

RESOLUTION NO. 13-2135

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA REQUESTING THAT THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) GRANT THE TOWN A PUBLIC PURPOSE LEASE ON A1A/HARDING AVENUE FROM 93RD STREET TO 96TH STREET, WHERE THE TOWN PROPOSES TO ISSUE PERMITS FOR SIDEWALK CAFES; AUTHORIZING TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE TERMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the “Town”) is a waterfront community located in Miami-Dade County; and

WHEREAS, one of the Town’s main thoroughfare is Harding Avenue and the Town believes a designated sidewalk café zone will enhance aesthetics and encourage pedestrian activity along a major corridor in the Town; and

WHEREAS, the Florida Department of Transportation (“FDOT”) requires the Town and FDOT to enter into a Public Purpose Lease and addendums as described below in order for the Town to issue sidewalk café permits within the FDOT right of way; and

WHEREAS, it is in the best interests of the Town to permit sidewalk cafés so that the public may enjoy Surfside’s natural beauty, and to encourage increased pedestrian activity within the downtown business district and to provide to the public the convenience of dining outdoors while using the business areas of the Town.

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

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Attached Lease Agreement and Addendums. The Town Commission approves the Town entering into a lease agreement with FDOT as detailed in the

attached State of Florida Lease Agreement (Exhibit "A"), State of Florida Addendum to Lease Agreement (Exhibit "B"), and Town of Surfside Second Addendum to Lease Agreement (Exhibit "C").

Section 3. Authorization of Town Officials. The Town Manager and Town Attorney are hereby authorized to take all steps necessary to complete the execution of the terms of this Resolution.

Section 4. Effective Date. This Resolution shall take effect immediately upon adoption.

Motion by Vice Mayor Karukin, Second by Commissioner Kligman.

PASSED AND ADOPTED this 15 day of January 2013

FINAL VOTE ON ADOPTION

- Commissioner Michelle Kligman
- Commissioner Joseph Graubart
- Commissioner Marta Olchyk
- Vice Mayor Michael Karukin
- Mayor Daniel Dietch


yes
no
yes
yes
yes


 Daniel Dietch, Mayor

ATTEST:


 Sandra Novotny, CMC
 Town Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:


 Lynn M. Dannheisser, Town Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LEASE AGREEMENT

575-060-33
RIGHT OF WAY
OGC - 08/09
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ITEM/SEGMENT NO.: 2495611
MANAGING DISTRICT: Six
F.A.P. NO.: N/A
STATE ROAD NO.: A1A
COUNTY: Miami-Dade
PARCEL NO.: 4228

THIS AGREEMENT, made this _____ day of _____, _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter called the Lessor), and TOWN OF SURFSIDE at 9293 Harding Avenue, Surfside, Florida 33154 (hereinafter called the Lessee).

WITNESSETH:

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Property and Term.** Lessor does hereby lease unto Lessee the property described in Exhibit "A", attached and made a part hereof, for a term of _____ beginning _____ and ending _____. This Lease may be renewed for an additional _____ term at Lessee's option, subject to the rent adjustment as provided in Paragraph 3 below. Lessee shall provide Lessor 120 days advanced written notice of its exercise of the renewal option.

If Lessee holds over and remains in possession of the property after the expiration of the term specified in this Lease, or any renewals of such term, Lessee's tenancy shall be considered a tenancy at sufferance, subject to the same terms and conditions as herein contained in this Lease.

This Lease is subject to all utilities in place and to the maintenance thereof as well as any other covenants, easements, or restrictions of record.

This Lease shall be construed as a lease of only the interest, if any, of Lessor, and no warranty of title shall be deemed to be given herewith.

2. **Use.** The leased property shall be used solely for the purpose of use of sidewalk for sidewalk cafe. If the property is used for any other purpose, Lessor shall have the option of immediately terminating this Lease. Lessee shall not permit any use of the property in any manner that would obstruct or interfere with any transportation facilities.

Lessee will further use and occupy the leased property in a careful and proper manner, and not commit any waste thereon. Lessee will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the property. Lessee will not use or occupy said property for any unlawful purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinances and/or rules, regulations, requirements, and orders of governmental authorities or agencies respecting the use and occupation of the leased property.

Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials on the leased property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Lessor, within the leased property. If any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the leased property, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Lessor from any claim, loss, damage, costs, charge, or expense arising out of any such contamination.

3. **Rent.** Lessee shall pay to Lessor as rent, on or before the first day of each rent payment period, the sum of _____ plus applicable tax, for each N/A of the term. If this Lease is terminated prior to the end of any rent payment period, the unearned portion of any rent payment, less any other amounts that may be owed to Lessor, shall be refunded to Lessee. Lessee shall pay any and all state, county, city, and local taxes that may be due during the term hereof, including any real property taxes. Rent payments shall be made payable to the Florida Department of Transportation and shall be sent to Right of Way Administration, 1000 NW 111th Ave, Rm 6105-B, Miami, Florida 33172. Lessor reserves the right to review and adjust the rental fee biennially and at renewal to reflect market conditions. Any installment of rent not received within ten (10) days after the date due shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate Lessor to accept late rent payments or provide Lessee a grace period.

4. **Improvements.** No structures or improvements of any kind shall be placed upon the property without the prior written approval of the District Secretary for District Six of Lessor. Any such structures or improvements shall be constructed in a good and workmanlike manner at Lessee's sole cost and expense. Subject to any landlord lien, any structures or improvements constructed by Lessee shall be removed by Lessee, at Lessee's sole cost and expense, by midnight on the day of termination of this

Lease and the leased property restored as nearly as practical to its condition at the time this Lease is executed. Portable or temporary advertising signs are prohibited.

Lessee shall perform, at the sole expense of Lessee, all work required in the preparation of the leased property for occupancy by Lessee, in the absence of any special provision herein contained to the contrary; and Lessee does hereby accept the leased property as now being in fit and tenable condition for all purposes of Lessee.

Lessor reserves the right to inspect the property and to require whatever adjustment to structures or improvements as Lessor, in its sole discretion, deems necessary. Any adjustments shall be done at Lessee's sole cost and expense.

5. Maintenance. Lessee shall keep and maintain the leased property and any building or other structure, now or hereafter erected thereon, in good and safe condition and repair at Lessee's own expense during the existence of this Lease, and shall keep the same free and clear of any and all grass, weeds, brush, and debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or objectionable. Lessor shall have no duty to inspect or maintain any of the leased property or buildings, and other structures thereon, during the term of this Lease; however, Lessor shall have the right, upon twenty-four (24) hours notice to Lessee, to enter the leased property for purposes of inspection, including conducting an environmental assessment. Such assessment may include: surveying; sampling of building materials, soil, and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other actions which may be reasonable and necessary. Lessor's right of entry shall not obligate inspection of the property by Lessor, nor shall it relieve the Lessee of its duty to maintain the leased property. In the event of emergency due to a release or suspected release of hazardous waste on the property, Lessor shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without notice, the sole cost and expense of which shall be the responsibility of the Lessee.

6. Indemnification. (select applicable paragraph)

Lessee is a Governmental Agency

To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Lessor and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its agents, or employees, during the performance of the Lease, except that neither Lessee, its officers, agents, or employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Lessor or any of its officers, agents, or employees during the performance of the Lease.

When the Lessor receives a notice of claim for damages that may have been caused by the Lessee, the Lessor will immediately forward the claim to the Lessee. Lessee and the Lessor will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Lessor will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Lessor in such claim as described in this section. The Lessor's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Lessor and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

Lessee is not a Governmental Agency

Lessee shall indemnify, defend, save, and hold harmless Lessor, its agent, officers, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees, (including regulatory and appellate fees), arising out of or because of any acts, action, neglect, or omission by Lessee, or due to any accident, happening, or occurrence on the leased property or arising in any manner from the exercise or attempted exercise of Lessee's rights hereunder whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of Lessor.

Lessee's obligation to indemnify, defend and pay for the defenses or at Lessor's option, to participate, and to associate with the Lessor in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Lessor's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend and indemnify within seven days after such notice by the Lessor is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Lessor solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by Lessor. Lessor's failure to notify Lessee of claim shall not release Lessee of the above duty to defend.

