipment may be repairable or replaced under the manufacturer's Warranty policy. The local AVI-SPL office responsible for the project will assist the customer to arrange return of the defective equipment to the manufacturer for service/replacement. Components and materials carry the manufacturer's warranty
- * **On-site Service/Response:** An AVI-SPL service technician will be scheduled to be dispatched from the local AVI-SPL office to the Customer location once a problem has been reported to the AVI-SPL Help Desk or to the local AVI-SPL office responsible for the project.
- * **On-site & Remote (phone) Support** is covered by the local AVI-SPL office during normal business Hrs. (M-F, 8A-5P, excluding holidays)

Time & Materials Only

Upon the expiration of the 90-Day Office Warranty, remote technical phone support services and web portal access are still available but do not include a service level guarantee. Any required onsite technical dispatch will be billed at standard non-contract time and materials rates. Out of manufacturer warranty support and consumables replacement are subject to additional billing.

Customer CARE Preferred

Provides remote technical phone support services, facilitation of manufacturer repair or replacement programs, and access to manufacturer published software updates and upgrades for covered assets. Also includes access to an online portal for incident reporting and annual business reviews. Remote technical phone support services are available 24x7x5

Customer CARE Preferred Onsite

In addition to all items covered in Preferred, also includes unlimited Onsite Field Technician dispatch services available Monday through Friday from 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

Customer CARE Exclusive Onsite

In addition to all items covered in Preferred Onsite, Exclusive On-site provides advanced support services for all covered assets including assigned Customer Service Manager, direct access to Tier II phone support services, proactive version control, configuration change management support, equipment re-location support, advanced account reporting, trend analysis, quarterly account reviews and up to two (2) hours of remote device administrator training for covered assets. **Requires all covered assets be covered at as part of the Customer Care Exclusive program.**



Optional Services

Preventative Maintenance Visits

Preventative Maintenance Visits are an optional add-on service. Visits offer the comfort of knowing installed technology is professionally maintained to ensure equipment runs as smoothly and effectively as when it was first installed. Preventative Maintenance Visits include onsite field technicians to perform regular testing, cleaning and configuration validation based on a best practice preventative care regiment keeping systems in optimal operating condition. Visits can be scheduled on a Quarterly, Bi-Annual, or Annual basis with scheduling flexibility on a room-by-room basis. All preventative maintenance visits are coordinated with local contacts to ensure maintenance activity does not interfere with scheduled use of the space. Each visit includes a standard preventative maintenance checklist, documentation of completion and recommendations where field technicians observe opportunity to enhance reliability, features, security or ensure configuration standards compliance.

Third Party Service Management

Third Party Management Services are an optional add-on service. This service provides consolidated remote technical phone support services, third-party incident management and ticketing services for covered assets. Third party contract information and / or Letter of Agency are required to enable AVI-SPL to act on Customer’s behalf.

Support Engagement

To ensure your need for assistance is resolved as quickly as possible, we follow a process that tracks calls and guides them through steps that lead to a successful resolution. Below is our three-tier process:

Tier 1 Help Desk			
<ul style="list-style-type: none"> * Log call & identify coverage level * Check equipment for status/errors * Perform diagnostics * Adjust settings as required * Escalate to Tier 2 if required 	<th colspan="2">Tier 2 Help Desk</th>	Tier 2 Help Desk	
	<ul style="list-style-type: none"> * Perform root cause diagnostics * Attempt remote repair * Order replacement components (if applicable) * Schedule parts delivery *Escalate to Tier 3 if required 	<th>Tier 3 Help Desk</th>	Tier 3 Help Desk
		<ul style="list-style-type: none"> * Escalate to manufacturer * Work with manufacturer * Implement fix * Close case 	

AVI-SPL will provide an Average Speed of Answer (ASA) of 60 seconds for support calls and will respond to email or web portal-originated service requests within four (4) hours Monday through Friday, 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

When applicable, AVI-SPL will provide a two business day onsite response following the Help Desk’s determination that a dispatch is required for incident remediation. All onsite activity will be scheduled Monday through Friday, 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.



Time & Material Rate Sheet

Service	Day (Type)	Rate	Hourly Minimum	Travel & Expenses
Remote Support	Monday - Friday 8am - 5pm local time	\$150.00 per incident	NA	NA
Onsite Support: Normal Business Hours (non-holiday)	Monday - Friday 8am - 5pm local time	\$120.00/hr.	2 hours	Not included
Onsite Support: Saturday / Sunday (non-holiday)	Saturday or Sunday: 9am - 5pm local time	\$180.00/hr.	2 hours	Not Included
Onsite Support: Holiday	AVI-SPL recognized Holiday	\$240.00/hr.	4 hours	Not Included



Investment Summary

Prepared For: JOSE FELIZ TOWN OF SURFSIDE	Prepared By: Debra Blanco
	Date Prepared: 02/13/2019
	Proposal #: 302282-1
	Valid Until: 04/15/2019

Total Equipment Cost **\$9,565.48**

Includes cable, connectors, hardware, switches, relays, terminal blocks, panels, etc., to ensure a complete and operational system

Professional Integration Services **\$2,560.00**

Includes: Engineering, project management, CAD, on-site installation and wiring, coordination and supervision, testing, checkout, owner training, etc. performed on the Owner's premises. Also includes all fabrication, modification, assembly, rack wiring, programming, warranties, etc., some performed at AVI-SPL

Direct Costs **\$0.00**

Includes: Non equipment or labor costs such as travel expenses, per diem, lift and vehicle rentals.

General & Administrative **\$314.52**

Includes all G & A expenses: bonds, vehicle mileage, shipping & insurance

Maintenance Services **\$0.00**

Includes room maintenance services and/or customer care hardware and software maintenance services as described in "Room Summary".

Subtotal	\$12,440.00
Tax	\$0.00
Total	\$12,440.00

*** any and all applicable taxes will be included upon invoicing**

Purchase orders should be addressed to Audio Visual Innovations, Inc.

Signed _____

Printed _____

Date _____

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Room Summary

Prepared For:	JOSE FELIZ
	TOWN OF SURFSIDE

Prepared By:	Debra Blanco
Date Prepared:	02/13/2019
Proposal #:	302282-1
Room Name:	First Room
Valid Until:	04/15/2019

Equipment List

Mfg	Model	Description	Qty	Unit Price	Extended Price
EEG ENTERPRISES, INC.	EEGHD492	ENCODER/DECODER VII, HDTV SMART 1 YEAR SUPPORT& 2 YEAR HARDWARE WARRANTY INCLUDED	1	\$9,090.00	\$9,090.00
Total					\$9,090.00

Room Maintenance Services

	Price
90 Day - Warranty	\$0.00
Equipment Total	\$9,090.00
Installation Materials	\$475.48
Professional Services	\$2,560.00
Direct Costs	\$0.00
General & Administrative	\$314.52
Maintenance Services	\$0.00
Subtotal	\$12,440.00
Tax	\$0.00
Total	\$12,440.00

Purchase orders should be addressed to Audio Visual Innovations, Inc.

Integration Inclusions & Exclusions

Inclusions

The following items are INCLUDED in this proposal unless specifically noted otherwise within this proposal document or scope of work statement:

- All equipment, wire and accessories required for a fully functional audio/visual system per the agreed upon scope of work.
- Non-union labor associated with audio/visual system engineering, installation, programming and testing.
- Documentation package including complete as-built AV system diagrams and manufacturer's operation manuals.
- Coordination and cooperation with the construction team in regard to installing the system.
- User demonstration of full AV system operation for final sign-off.

