

RESOLUTION NO. 13-Z-06

A RESOLUTION OF THE TOWN COMMISSION OF SURFSIDE, FLORIDA, APPROVING AN APPLICATION FOR AMENDED SITE PLAN, PURSUANT TO SECTION 90-41 ET SEQ. OF THE ZONING CODE, TO PERMIT A 285 UNIT CONDOMINIUM/HOTEL INCLUDING A GOURMET SPECIALTY FOOD PRODUCT STORE, A FOUR STAR HOTEL WITH A FIRST CLASS QUALITY SPA, ROOF TOP DECKS, POOLS, 668 PARKING SPACES, TANDEM PARKING, AND 24 HOUR VALET PARKING CONSISTING OF THREE 12-STORY BUILDINGS ON THE EAST SIDE OF COLLINS AVENUE AND TWO 4-STORY BUILDINGS ON THE WEST SIDE OF COLLINS AVENUE, AND CONDITIONAL USES, PURSUANT TO SECTION 90-23-2 OF THE ZONING CODE, TO PERMIT THE DEVELOPMENT OF STRUCTURED PARKING, HOTEL SWIMMING POOLS, JACUZZI, OUTDOOR DINING, LOUNGES/BARS, AND A ROOF TOP BAR, ALL WITH AN ADDRESS OF 9011 COLLINS AVENUE, SURFSIDE, FL, AS SUBMITTED BY THE SURF CLUB, INC., SUBJECT TO CERTAIN CONDITIONS WHICH SHALL BE INCLUDED IN A RECORDED COVENANT RUNNING WITH THE LAND, AND PROVIDING FOR A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

I. RECITALS.

WHEREAS, **The Surf Club, Inc.** (the "Applicant"), a Florida corporation, owner of the property located at 9011 Collins Avenue, Surfside, FL 33154, with a general location of the east and west sides of Collins Avenue and 91st Street, Surfside, FL, (the "Property") submitted an application to the Town of Surfside, Florida (the "Application") on February 15, 2013, requesting an amendment to the Town approvals granted for the property by Resolution No. 12-Z-03, which amendment requests certain design changes to the original site plan approval as set forth below (the "Application"):

- A. Pursuant to Section 90-41 et seq., of the Town Zoning Code, site plan approval of a 285 unit condominium/hotel development to be known as "The Surf Club", including a gourmet specialty food product store, a four star hotel with a first class quality spa, roof top decks, pools, 668 parking spaces, tandem parking, and 24 hour valet parking consisting of three 12-story buildings on the east side of Collins Avenue and two 4-story buildings on the west side of Collins Avenue.

- B. Pursuant to Section 90-23-2 of the Town Zoning Code, conditional use approval for structured parking, hotel swimming pools, Jacuzzi, outdoor dining, lounges/bars and a rooftop bar as part of the restoration and redevelopment of the property at 9011 Collins Avenue, Surfside, Florida for a condominium/hotel with 285 hotel rooms and related uses.

Plans are on file and may be examined in the Building Department entitled "Surf Club" at 9011 Collins Avenue, Surfside, FL 33154, which plans may be modified at public hearing (hereinafter referred to as the "Plans") prepared by Richard Meier & Partners Architects, LLP and Kobi Karp Architecture & Interior Design, submitted April 9, 2013 consisting of a set of sheets including the following:

Architecture sheets:

Prepared by Richard Meier & Partners Architects, LLP and Kobi Karp Architecture & Interior Design