7. Insurance. Lessee at its expense, shall maintain at all times during the term of this Lease, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the property arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than one million dollars (\$ 1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than one million dollars (\$ 1,000,000.00) for property damage, or a combined coverage of not less than two million dollars (\$ 2,000,000.00). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be

anceled or modified unless Lessor is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide Lessor certificates showing such insurance to be in place and showing Lessor as additional insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the leased property.

Lessor may require the amount of any public liability insurance to be maintained by Lessee be increased so that the amount thereof adequately protects Lessor's interest. Lessee further agrees that it shall during the full term of this Lease and at its own expense keep the leased property and any improvements thereon fully insured against loss or damage by fire and other casualty. Lessee also agrees that it shall during the full term of this Lease and at its own expense keep the contents and personal property located on the leased property fully insured against loss or damage by fire or other casualty and does hereby release and waive on behalf of itself and its insurer, by subrogation or otherwise, all claims against Lessor arising out of any fire or other casualty whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of the Lessor.

8. Eminent Domain. Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Lease, including any residual interest in the Lease, or any other facts or circumstances arising out of or in connection with this Lease.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the leased property, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the leased property. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the leased property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Lease is still in existence on the date of taking or sale; or has been terminated prior thereto.

9. Miscellaneous.

a. This Lease may be terminated by Lessor immediately, without prior notice, upon default by Lessee hereunder, and may be terminated by either party, without cause upon thirty (30) days prior written notice to the other party.

b. In addition to, or in lieu of, the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

c. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms, and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this Lease freely and voluntarily. This Lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and the previous owner of the leased property and landlord of Lessee are merged in this Lease, which alone, fully and completely expresses the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver, or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee unless in writing and signed by both parties.

d. Lessee shall not sublet the property or any part thereof, nor assign this Lease, without the prior consent in writing of the Lessor; this Lease is being executed by Lessor upon the credit and reputation of Lessee. Acceptance by Lessor of rental from a third party shall not be considered as an assignment or sublease, nor shall it be deemed as constituting consent of Lessor to such an assignment or sublease.

e. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

f. This Lease shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

g. All notices to Lessor shall be sent to the address for rent payments and all notices to Lessee shall be sent to:
9293 Harding Avenue, Surfside, Florida 33154

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

TOWN OF SURFSIDE
Lessee (Company Name, if applicable)

By: _____
District Secretary

BY: _____

Gus Pego, P.E.
Print Name

Roger M. Carlton
Print Name

Attest: _____

Title: Town Manager

Name/Title: Executive Secretary

Attest: _____ (SEAL)

LEGAL REVIEW:

Print Name

District Counsel

Title: _____

Alicia Trujillo, Esq
Print Name

ADDENDUM

This is an Addendum to that certain Lease Agreement between DO NOT SIGN - SEE ADDENDUM ATTACHED

and the State of Florida Department of Transportation dated the _____ day of _____, _____.
In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (b) of said Agreement:

DO NOT SIGN - SEE ADDENDUM ATTACHED

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
District Secretary

Lessee (Company Name, if applicable)

BY: _____

Print Name

Print Name

Attest: _____

Title: _____

Name/Title: _____

Attest: _____ (SEAL)

LEGAL REVIEW:

Print Name

District Counsel

Title: _____

Print Name

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ADDENDUM TO LEASE AGREEMENT

Item/Seg No.: 2495611
Sec/Job No. 87060
SR No.: A1A
County: Miami-Dade
Parcels No.: 4228

This Addendum made this _____ day of _____ 2013, is an Addendum to the Lease Agreement dated _____ between the Town of Surfside (Lessee), and the Florida Department of Transportation (Lessor).