Any additional trips, labor or materials due to failure of the other work forces to have the audiovisual system rough-in work completed as anticipated and previously confirmed, will be added to the project billing as required.

Where applicable, the owner's architect will provide AVI-SPL's engineering department with all required architectural floor, reflected ceiling, building elevation, and section plans in AutoCAD® format at no charge to AVI-SPL.

Exclusions

The following items are EXCLUDED from this proposal unless specifically identified otherwise within this proposal document or scope of work statement.

- All conduits, high voltage wiring panels, breakers, relays, boxes, receptacles, etc. Any related electrical work including but not limited to 110VAC, conduit, core drilling, raceway and boxes.
- Voice/data cabling, IE analogue phone lines, ISDN lines, network ports, etc.
- Network connectivity, routing, switching and port configuration necessary to support audiovisual equipment.
- Concrete saw cutting and/or core drilling.
- Fire wall, ceiling, roof and floor penetration, patching, removal or fire stopping.
- Necessary sheet rock replacement, ceiling tile, T-bar replacement and/or wall/ceiling repair.
- Any and all millwork (moldings, trim, etc.). All millwork or modifications to project millwork/furniture to accommodate the AV equipment is to be provided by others.
- Painting, patching or finishing of architectural surfaces.
- Permits
- Engineered (P.E.) seals and/or stamped structural/system details.
- HVAC and plumbing relocation.
- Rough-in, bracing, framing or finish trim carpentry for installation.
- Cutting, structural welding, or reinforcement of structural steel members required for support of assemblies, if required.
- Owner furnished equipment or equipment furnished by others that is integrated into the systems (as described above) is assumed to be current, industry acceptable and in good working order. If it is determined that this equipment is faulty upon installation, additional project charges may be incurred.
- Warranty or Customer Care service coverage for Owner furnished equipment or equipment furnished by others.
- Additional or specific manufacturer's "User Adoption" training.
- Additional costs for union labor.

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RESOLUTION NO. 19-_____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE GENERAL TERMS AND CONDITIONS, CUSTOMER CARE SERVICE AGREEMENT, SOFTWARE LICENSE AGREEMENT AND ADDENDUM (COLLECTIVELY, AGREEMENT) WITH AUDIO VISUAL INNOVATIONS, INC./SIGNAL PERFECTION, LTD. FOR A CLOSE CAPTIONING SYSTEM FOR THE TOWN'S PUBLIC BROADCASTING CHANNEL; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AUTHORIZING EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") desires to comply with the American with Disabilities Act ("ADA") and applicable regulations by providing for a close captioning system ("System") to accommodate and service the needs of audio impaired users of the Town's public broadcasting channel by engaging Audio Visual Innovations, Inc./Signal Perfection, Ltd. ("AVI-SPL"); and

WHEREAS, the Town solicited three quotes from vendors for the System, and finds that AVI-SPL provided the lowest responsible and responsive proposal and most advantageous to the Town; and

WHEREAS, Company will provide the equipment and professional integration services for the installation and implementation of the System; and

WHEREAS, AVI-SPL has agreed to provide the deliverables and services for the System, and the parties desire to enter into the agreements attached hereto as: (i) General Terms and Conditions attached hereto as Exhibit "A"; (ii) Customer Care Service Agreement attached hereto as Exhibit "B"; (iii) Software License Agreement attached hereto as Exhibit "C"; and (iv) Addendum to Agreement attached hereto as Exhibit "D" (collectively, the "Agreement"); and

WHEREAS, the Town desires to enter into the Agreement, substantially in the form attached hereto as Exhibits "A", "B", "C" and "D" and finds that the Agreement is in the best interest and welfare of the Town.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

Section 1. Recitals. That the above and foregoing recitals are true and correct and are hereby incorporated by reference.

Section 2. Approval and Authorization. The Agreement, substantially in the form attached hereto as Exhibits "A", "B", "C" and "D", is approved, subject to such changes as may be

acceptable to the Town Manager and the Town Attorney as to form and legality. The Town Commission authorizes the Town Manager to execute the Agreement on behalf of the Town.

Section 3. Implementation. The Town Manager is authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

Section 4. Authorization to Expend Funds. The Town Manager is authorized to expend the amount of \$12,440.00 for the System.

Section 5. Effective Date. This Resolution will become effective upon adoption.

PASSED AND ADOPTED this _____ day of February, 2019.

Motion by _____.

Second by _____.

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Daniel Gielchinsky	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

ATTEST:

Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney



General Terms and Conditions

1. Applicability of Terms

These General Terms and Conditions, including any addenda attached hereto, together with the Customer Care Service Agreement ("Service Agreement") and Software License Agreement ("Software License") attached hereto and incorporated herein by this reference (collectively, the "Terms and Conditions") are the only terms which govern the sale of the equipment and any related software ("Products") and services ("Services") contained in the accompanying audiovisual solutions proposal (the "Proposal") by Audio Visual Innovations, Inc./Signal Perfection, Ltd. ("Company") to Buyer.

The Terms and Conditions and the Proposal (collectively, the "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of a conflict between these General Terms and Conditions and the Service Agreement, the Service Agreement shall prevail. In the event of a conflict between these General Terms and Conditions and an addendum attached hereto, the addendum shall prevail. In the event of a conflict between these General Terms and Conditions and any of the other documents constituting the Agreement, these General Terms and Conditions shall prevail unless expressly provided otherwise herein. Notwithstanding anything herein to the contrary, if a master services agreement signed by both parties is in effect covering the sale of the Products and Services covered hereby, the terms and conditions of said agreement shall prevail to the extent they are inconsistent with these Terms and Conditions.

2. Acceptance of Terms

This Agreement shall not be binding upon the Company until signed by the Buyer and accepted in writing by a duly authorized representative of the Company. Any modification, addition to, or waiver of any of this Agreement shall not be effective unless in writing and signed by an authorized representative of the Company, and any different or conflicting terms appearing in Buyer's purchase order or other documents are expressly rejected by Company. Buyer's receipt of the Products/Services shall constitute assent to this Agreement. No relaxation, forbearance or indulgence by the Company in enforcing any of the terms and conditions of this Agreement or the granting of any time to any other party shall prejudice or restrict the rights and powers of the Company hereunder, nor shall waiver of any breach hereof operate as a waiver of any subsequent or continuing breach hereof.

3. Delivery

The Company will use its best efforts to deliver the Products in accordance with the Buyer requested delivery date subject to receipt of all necessary information from Buyer. Shipping dates are approximate only, and the Company shall not be liable for delays or for failure to manufacture due to causes beyond its reasonable control or due to compliance with any government regulations.

Any delay shall extend delivery dates to the extent caused thereby. Buyer shall reimburse the Company its additional expenses resulting from any Buyer-caused delay. When delivery of the Products is delayed at the request of the Buyer and the Products have already been shipped to the Company, the Company will place the Products in storage and the Company will immediately invoice the Buyer 70% of the price, which will be promptly paid. The Buyer shall have no right to cancel or rescind this Agreement by reason of an excusable delay as defined herein, and shall accept

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such delayed performance by the Company. The Buyer's receipt of the Products shall constitute a waiver of any claims for delay.

4. Payment Terms

Unless otherwise specified herein, the total contract price shall be paid as follows: 50% down payment at time of order, 40% upon delivery at Company; 10% upon completion or first beneficial use, payable net 30 from receipt of invoice. Unless otherwise specified, Products are sold F.O.B. origin-Buyer to pay all shipping charges. If this Proposal covers Products or Services for more than one system, room, suite, or location, for purposes of payment in accordance with payment terms stated on the face hereof each room, suite, or location shall be treated as if the subject of a separate sale and payment made accordingly. Company shall not be liable for failures of or delays in manufacture, delivery or installation resulting from any cause or causes beyond its reasonable control.