A1.00 COVER April 9, 2013 1 OF 2 SURVEY SHEET 1 July 12, 2012 2 OF 2 SURVEY SHEET 2 July 12, 2012 A1.01 SHEET INDEX April 9, 2013 A1.01A SCHEMATIC DEMOLITION DIAGRAM March 11, 2013 A1.01B PERVIOUS AREA DIAGRAM March 11, 2013 A1.01C USABLE ROOF DIAGRAM March 11, 2013 A1.02 AERIAL IMAGES SEPT 18, 2012 A1.03 PROPOSED - STREET VIEW – RENDERING March 11, 2013 A1.03 COMMISSION APPROVED - STREET VIEW – RENDERING SEPT 18, 2012 A1.04 PROPOSED - COLLINS BIRD'S EYE – RENDERING March 11, 2013 A1.04 COMMISSION APPROVED - COLLINS BIRD'S EYE – RENDER SEPT 18, 2012 A1.05 PROPOSED - 90TH BIRD'S EYE VIEW – RENDERING March 11, 2013 A1.05 COMMISSION APPROVED - 90TH BIRD'S EYE VIEW – RENDER SEPT 18, 2012 A1.06 PROPOSED - BEACH VIEW – RENDERING April 9, 2013 A1.06 COMMISSION APPROVED - BEACH VIEW – RENDERING SEPT 18, 2012 A1.07 PROPOSED - BEACH VIEW – RENDERING March 11, 2013 A1.07 COMMISSION APPROVED - BEACH VIEW – RENDERING SEPT 18, 2012 A1.08 PROPOSED - STREET VIEW – RENDERING March 11, 2013 A1.08 COMMISSION APPROVED - STREET VIEW – RENDERING SEPT 18, 2012 A1.09 SHEET REMOVED (DUPLICATE RENDERING) A1.10 STREET VIEW – RENDERING SEPT 18, 2012 A1.11 STREET VIEW – RENDERING SEPT 18, 2012 A1.12 STREET VIEW – RENDERING SEPT 18, 2012 A1.13 COLLINS VIEW – RENDERING SEPT 18, 2012 A2.00 ZONING INFORMATION March 11, 2013 EX-A ELEVATION COMPARISONS APRIL 9, 2013 EX-B SITE COMPARISONS March 11, 2013 EX-C PROPOSED ROOF COMPARISON PLAN APRIL 9, 2013 A2.01 SITE PLAN April 9, 2013 A3.00 SERVICE LEVEL FLOOR PLAN April 9, 2013 A3.01 GROUND LEVEL FLOOR PLAN April 9, 2013 A3.02 200 LEVEL FLOOR PLAN April 9, 2013 A3.03 300 LEVEL FLOOR PLAN April 9, 2013 A3.04 400 LEVEL FLOOR PLAN April 9, 2013 A3.05 500 LEVEL FLOOR PLAN April 9, 2013 A3.06 600 LEVEL

FLOOR PLAN April 9, 2013 A3.07 700-800 LEVEL FLOOR PLAN April 9, 2013 A3.08 900 LEVEL FLOOR PLAN April 9, 2013 A3.09 1000 LEVEL FLOOR PLAN April 9, 2013 A3.10 1100 LEVEL FLOOR PLAN April 9, 2013 SHEET TITLE REVISION DATE A3.11 1200 LEVEL FLOOR PLAN April 9, 2013 A3.12 ROOF LEVEL FLOOR PLAN April 9, 2013 A3.13 ROOF CANOPY PLAN April 9, 2013 A4.00 EAST BUILDINGS ELEVATIONS April 9, 2013 A4.01 EAST BUILDINGS ELEVATIONS April 9, 2013 A4.02 NW BUILDING ELEVATIONS SEPT 18, 2012 A4.03 NW BUILDING ELEVATIONS SEPT 18, 2012 A4.04 SW BUILDING ELEVATIONS SEPT 18, 2012 A4.05 SW BUILDING ELEVATIONS SEPT 18, 2012 A4.06 EAST BUILDINGS RENDERED ELEVATIONS March 11, 2013 A4.07 EAST BUILDINGS RENDERED ELEVATIONS 15 Febr, 2013 A4.08 WEST BUILDINGS RENDERED ELEVATIONS SEPT 18, 2012 A4.09 WEST BUILDINGS RENDERED ELEVATIONS SEPT 18, 2012 A5.00 SITE SECTIONS March 11, 2013 A5.00A SOUTH TOWER LONGITUDINAL SECTION 15 Febr, 2013 A5.01 SOUTH TOWER CROSS SECTION 15 Febr, 2013 A5.02 NORTH TOWER LONGITUDINAL SECTION March 11, 2013 A5.03 NORTH TOWER CROSS SECTION 15 Febr, 2013 A5.04 NW BUILDING LONGITUDINAL SECTIONS SEPT 18, 2012 A5.05 SW BUILDING SECTIONS SEPT 18, 2012 A5.06 NORTH TOWER CROSS SECTION 15 Febr, 2013 A5.07 NORTH TOWER CROSS SECTION March 11, 2013 A5.08 NORTH TOWER CROSS SECTION 15 Febr, 2013

Survey sheets:

Prepared by Fortin, Leavy, Skiles, Inc.