In addition to the provisions contained in said Lease Agreement, the following terms, conditions and/or amendments shall be deemed to be a part thereof pursuant to Paragraph 9(b) of said Lease Agreement:

1. Where the provisions of this Addendum conflict with the provisions of the Lease Agreement, this Addendum shall control. Except as otherwise agreed herein all other terms of the Lease Agreement shall remain in full force and effect.
2. The Lessor does hereby lease unto Lessee the FDOT sidewalks for State Road A1A/Harding Avenue from 93rd street to 96th Street located in the Town of Surfside for purposes of the operation of sidewalk cafes.
3. Sidewalk Café Permit approval process:

The Lessor does hereby agree that Lessee shall be permitted to issue permits to portions of the leased property to such third parties for purposes of the operation of a sidewalk café, but only to users who apply for, and are granted, a sidewalk café permit ("Permittees") issued by the Lessee, in accordance and compliance with the Lessee's Ordinance No. _____, guidelines and procedures for sidewalk cafés, FDOT's applicable regulations (as same may be amended from time to time), and any and all administrative regulations.

Upon the issuance of a sidewalk permit by Lessee to a Permittee, the Lessee shall submit a Sidewalk Café Supplement, in the form attached hereto as Exhibit "A-1", for approval by Lessor. Upon approval by Lessor, any such Supplement shall be incorporated to and constitute an addendum to the Lease Agreement ("Supplement Addendum").

In addition, the Lessee shall:

- a) Submit evidence of any sidewalk café permit site plan modification to Lessor within fifteen (15) days from the date that such modification is granted to a Permittee;

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ADDENDUM TO LEASE AGREEMENT

Item/Seg No.: 2495611
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County: Miami-Dade
Parcels No.: 4228

- b) Submit a Supplement Addendum to Lessor for each sidewalk café permit renewal by no later than October 15th of each calendar year.

4. Rent:

Paragraph 3 of the Lease Agreement is modified as follows:

Rent calculation. The Lessee and Lessor have agreed to a rent of 20% of the sidewalk café annual permit fee (or permit renewal fee, as the case may be) in accordance with the Lessee's ordinance Sec. 18-90 (1) as set forth in appendix A of said ordinance. The rent payable for the leased property is to be calculated on a per square footage basis, in accordance with the sidewalk café permit area described in each Supplement Addendum and sidewalk cafe permit granted by the Lessee.

Rent shall be paid annually as follows:

- a) Permits issued subsequent to October 1st of each calendar year shall be due and payable within thirty (30) days from the date the sidewalk café permit is issued by the Lessee to the Permittee and shall be pro-rated accordingly;
- b) Renewal permits shall be due and payable on or before November 1st of each calendar year.

The annual rental for each permit issued shall be based on the Lessee's permit year, to wit: October 1st to September 30th of each calendar year, and any rental pro-rations shall be based on this time period.

For purposes of any Supplement Addendum, the commencement date shall be deemed to be the date of the issuance of the sidewalk café permit by the Lessee.

Late fees or charges of any kind may be classified as additional rent if not paid when demanded, and may be included in any statutory notices served on the Lessee for non-payment of rent.

Lessor reserves the right to review and adjust the rent rate every two (2) years, and at renewal, to reflect market conditions.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ADDENDUM TO LEASE AGREEMENT

Item/Seg No.: 2495611
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County: Miami-Dade
Parcels No.: 4228

5. Maintenance:

Paragraph 5 of the Lease Agreement is modified as follows:

Notwithstanding anything contained in Paragraph 5 of the Lease Agreement, Lessor will be responsible for any structural repairs to the leased property not resulting from damage caused by Lessee, Permittee, or their respective employees, agents, guests or invitees. Lessee shall be responsible for maintenance of the leased property, including but not limited to, proper cleaning, upkeep and housekeeping of the leased property at its expense and for restoration repairs resulting from affixing items to the sidewalk surface.

6. Indemnification.

Paragraph 6 of the Lease Agreement is modified as follows:

Notwithstanding anything contained in Paragraph 6 of the Lease Agreement, Lessee shall indemnify Lessor, to the extent provided by law and subject to the limitations as provided in Section 768.28, F.S.

7. Insurance:

In addition to the provisions of paragraph 7 of the Lease Agreement:

Lessee does hereby agree that any sidewalk café permit issued to a Permittee shall include a provision requiring the Permittee, at its expense, to maintain, at all times during the Permit term, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the permit area arising out of the act, negligence, omission, nonfeasance, or malfeasance of Permittee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum than One million dollars (\$1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than One million dollars (\$1,000,000.00) for property damage, or a combined coverage of not less than two million dollars (\$2,000,000.00).