5. Buyer In Arrears Or Default

In the event Buyer is in arrears with any payment whatsoever due from it to the Company at any time whatever, whether in respect of the purchase price or any other amount due from the Buyer to the Company under the terms of this Agreement, the amount in arrears shall bear interest at three (3) percent above the prime rate prevailing at the principal New York branch of Chase Manhattan Bank as from the date each amount falls due, pending actual payment thereof in full, without prejudice to any relief and remedy available to the Company. In the event of Buyer's default, the Company may, without notice, peaceably enter any premises in which the Products are located and remove, hold and sell them in accordance with applicable law, to satisfy in whole or in part Buyer's obligations.

6. Title, Risk of Loss

Title to the Products shall pass to Buyer upon delivery, subject to the Software License (if applicable) ~~and a purchase money security interest retained by the Company in the Products sold and the proceeds thereof until payment of all amounts then due to the Company.~~ The Company shall be entitled to remove the Products from the Buyer's premises if all payments are not made when due. ~~Buyer agrees to cooperate with Company in the execution and filing of financing statements under the Uniform Commercial Code or other documents as the Company requests to protect its security interest.~~ Risk of loss or damage to the Products or any part thereof shall pass to the Buyer upon delivery.

7. Installation & Site Preparation

Installation (field assembly, interconnection, equipment calibration and checkout) is to be performed by the Company's trained technical employees. The Company shall be entitled to employ sub-contractors and/or agents to assist in or carry out, in whole or in part, the installation. In the event installation by Company employees is prevented by trade unions, the Buyer shall arrange with the trade unions at its own expense to complete installation. The Company is thereafter liable only for engineering supervision of installation.

The Company shall coordinate and cooperate with other trades to facilitate satisfactory work progress. If the Company's work in progress is impeded by other trades and/or contractors (excluding the Company's own subcontractors) or by scheduling delays due to the Buyer, time delays in the final installation as well as additional charges including labor, travel and reasonable expenses may result.



The Buyer shall be responsible for preparing, at its own expense, the installation site in accordance with the Company's instructions, including the requirements specified in the Proposal. In no event shall the Company be responsible for any high voltage electrical work, ceiling modifications, structural modifications, or mechanical systems modifications. Unless otherwise specified, Buyer shall provide the Company with source code for any non-Company programmed remote control system required to be modified under the terms of this Agreement.

8. Installation & Site Preparation (Continued)

The Buyer shall provide the Company with reasonable access to the installation site before delivery, for purposes of determining site readiness for installation, and shall designate an individual on Buyer's staff to serve as a contact person for all site preparation and installation issues. Buyer shall provide the Company with free access to the installation site for the purpose of preparation for installation. The Buyer shall indemnify the Company against any loss, damage or claim arising out of the condition of the storage and installation premises.

Buyer shall obtain at its expense and keep effective all permissions, licenses, and permits whenever required in connection with the installation and/or use of the Products and the premises where the Products shall be situated.

9a. Warranty

In the event the Products are in any way misused or altered or repaired by someone other than a representative of the Company, which within the sole judgment of the Company results in an adverse effect, including effects upon performance or reliability of the Products, the warranty and the Company's obligations hereunder shall terminate without notice to Buyer.

9b. Warranty Service

Unless Buyer has purchased a Service Program (as defined in the Customer Care Service Agreement) providing for a longer period of warranty coverage, each installation/system carries a standard ninety-day warranty covering defects in the installation portion of the sale. Components and materials carry the manufacturer's warranty as described below, which may be greater than the ninety-day period listed above. The Company will attempt to reply to warranty service requests received from Buyer prior to 1:00 p.m. within forty-eight hours. In the event service is provided outside of normal working hours, Buyer will be charged for any overtime hours in accordance with the Company's then- standard policy on overtime rates. Normal working hours are 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

10. Limitations Of Warranty – Products Of Others

Unless otherwise specified, no warranty whatsoever is provided by the Company hereunder as to Products manufactured by anyone other than the Company, including but not limited to, cables, lamps, batteries, glassware, and evacuated devices (including valve, cathode ray tubes, and other special electron tubes).

The Company's sole obligation with respect to any material or part identified in the Proposal, literature, or specifications furnished to the Buyer as manufactured or supplied by others, shall be to pass on to the Buyer the applicable manufacturer's warranties, if any.

11. Buyer Responsibilities

Buyer or any user of the Products shall (i) notify the Company as soon as any unusual operating peculiarity appears, and (ii) operate the Products in a safe and competent manner in strict compliance with established safety operating procedures and applicable laws and government regulations. In the event the Buyer or any user of the Products fails to comply with any of the above-stated conditions, the Company's warranties and its obligations hereunder shall terminate without notice to Buyer.

12. Limitation Of Liability

The foregoing warranties are exclusive and in lieu of all other warranties, whether written or oral, implied or statutory. No implied warranty of merchantability or fitness for a particular purpose shall apply; in no event will the Company be liable for any damages, other than the allocable charges paid by the Buyer for the Products, whether direct, indirect, special, incidental or consequential, arising from any warranty claims.

13. Taxes

Any and all taxes levied or based on the prices in this Agreement, or the Products/Services being sold hereunder, exclusive of any taxes based on net income, shall be added to the selling prices set forth in the Proposal; otherwise, the Buyer shall provide the Company with a tax exempt certificate acceptable to the taxing authorities.

14. Choice Of Law And Severability

This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of Florida without giving effect to its conflict of law rules. Venue shall be Hillsborough County, Florida. Should any provision of this Agreement be found 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 provision contained herein. In the event of litigation relating to the subject matter of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney fees and costs resulting therefrom.

15. Restocking Fees

In the event Buyer wishes to return any Products based on reasons outside of the Company's control, Buyer agrees to pay any and all restocking fees.

16. General

The Proposal shall be firm for the period shown on the face hereof, subject to withdrawal or change by the Company upon notice at any time prior to acceptance of an order.

SEE APPENDUM ATTACHED HERETO

Buyer Acceptance of General Terms and Conditions

Signed Name

Client

Printed Name

Date

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Customer Care Service Agreement

1. Applicability of this Service Agreement.

This Service Agreement together with the General Terms and Conditions and, if applicable, the Software License set forth the terms and conditions pursuant to which Audio Visual Innovations, Inc./Signal Perfection, Ltd. ("AVI-SPL") will provide Services and related Products to its end user customers ("Customer", "You" or "Your") based upon such Service Programs which Customer has purchased from AVI-SPL.

This Service Agreement applies to the Services being provided under a Service Program.

By submitting a purchase order for Services provided under a Service Program to AVI-SPL, Customer agrees to be bound by this Service Agreement. Unless otherwise agreed in writing by AVI-SPL, no other terms and conditions endorsed upon, delivered with or contained in an end user's purchase order, or in any other similar document, will amend, or vary the provisions of this Service Agreement.

2. Definitions.

In this Service Agreement, the following terms shall have the following meanings. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the General Terms and Conditions.

- 2.1. **"Products"** means equipment and software generally made available in the marketplace.
- 2.2. **"Manufacturer"** means an entity that produces equipment and/or Software.
- 2.3. **"Services"** means the AVI-SPL branded services provided under a relevant Service Program.
- 2.4. **"Service Program"** means those pre-packaged service programs as described in Section 3 of this Service Agreement.
- 2.5. **"Software"** means programs or applications developed, installed or released by the manufacturer or third party integrator to control the function of a device, feature or function.
- 2.6. **"Software Options"** means optional functionality or features of Software that may be selected at the time of purchase or at a later time, and for which AVI-SPL or Manufacturer charges separately.
- 2.7. **"Update"** means Software for which AVI-SPL or the Manufacturer has provided fixes or minor revisions to correct errors or defects in the existing operation of the Software in accordance with the published Product specifications, and which is limited to those updates that AVI-SPL or Manufacturer generally provides to its support Services customers at no charge. Updates do not include Upgrades or Software Options.
- 2.8. **"Upgrade"** means new releases of the Software which contains enhancements improving the functionality or capabilities of the Software, which AVI-SPL or Manufacturer may make available to its support Services customers. Upgrades do not include Software Options.

3. Covered Services.

- **Customer Care Preferred** - provides remote technical phone support services, facilitation of manufacturer repair or replacement programs, and access to manufacturer published software updates and upgrades for covered assets. Also includes access to an online portal for incident reporting and annual business reviews. Remote technical phone support services are available 7x24.
- **Customer Care Preferred Onsite** - provides remote technical phone support services, facilitation of manufacturer repair or replacement programs with onsite Field Technician dispatch, and access to manufacturer published software updates and upgrades for covered assets. Also includes access to an online portal for incident reporting and annual business reviews. Remote technical phone support services are available 7x24. Onsite Field Technician dispatch are available Monday through Friday from 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

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- Customer Care Exclusive Onsite – provides advanced support services for all covered assets including 7x24 remote technical phone support services, assigned Customer Service Manager, direct access to Tier II phone support services, proactive version control, configuration change management support, equipment re-location support, advanced account reporting, trend analysis, quarterly account reviews and up to two (2) hours of remote device administrator training for covered assets. Requires all covered assets be covered as part of the Customer Care Exclusive program. Underlying Maintenance support may vary in Service Level by location. Onsite Field Technician dispatch are available Monday through Friday from 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.
- First Call Consolidation Services – provides consolidated remote technical phone support services, third-party incident management and ticketing services for covered assets. Third party contract information and / or Letter of Agency are required to enable AVI-SPL to act on Customer's behalf.
- Preventative Maintenance - provides scheduled onsite Field Technicians to perform operational health testing of covered assets, routine maintenance tasks such as cleaning, alignment adjustments, log reviews, and remediation of identified problems. Consumables such as filters, bulbs and batteries will be replaced and chargeable at additional fee. Preventative Maintenance visits are scheduled Monday through Friday from 8 AM to 5 PM local standard time excluding AVI-SPL published holidays according to the following schedule based on the number of Preventative Maintenance visits elected:
 - Quantity 4 – Quarterly visits – scheduled in 3 month intervals
 - Quantity 2 – Bi-Annual visits – scheduled in 6 month intervals
 - Quantity 1 – Annual visit – scheduled anytime within the contract term

Unscheduled Preventative Maintenance visits expire 30 days into the next scheduled interval within the contract term. Unscheduled annual visits expire at contract expiration.

4. Services; Orders.

In order to receive Services under a Service Program pursuant to this Service Agreement, you must submit a purchase order or valid credit card to AVI-SPL for a validly quoted Service Program. Purchase orders must refer to AVI-SPL quote identification number. A valid AVI-SPL quote will contain the following information for each covered asset listed on the purchase order: (i) the Service Program you are purchasing; (ii) the model (and serial number for renewals of Service Programs only) of the applicable Products; (iii) the appropriate pricing information; (iv) the site location(s) of covered assets and (v) the Service Period (if applicable). Following order acceptance customer agrees to provide a contact name, contact email address, and telephone number at the location (if applicable).

AVI-SPL will determine the pricing and payment terms associated with any Service Program which you purchase. All orders are subject to acceptance by AVI-SPL, and no obligation, including a purchase order, shall be binding on AVI-SPL unless and until such order is accepted by AVI-SPL, or, if earlier, Services are provided to Customer. Please note that only those Products listed on a valid quotation applicable to your purchase order will be covered by Service Programs under this Service Agreement. Any optional services for a Service Program available to Customers for an additional fee will be invoiced separately with payment terms as specified within such Service Program.

5. Service Period.

The initial period of any Service Program purchased hereunder (the "Initial Service Period"), shall commence on the date AVI-SPL accepts an Order, or such other date as specified on the applicable Order and accepted by AVI-SPL, and shall continue twelve (12) months therefrom, or such other period of time as specified on the applicable Order and accepted by AVI-SPL.

This Service Agreement shall automatically renew for successive periods of equal length and, with the exception of moderate price increases as described herein, under the same terms and conditions as the Initial Service Period ("Renewal Service Period") unless either party gives the other written notice of termination no less than thirty (30) days prior to expiration of the then-current Initial or Renewal Service Period.

Prior to the commencement of any successive renewal period, AVI-SPL reserves the right to increase the price of the applicable Service Program for the duration of the successive renewal term in an amount not to exceed five (5%) percent of the Order price for the then-current Initial or Renewal Service Period. In the event the price increase exceeds five (5%) percent, AVI-SPL shall issue a new quote to Customer for approval prior to the commencement of the successive renewal period.

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6. Service Activation.

For new equipment purchase: Service coverage will begin 30 days from the date of shipment from the manufacturer's warehouse or upon installation, whichever is sooner unless otherwise specified.

For existing equipment coverage: Service coverage will begin immediately upon receipt of an authorized purchase order or payment in full, if required by AVI-SPL. If equipment was not under an AVI-SPL or manufacturer's support contract for an extended period of time, AVI-SPL and / or the manufacturer may require a recertification fee and / or inspection of the equipment prior to AVI-SPL being able to support or being able to receive manufacturer support and replacement parts / software for the equipment. The recertification costs and any repairs required by AVI-SPL to certify a room and / or to meet the manufacturer specifications is the responsibility of the customer and are not covered under the agreement unless specifically noted in the Service Program.

7. Services Availability.

Remote Technical Phone Support Services will be provided on a 7x24x365 basis.

Onsite Field Technician Dispatch Services: Unless otherwise provided in any Service Program, Services will be provided Monday through Friday from 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

8. Software Updates, Upgrades and Options.

For Software covered under a Service Program, you will receive Updates and / or Upgrades as specified in the applicable Service Program description. For the latest Updates and Upgrades available for your Software, if any, please contact the AVI-SPL Help Desk. Updates are provided on a fix or fail basis. That is, to obtain an available Update the customer must call AVI-SPL to report a specific customer product failure (identified by Product serial number) exhibiting a problem, which the Update corrects. AVI-SPL will configure the Update according to the Software record of the registered Product.

9. Replacement Parts.

Replacement parts provided pursuant to a Service Program will be either new parts or parts equivalent in performance to new parts when used with the Product, and are warranted for ninety (90) days from shipment or the remainder of the initial warranty period, whichever is longer. Parts removed from Product for replacement will become the property of AVI-SPL or the Manufacturer, and if replaced by the Customer must be received back to the local AVI-SPL service facility (as the same is listed on the pre-addressed return package provided by AVI-SPL) within five (5) business days of receipt of the replacement part, or you will be invoiced the full list price for the replaced part.

9.1. Warranty Parts Repair / Replacement: Some equipment may be repairable or replaced at no charge under the manufacturer's Warranty policy. Labor for onsite installation of parts covered under manufacturer warranty may be subject to AVI-SPL Time and Material labor fees. The Help Desk will assist the customer to arrange return of the defective equipment to the manufacturer for service/replacement.

9.2. Advanced Parts Replacement: Specific to videoconferencing equipment available with advanced parts replacement from the manufacturer; some equipment may be eligible for an Advanced Replacement program. In these instances, upon determination of a part requiring replacement by the Help Desk technician, a replacement part will be delivered to the customer location. Return of the defective product is required by the Customer under the conditions defined under the Terms and Conditions of Service.