All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless Lessor is given at least sixty (60) days

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ADDENDUM TO LEASE AGREEMENT

Item/Seg No.: 2495611
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prior written notice of such cancellation or modification. Lessee shall provide Lessor certificates showing such insurance to be in place and showing Lessor as additional insured under the policies.

8. Paragraph 9 of the Lease Agreement is modified to include the following provision:

h. Lessee agrees to regularly inspect the premises to ensure compliance with the provisions of the sidewalk permits and Lessee's Ordinance No. 2008-3601; Lessee's administrative guidelines and procedures for sidewalk cafés; and FDOT's applicable regulations.

IN WITNESS WHEREOF, the parties have executed this Addendum to the Lease Agreement as of this _____ day of _____ 2012.

On behalf of Lessee
TOWN OF SURFSIDE

On behalf of Lessor
STATE OF FLORIDA
DEPARTMENT OF
TRANSPORTATION

By: _____
Roger M. Carlton
Town Manager

By: _____
Gus Pego P.E.
District Secretary

Witness: _____

Attest: _____

Name/Title

Executive Secretary

Witness: _____

Name/Title

Attest: _____

LEGAL REVIEW:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ADDENDUM TO LEASE AGREEMENT

Item/Seg No.: 2495611
Sec/Job No. 87060
SR No.: A1A
County: Miami-Dade
Parcels No.: 4228

Alicia Trujillo, Esq.
District Chief Counsel

SECOND ADDENDUM TO LEASE AGREEMENT

Between

THE TOWN OF SURFSIDE, FLORIDA

And

FLORIDA DEPARTMENT OF TRANSPORTATION

For

LEASE OF SIDEWALKS IN SURFSIDE BETWEEN 93rd STREET AND 96th STREET AND
HARDING AVENUE

This Second Addendum to the Lease Agreement, dated _____ (the "Effective Date"), is made by and between the TOWN OF SURFSIDE, Florida, a Florida municipal corporation (hereinafter referred to as the "LESSEE"), and FLORIDA DEPARTMENT OF TRANSPORTATION, AN AGENCY OF THE STATE OF FLORIDA ("LESSOR"). This SECOND ADDENDUM, the Addendum to the Lease Agreement between Lessee and Lessor dated _____, and the Lease Agreement shall collectively be referred to herein as the "Agreement". In the event of any conflict between this second Addendum, the Lease Agreement, and the Addendum to the Lease Agreement, it is agreed that this Second Addendum shall control.

PARAGRAPH 6. INDEMNIFICATION. To the extent allowable by law, Lessee shall indemnify and hold harmless the Lessor and all of its officers, agents, and employees from any claim, loss, cost, charge or expense arising out of any act, error, omission, or negligent act by Lessee, its agents or employees, during the performance of the Lease with regard to the subject of this lease- to wit: the sidewalks only, except that neither Lessee, its officers, agents or employees will be liable under this paragraph for any claim, loss, cost, damage, charge or expense arising out of any act error, omission, or negligent act of any of its officers, agents, or employees during the performance of the Lease. With regard to property that is not the subject of this Lease, and to the extent allowable by law, Lessor shall indemnify and hold harmless the Lessee and all of its officers, agents, and employees from any claim, loss, cost, charge or expense arising out of any act, error, omission, or negligent act by Lessee, its agents or employees, during the performance of the Lease.

IN WITNESS WHEREOF, the parties hereby execute this Agreement on the date first stated above.

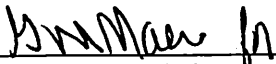
ATTEST:

TOWN OF SURFSIDE, FLORIDA

Sandra Novoa, TOWN Clerk

By: _____
Roger Carlton, Town Manager

APPROVED AS TO FORM AND LEGALITY



Lynn M. Dannheisser, Town Attorney

ATTEST:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Secretary
Please type name of Secretary

By: _____
Gus Pego, District Secretary

Date: _____

LEGAL REVIEW:

District Counsel