10. Service Level Agreement.

AVI-SPL will provide an Average Speed of Answer (ASA) of 60 seconds for support calls placed to its help desk Monday through Friday, 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

AVI-SPL will respond to new service requests made via email or web portal within four (4) hours with case assignment notification Monday through Friday, 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

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When applicable, AVI-SPL will provide a two business day onsite response pursuant to the Help Desk's determination that a dispatch is required for incident remediation. This service level may be impacted by room availability and the requirement for replacement parts. All onsite activity will be scheduled Monday through Friday, 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

When a case is opened, the Help Desk will classify the case in accordance with the following incident priority classifications:

- P1: Critical – System outage equipment or room system fully non-functional
- P2: Major – System impaired but operational quality or features diminished
- P3: Minor – System operational with acceptable quality features are diminished
- P4: Informational – End User "How To" inquiry, request for configuration modification

11. Service Program Exclusions.

Unless otherwise specified, Service Programs do not cover any of the following: (i) electrical work and / or in-house cabling external to the Product; (ii) repair or replacement of Product resulting from causes external to the Product, including disaster, fire, flood, earthquake, tornado accident, neglect, misuse, vandalism, water, corrosion, power surges, unconditioned or fluctuating power, lightning, customer-provided network, or failure of the installation site to conform to manufacturer specifications; or resulting from use of the Product for other than intended purposes; or resulting from use of the Product with items not provided or approved by AVI-SPL; or resulting from the performance of maintenance or the attempted repair of an item of a Product by persons other than AVI-SPL employees or persons authorized by AVI-SPL; (iii) repair or replacement of Product excluded by or no longer covered by the Product manufacturer's repair and replacement program; (iv) furnishing supplies or accessories including consumables such as projection lamps, bulbs, filters, fuses, batteries and the labor to replace these items, or painting or refinishing the Product; (v) Services in connection with the relocation of the Product, or the addition or removal of items of equipment or parts, attachments, features, from or to other devices not furnished by AVI-SPL including facilitation of customer spare or loaner equipment, including communications devices, video devices, audio devices, networks or links; (vi) damage to displays caused by screen burnout or image "burn-in"; (vii) Replacement and / or general support for manufacturer-specified end of life products after AVI-SPL has informed Customer of such change in status and pro-rated remaining portion of relative cost for such pertinent products; (viii) Services in connection with computer viruses or conflicts involving software that is not installed or introduced by AVI-SPL including coverage for "OFE" (Owner Furnished Equipment) unless specifically listed as covered equipment or devices not installed by AVI-SPL and not specifically covered under this Service Agreement.

12. Charges and Payment Terms

Payment terms are NET 30 Days from the date of invoice. All fees and payments referenced in this Service Agreement are in US Dollars. The Services as outlined will be invoiced in full upon execution of the Service Agreement.

13. Termination

Either party may at its option terminate any applicable Service Program in whole or in part for cause: (i) if the other party breaches any material term or condition hereunder or under any applicable Service Program, and fails to remedy such failure within thirty (30) calendar days after receipt of written notice of such default; (ii) in the event that any proceedings are commenced against the other party or such party seeks protection under bankruptcy, insolvency, or other debtor's relief law or (iii) the other party becomes insolvent or dissolves. Furthermore, AVI-SPL may terminate any applicable Service Program in whole or in part for cause if any person other than a AVI-SPL employee, or designated service representative, alters a Product without AVI-SPL's prior written consent, or in any way renders a Product unsafe (adjustments to a Product made at the direction of AVI-SPL or the Manufacturer or as otherwise intended as set forth in the applicable Product documentation do not constitute alterations for the purposes of this Section). In the event of cancellation due to non-payment, the customer agrees to be liable for the full cost of any manufacturer sub-coverage purchased on the customer's behalf by AVI-SPL and for services and parts provided to the customer on a Time and Material basis per AVI-SPL's then-current Time and Material rate schedule.

AVI-SPL reserves the right to terminate or modify available Service Programs at any time in its sole discretion; provided, that any such modifications will not affect any Service Programs already ordered by you and accepted by AVI-SPL prior to such modifications except as mutually agreed by both parties.

14. Customer Obligations.

- 14.1. You shall have the continuing obligation to keep all Products under a Maintenance Service Program at either the then-current Software version or previous major Software version release.

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- 14.2. Software updates and upgrades are the responsibility of the customer. Assistance may be requested from the Help Desk to gain access to the software or if issues are encountered. Software updates do not mandate an onsite service call.
- 14.3. Customer is required to assist the AVI-SPL Help Desk technician with the remote diagnosis of the reported problem to help determine the cause of the problem. Parts replacement and onsite service may not become available until the Help Desk is provided the appropriate information or support to diagnose the problem.
- 14.4. Remote access to the equipment for the purposes of diagnostics prior to technician dispatch is required. If remote access is not provided, delays may be experienced in the diagnosis and repair of the equipment.
- 14.5. If applicable, you will provide AVI-SPL personnel with access to the Products and adequate working space (including heat, light, ventilation, electric current and outlets) at no charge to AVI-SPL. All Customer environments must be free from all risks to health and safety (except to the extent notified to AVI-SPL in writing and specifically accepted in writing by AVI-SPL).
- 14.6. If applicable, you will maintain, at your expense, the installation site and provide the necessary utility services for use of the Product in accordance with the Manufacturer's applicable published specifications.
- 14.7. You will be responsible for replacing, at your own expense, any and all consumable items used in connection with the Products, including without limitation, bulbs and batteries.
- 14.8. Customer will be responsible for payment of Repairs and Services provided by AVI-SPL that are not covered under the selected coverage under the agreement and after mutual agreement delivered by AVI-SPL on a Time and Material Basis in accordance with the AVI-SPL standard published labor rates and material charges.
- 14.9. Equipment Operation and Alteration: The customer may not alter, repair or modify the covered equipment except as expressly directed by AVI-SPL service personnel. The customer must operate the equipment as detailed in the user operations manual provided by the manufacturer with the covered equipment. The customer may not add equipment, components, wiring or other parts to the covered equipment without written notification to and acceptance by AVI-SPL.
- 14.10. AVI-SPL strongly recommends that you install and use a current, reputable anti-virus program in connection with any PC-based, open-architecture Product, and that you regularly update and run such anti-virus program, especially in connection with the emergence of any new viruses and/or 'worms'. Repair or restoration of any Product damaged or 'infected' by viruses is not covered under this Service Agreement or the Service Programs.
- 14.11. You are solely responsible for backing up your data. AVI-SPL will not under any circumstances have a duty to back up your data or to restore data that is lost in the course of AVI-SPL's provision of Services, or otherwise. ~~AVI-SPL will not be liable for the loss of your data, whatever the reason for the loss, including without limitation as a result of AVI-SPL's negligence. The preceding limitation applies to any cause of action, whether based in contract, tort, or any other theory.~~

15. Intellectual Property.

Each party shall retain all right, title and interest in and to, and possession of their respective preexisting intellectual property. Furthermore, AVI-SPL shall retain all right, title and interest in and to, and possession of, any know-how, technical information, specifications, documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of AVI-SPL relating to Services performed under or in relation to a Service Program. Any intellectual property, know-how, information or documents supplied at any time by one party to the other shall be treated as confidential and covered by the confidentiality undertaking in Section 18 below.

16. Indemnity.

AVI-SPL **CUSTOMER**
Each party shall indemnify, defend and hold the other harmless from all claims, suits, losses, expenses, judgments and liabilities (including reasonable attorney's fees) for personal injury or death to the extent caused by the negligence of the indemnifying party or its employees. The indemnitee shall give the indemnifying party prompt notice of and authority to defend or settle, any such claim and shall give, at the indemnifying party's request and expense, reasonable information and assistance thereto.

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17. WARRANTY / LIMITATION OF LIABILITY.

AVI-SPL WARRANTS FOR NINETY (90) DAYS FROM THE PERFORMANCE OF ANY SERVICES BY AVI-SPL PURSUANT TO THIS AGREEMENT, EXCLUDING MANAGED SERVICES, THAT SUCH SERVICES SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. AVI-SPL MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. AVI-SPL MAKES NO WARRANTY THAT OPERATION OF THE PRODUCT SERVICED WILL BE UNINTERRUPTED OR ERROR FREE. IN NO EVENT WILL AVI-SPL BE LIABLE FOR ANY DELAY IN FURNISHING SERVICES. CUSTOMER MUST REPORT IN WRITING ANY BREACH OF THIS WARRANTY TO AVI-SPL DURING THE ABOVE WARRANTY PERIOD, AND CUSTOMER'S EXCLUSIVE REMEDY AND AVI-SPL'S ENTIRE LIABILITY FOR ANY BREACH OF SUCH WARRANTY SHALL BE TO REPERFORM THE SERVICES, OR IF AVI-SPL IS UNABLE TO RE-PERFORM THE SERVICES AS WARRANTED, CUSTOMER SHALL BE ENTITLED TO RECOVER THE PRORATED FEES PAID TO AVI-SPL FOR THE NONCONFORMING SERVICES. EXCEPT FOR BREACHES OF CONFIDENTIALITY, OR INTELLECTUAL PROPERTY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, LOST BUSINESS PROFITS, OR LOSS, DAMAGE OR DESTRUCTION OF DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SAME. SUBJECT TO THE PRECEDING SENTENCE, EXCEPT FOR BREACHES OF CONFIDENTIALITY OR INDEMNITY OBLIGATIONS, AVI-SPL'S MAXIMUM LIABILITY FOR ALL OTHER DAMAGES WILL BE LIMITED TO (I) ONE (1) YEAR'S SERVICE CHARGES (IN THE CASE OF SERVICE PROGRAMS WITH AN APPLICABLE SERVICE PERIOD) OR (II) AGGREGATE SERVICE FEES PAYABLE TO AVI-SPL PURSUANT TO THE APPLICABLE SERVICE PROGRAM (IN THE CASE OF SERVICE PROGRAMS WITH NO APPLICABLE SERVICE PERIOD). THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES AND IN SUCH EVENT, THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL ONLY APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SERVICE AGREEMENT SHALL BE DEEMED TO LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR (I) FRAUD OR FRAUDULENT MISREPRESENTATION OR (II) DEATH OR PERSONAL INJURY TO THE EXTENT THAT IT RESULTS FROM SUCH PARTY'S NEGLIGENCE AND SOLELY TO THE EXTENT REQUIRED BY APPLICABLE LAW.

18. Confidentiality.

** All provisions subject to Florida's Public Records Laws (Ch. 119, Florida Statutes)*

Confidential Information. Each party (the "Disclosing Party") may from time to time during the Term disclose to the other party (the Recipient") certain information regarding the Disclosing Party's business, including its products, inventions, operations, methodologies, systems, processes, product development plans or intentions, know-how, designs, trade secrets, market opportunities, business or financial affairs, and technical, marketing, financial, employees, planning, and other confidential or proprietary information ("Confidential Information"). AVI-SPL's Confidential Information includes (without limitation) the function and performance of the Products, the terms of this Agreement, and any other information relating to the Products or the sale thereof. Confidential Information includes information disclosed orally, visually, or through any tangible medium.

Protection of Confidential Information. Recipient will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Service Agreement or to carry out the Services, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of carrying out the Services and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

Residuals. The Recipient shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the Disclosing Party, provided that the Recipient shall not disclose the Confidential Information except as expressly permitted hereunder. The term "residuals" means information in intangible form, which is retained in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Recipient shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this section shall not be deemed to grant to the Recipient a license under the Disclosing Party's copyrights or patents.

Exceptions. Recipient's obligations under Section 16 with respect to any Confidential Information of the Disclosing Party will terminate if and when Recipient can document that such information: (a) was already lawfully known to Recipient at the time of disclosure by the Disclosing Party; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, the Disclosing Party's Confidential Information. In addition, Recipient will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in advance, in writing by the Disclosing Party, (ii) necessary for Recipient to enforce its rights under this Service Agreement in connection with a legal proceeding; or (iii) required by law or by the order or a court of similar judicial or administrative body, provided that Recipient notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

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19. Force Majeure.

Except for the obligation to make timely payments, neither party will be liable to the other for delays or failures to perform occasioned by causes beyond its reasonable control. Such acts or events shall include but not be limited to, acts of God, civil or military authority, civil disturbance, riot, fire, strikes, lockouts or slowdowns, factory or labor conditions, inability to obtain necessary labor, materials or manufacturing facilities, delayed issuance of export control licenses. In the event of such delays or failures to perform, any dates or times by which AVI-SPL is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the additional time required because of the delay or failure to perform. Each of the parties shall promptly inform the other of any event of force majeure, its expected duration and cessation, respectively.

20. General.

Except as otherwise set forth in this Service Agreement, this Service Agreement may only be modified by a written agreement duly signed by authorized representatives of both parties, and variance from or addition to the provisions of this Service Agreement in any order or other written notification will be of no effect.

Any notices required or permitted to be given hereunder shall be in writing and effective when received by a party at the address as the receiving party has last notified to the other party by prior written notice. In the case of AVI-SPL such address, unless otherwise notified in writing, shall be as follows:

AVI-SPL, Inc.
Attn: Executive Vice President
6301 Benjamin Road, Suite 101
Tampa, Florida 33634

If any provision of this Service Agreement shall be held to be invalid, illegal, or unenforceable, the remaining terms of this Service Agreement shall in no way be affected or impaired. The waiver by either party of a breach of any provision of this Service Agreement shall not be construed as a waiver of any subsequent breach.

You may not assign any or all of your rights or obligations under this Service Agreement including by purchase, merger or operation of law, without the prior written consent of AVI-SPL, which consent shall not be unreasonably withheld. Any attempted assignment or transfer in violation of this provision shall be null and void. AVI-SPL may assign its rights and obligations under this Service Agreement without prior written consent or notice.

AVI-SPL's affiliates may participate in AVI-SPL's performance under this Service Agreement and a Service Program, and AVI-SPL may also sub-contract its obligations under this Service Agreement and a Service Program provided that AVI-SPL remains liable for the performance of its affiliates and/or sub-contractors in respect thereof.

Same as expressly provided, no term or provision of this Service Agreement or a Service Program shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

The Customer acknowledges that AVI-SPL has trained personnel who perform Services and has made an investment in such personnel. Therefore, at no time during the term of a Service Program or for one (1) year thereafter, will the Customer directly or indirectly either offer employment to or hire any AVI-SPL employees who perform Services on behalf of AVI-SPL without AVI-SPL's express prior written consent. ~~In the event that the Customer is in breach of this provision, AVI-SPL shall have the right to invoice the Customer, and the Customer agrees to pay, a sum equal to 12 months' salary in respect of the hired individual.~~

In performing the Services, AVI-SPL shall be deemed to be an independent contractor and its personnel and representatives shall not act as nor be Customer's agents or employees. AVI-SPL shall have complete charge and responsibility for personnel employed or engaged by AVI-SPL.

Upon any expiration or termination of these this Service Agreement, Sections 15 (Intellectual Property), 16 (Indemnity) and 17 (Warranty/Limitation of Liability) shall survive.

This Service Agreement may have been translated into various languages for the convenience of AVI-SPL's Customers. While the translation is correct to the best of AVI-SPL's knowledge, AVI-SPL is not responsible or liable in the event of an inaccuracy. English is the controlling language of this Service Agreement, and any translation has been prepared for you as a courtesy only. In the event of a conflict between the English-language version of this Service Agreement and a version that has been translated into another language, the English-language version of this Service Agreement shall control.

Audio Visual Innovations Inc. and Signal Perfection Ltd are wholly owned subsidiaries of AVI-SPL, Inc. This Entire Document and all information (including drawings, specifications and designs) presented by any subsidiary are the property of AVI-SPL Inc. Proprietary information provided to potential customers, clients or agents is for the sole purpose of demonstrating solutions delivery capabilities and shall be held in confidence. These Materials may not be copied, distributed or disclosed in any way without the sole written permission of an authorized representative of AVI-SPL. © Copyright AVI-SPL. All Rights Reserved



This Service Agreement shall be governed by the laws of the State of Florida and any disputes will be subject to the exclusive jurisdiction of the federal courts of the United States of America or the courts of the State of Florida, in each case located in the city of Tampa and the county of Hillsborough. The non-prevailing party in any dispute will pay all reasonable court costs and attorneys fees finally awarded. The U.N. Convention on Contracts for the International Sale of Goods does not apply. AVI-SPL shall have the option to bring a suit before the courts of your domicile, when the claim is for payments due from you.

UNLESS OTHERWISE EXPRESSLY AGREED IN A SIGNED WRITING BY THE PARTIES IN ACCORDANCE HEREWITH, THIS SERVICE AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, SUPERSEDING ALL PROPOSALS OR PRIOR TERMS AND CONDITIONS, AGREEMENTS OR COMMUNICATIONS, ORAL OR WRITTEN, BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF.

PLEASE SEE APPENDUM ATTACHED HERETO AND MADE A PART HEREOF.

Customer Acceptance of Customer Care Service Agreement

Signed Name

Customer

Printed Name

Date



Software License Agreement

This Software License is made by Audio Visual Innovations, Inc./Signal Perfection, Ltd. ("Company") to Buyer as an essential element of the services to be rendered by the Company as defined in the Proposal and any system specification and any associated documents made available to Buyer by Company. Buyer and Company agree that this Software License is deemed to be part of the Agreement. This Software License applies to control system integration and programming and does not apply to any other services. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them under the General Terms and Conditions.

SECTION 1 LICENSE GRANT AND OWNERSHIP

1.1 The Company hereby grants to Buyer a worldwide, perpetual, non-exclusive, non-transferable license to all software for Buyer's use in connection with the establishment, use, maintenance and modification of the system implemented by the Company. The term "Software" for the purposes of this Software License shall refer to all source code, executable object code, and the patches, scripts, modifications, enhancements, designs, concepts or other materials that constitute the software programs necessary for the proper function and operation of the system as delivered by the Company and accepted by the Buyer.

1.2 Except as expressly set forth in this paragraph, the Company shall at all times own all intellectual property rights to the software. Any and all licenses, product warranties or service contracts provided by third parties in connection with any software, hardware or other software or services provided in the system shall be delivered to Buyer for the sole benefit of Buyer.

1.3 Buyer may supply to the Company or allow the Company to use certain proprietary information, including service marks, logos, graphics, software, documents and business information and plans that have been authored or pre-owned by Buyer. All such intellectual property shall remain the exclusive property of Buyer and shall not be used by the Company for any purposes other than those associated with delivery of the system.

SECTION 2 COPIES, MODIFICATION, AND USE

2.1 Buyer may make copies of the software for archival purposes and as required for modifications to the system. All copies and distribution of the software shall remain within the direct control of Buyer and its representatives.

2.2 Buyer may make modifications to the source code version of the software, if and only if the results of all such modifications are applied solely to the system. In no way does this Software License confer any right in Buyer to license, sublicense, sell, or otherwise authorize the use of the software, whether in executable form, source code or otherwise, by any third parties, except in connection with the use of the system as part of Buyer's business.

2.3 All express or implied warranties relating to the Software shall be deemed null and void in case of any modification to the software made by any party other than the Company.

SECTION 3 WARRANTIES AND REPRESENTATIONS

The Company represents and warrants to Buyer that:

Audio Visual Innovations Inc. and Signal Perfection Ltd are wholly owned subsidiaries of AVI-SPL, Inc. This Entire Document and all information (including drawings, specifications and designs) presented by any subsidiary are the property of AVI-SPL Inc. Proprietary information provided to potential customers, clients or agents is for the sole purpose of demonstrating solutions delivery capabilities and shall be held in confidence. These Materials may not be copied, distributed or disclosed in any way without the sole written permission of an authorized representative of AVI-SPL. © Copyright AVI-SPL. All Rights Reserved

3.1 it has all necessary rights and authority to execute and deliver this Software License and perform its obligations hereunder and to grant the rights granted under this Software License to Buyer;

3.2 the Products and Services provided by Company subject to this Software License, including the Software and all intellectual property provided hereunder, are original to the Company or its subcontractors or partners; and

3.3 the software, as delivered as part of the system, will not infringe or otherwise violate the rights of any third party, or violate any applicable law, rule or regulation.

3.4 The Company further represents and warrants that, throughout the System Warranty Period, the executable object code of Software and the system will perform substantially in accordance with the system specifications and Agreement. If the Software fails to perform as specified and accepted all remedies are pursuant to the policies set forth in the system specifications and in the Agreement.

SECTION 4 INDEMNIFICATION

4.1 The Company hereby indemnifies and shall defend and hold harmless Buyer, its parent companies and its and their subsidiaries, affiliates, officers, directors, employees, agents and subcontractors from and against all liability, damages, loss, cost or expense, including but not limited to reasonable attorneys' fees and expenses, arising out of or in connection with any breach or alleged breach of the Agreement or any third party claims that the software or system here provided by the Company infringes or otherwise violates any rights of any such third party.

~~4.2 Buyer hereby indemnifies and shall defend and hold harmless the Company, its and their subsidiaries, affiliates, officers, directors, employees, agents and subcontractors from and against all liability, damages, loss, cost or expense, including but not limited to reasonable attorneys' fees and expenses, arising out of or in connection with any third party claims that Buyer's use of the software in contravention of the grant of rights infringes or otherwise violates any rights of any such third party.~~

4.3 Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by any third party that may give rise to liability of an indemnitor hereunder, the indemnitee shall promptly notify the indemnitor of the existence of such a claim and shall give the indemnitor reasonable opportunity to defend and to settle the claim at its own expense and with counsel of its own selection. The indemnitee shall cooperate with the indemnitor, shall at all times have the full right to participate in such a defense at its own expense and shall not be obligated,



against its consent, to participate in any settlement which it reasonably believes would have an adverse effect on its business.

SECTION 5 TRANSFER AND TERMINATION

This license will automatically terminate upon the disassembly of the system cited above, unless the system is reassembled in its original

configuration in another location. The Company may terminate this license upon notice for failure to comply with any of the terms set forth in this Software License. Upon termination, Customer is obligated to immediately destroy the Software, including all copies and modifications.

PLEASE SEE APPENDUM ATTACHED HERETO AND MADE A PART HEREOF.

Buyer Acceptance of Software License Agreement

Signed Name

Buyer

Printed Name

Date

ADDENDUM TO GENERAL TERMS AND CONDITIONS, CUSTOMER CARE SERVICE AGREEMENT AND SOFTWARE LICENSE AGREEMENT BY AND BETWEEN THE TOWN OF SURFSIDE, FLORIDA AND AUDIO VISUAL INNOVATIONS, INC./SIGNAL PERFECTION, LTD. FOR A CLOSE CAPTIONING SYSTEM

THIS ADDENDUM TO GENERAL TERMS AND CONDITIONS, CUSTOMER CARE SERVICE AGREEMENT AND SOFTWARE LICENSE AGREEMENT ("Addendum") is made and entered into as of this ___ day of _____, 2019, by and between **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation (referred to as "Town", "Buyer", and/or "Customer") and **AUDIO VISUAL INNOVATIONS, INC./SIGNAL PERFECTION, LTD.** (referred to as "Company" and/or "AVI-SPL").

WITNESSETH:

WHEREAS, the Town and Company wish to enter into those certain (i) General Terms and Conditions Agreement, (ii) Customer Care Agreement, and (iii) Software License Agreement, for the purpose of compliance with the American with Disabilities Act ("ADA") and applicable regulations by providing for a close captioning system ("Services") to accommodate and service the needs of audio impaired users of the Town's public broadcasting channel, and entering into corresponding service and software license agreements (hereinafter, collectively, the "Agreement"); and

WHEREAS, Company will provide the equipment and professional integration services for the installation and implementation of the System at a cost of \$12,440.00; and

WHEREAS, the Town and Company desire to amend certain provisions of the Agreement as hereinafter provided.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Town and Company desiring to be legally bound, do hereby agree and covenant as follows:

1. **Addendum Controls.** In the event of any conflict between this Addendum and the Agreement, the terms of this Addendum shall prevail and govern.
2. **Defined Terms.** All initial capitalized terms used in this Addendum shall have the same meaning as set forth in the Agreement unless otherwise provided.
3. **Recitals.** The recitals set forth above are incorporated herein and made a part of this Addendum.
4. **Payments.** Company shall deliver an invoice to the Town once the System installation is completed detailing deliverables or services delivered or completed and the amount due to Company under the Agreement. The Town shall pay the Company in accordance with the

Florida Prompt Payment Act after approval and acceptance of the deliverables or services by the Town Manager and/or his designee.

5. **Insurance.**

- 5.1 Company shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Company's insurance and shall not contribute to the Company's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 5 and may be increased by the Town as it deems necessary or prudent.
- 5.2 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Company. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
- 5.3 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Company shall be allowed to provide Services pursuant to the Agreement who is not covered by Worker's Compensation insurance.
- 5.4 Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- 5.5 Professional Liability Insurance in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence, single limit.
- 5.6 Cyber Liability Insurance in the amount of Two Million Dollars \$2,000,000.00.

5.7 **Certificate of Insurance.** Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of the Agreement by Town and prior to commencing any Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The Company shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of the Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to the Agreement and shall state that such insurance is as required by the Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

5.8 **Additional Insured.** Except with respect to Professional Liability Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of the Company in performance of the Agreement. The Company's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to the Company's insurance. The Company's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

5.9 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. The Company shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

5.10 The provisions of this section shall survive termination of the Agreement.

6. **Indemnification.** Company shall protect, defend, indemnify, save and hold harmless the Town, all departments, agencies, boards and commissions, its officers, agents,

servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any negligent act or omission of the Company, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the Town as a result of any claim, demands, and/or causes of action. Nothing in this indemnification or the Agreement is intended to act as a waiver of the Town's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of the Agreement.

7. **Notices/Authorized Representatives.**

7.1 Any notices required by the Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Town: Town of Surfside
Town Manager
9293 Harding Avenue
Surfside, Florida 33154

With a copy to: Town Attorney
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154

For The Company: AVI-SPL, Inc.
Attention: Executive Vice President
6301 Benjamin Road, Suite 101
Tampa, Florida 33634

8. **Governing Law.**

The Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

9. **Ownership and Access to Records; Public Records.** Notwithstanding anything to the contrary in the Agreement, the Agreement and all deliverables and services provided by the Company are subject to Florida's Public Records Law (Chapter 119, Florida Statutes, including but not limited to the following:

9.1 Company acknowledges that all inventions, innovations, improvements, developments, methods, studies, designs, analyses, plans, drawings, reports and all similar or related information (whether patentable or not)

which relate to Services to the Town which are conceived, developed or made by Company during the term of the Agreement (“Work Product”) belong to the Town. Company shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of the Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

- 9.2 All records, books, documents, maps, data, deliverables, papers and financial information (the “Records”) that result from the Company providing the Services to the Town under the Agreement shall be the property of the Town.
- 9.3 Company agrees to keep and maintain public records in Company’s possession or control in connection with Company’s performance under the Agreement. Company additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Company shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
- 9.4 Upon request from the Town custodian of public records, Company shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 9.5 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 9.6 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Company shall be delivered by the Company to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Company shall be delivered to the Town in a format that is compatible with the Town’s information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Company shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 9.7 Any compensation due to Company shall be withheld until all records are received as provided herein.

- 9.8 Company's failure or refusal to comply with the provisions of this section shall result in the immediate termination of the Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

**Custodian of Records: SANDRA NOVOA, MMC,
TOWN CLERK**

**Mailing address: 9293 Harding Avenue
Surfside, Florida 33154**

Telephone number: 305-887-9541

Email: snovoa@townofsurfsidefl.gov

10. **Compliance with Laws.**

Company shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out deliverables or services under the Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the services under the Agreement.

11. **Most Favored Nation.**

Company agrees that if, after the Effective Date of the Agreement, it enters into an agreement for the same or substantially similar scope of services with another local government in Florida which contains a term or condition, including fees, charges or costs, that are more favorable than the terms in the Agreement, the Town may provide Company with written notice explaining how the new agreement is for the same or substantially similar services and how the new agreement contains terms or conditions that are more favorable than the terms in the Agreement, and requesting to negotiate an amendment to the Agreement (a "New Agreement Notice"). The parties shall act in good faith to negotiate an amendment to the Agreement that addresses, in a manner that is fair and equitable to both parties, the matters raised by the Town in the New Agreement Notice. If the parties fail to reach agreement upon an amendment within ninety (90) days of the New Agreement Notice, then the Town shall have the right to terminate this Agreement without penalty or early termination fee. .

12. **Ratification.** Except as expressly amended herein, all of the terms and provisions

of the Agreement remain unmodified and in full force and effect. In the event of any conflict between the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall govern as necessary to resolve any such conflict.

13. **Controlling Agreement; No Construction against Drafter.** The Agreement, as modified by this Addendum, is the sole expression of the agreement between the Town and Company as to the subject matter thereof.

14. **Counterparts, Facsimiles.** This Addendum may be executed in counterparts and any counterpart evidencing signature by one party may be delivered by telecopy, facsimile or electronic mail. Each executed counterpart of this Addendum will constitute an original document and all executed counterparts, together, will constitute the same Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the parties hereto have caused this Addendum on the dates set forth below their respective signatures.

<p>ATTEST:</p> <p>_____</p> <p>Town Clerk</p>	<p>TOWN:</p> <p>TOWN OF SURFSIDE, FLORIDA, a Florida municipal corporation</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
<p>APPROVED AS TO LEGAL FORM AND SUFFICIENCY:</p> <p>_____</p> <p>Town Attorney</p>	
	<p>COMPANY:</p> <p>AUDIO VISUAL INNOVATIONS, INC./SIGNAL PERFECTION, LTD.</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>