1 OF 2 SURVEY SHEET 1 JULY 12, 2012 2 OF 2 SURVEY SHEET 2 JULY 12, 2012

Civil sheets

Prepared by Ocean Engineering

C100 SCHEMATIC PAVING, GRADING & DRAINAGE PLAN March 11, 2013 C200 SCHEMATIC WATER & SEWER PLAN March 11, 2013 C300 SCHEMATIC SIGNAGE & STRIPING PLAN March 11, 2013 I-000

Landscape architecture sheets

Prepared by EDSA

COVER SHEET March 11, 013 L-001 SHEET REMOVED L-002 LANDSCAPE CALCULATIONS March 11, 2013 L-100 OVERALL SITE PLAN March 11, 2013 L-101 SITE PLAN March 11, 2013 L-102

SITE PLAN March 11, 2013 L-103 SITE PLAN OCTOBER 4, 2012 L-200 OVERALL LAYOUT AND DIMENSIONING PLAN March 11, 2013 L-201 LAYOUT AND DIMENSIONING PLAN March 11, 2013 L-202 LAYOUT AND DIMENSIONING PLAN March 11, 2013 L-203 LAYOUT AND DIMENSIONING PLAN OCTOBER 4, 2012 L-400 OVERALL GRADING PLAN March 11, 2013 L-401 GRADING PLAN March 11, 2013 L-402 GRADING PLAN March 11, 2013 L-403 GRADING PLAN OCTOBER 4, 2012 SHEET TITLE REVISION DATE L-500 PLANTING NOTES March 11, 2013 L-501.00 TREE PLANTING SCHEDULE March 11, 2013 L-501.00 SHRUB PLANTING SCHEDULE March 11, 2013 L-502.00 OVERALL TREE REMOVAL AND RELOCATION PLAN OCTOBER 4, 2012 L-502.01 TREE REMOVAL AND RELOCATION PLAN OCTOBER 4, 2012 L-502.02 TREE REMOVAL AND RELOCATION PLAN OCTOBER 4, 2012 L-502.03 TREE REMOVAL AND RELOCATION PLAN OCTOBER 4, 2012 L-502.04 OVERALL TREE REMOVAL AND RELOCATION CHART OCTOBER 4, 2012 L-510.00 OVERALL TREE PLAN March 11, 2013 L-510.01 TREE PLAN March 11, 2013 L-510.02 TREE PLAN March 11, 2013 L-510.03 TREE PLAN OCTOBER 4, 2012 L-510.04 ROOF PLAN March 11, 2013 L-510.05 ROOF PLAN March 11, 2013 L-510.06 ROOF PLAN OCTOBER 4, 2012 L-520.00 OVERALL SHRUB PLAN March 11, 2013 L-520.01 SHRUB PLAN March 11, 2013 L-520.02 SHRUB PLAN March 11, 2013 L-520.03 SHRUB PLAN OCTOBER 4, 2012 L-520.04 SHRUB PLAN ROOF March 11, 2013 L-520.05 SHRUB PLAN ROOF March 11, 2013 L-520.06 SHRUB PLAN ROOF OCTOBER 4, 2012 L-520.07 SHRUB TYPICAL GARAGE LEVEL OCTOBER 4, 2012 L-520.08 SHRUB GARAGE DETAILS OCTOBER 4, 2012 L-700 SHEET REMOVED L-701 SHEET REMOVED L-702 SHEET REMOVED L-703 SHEET REMOVED L-971.00 SHEET REMOVED L-971.01 SHEET REMOVED L-950.00 PLANTING NOTES OCTOBER 4, 2012 L-950.01 PLANTING DETAILS OCTOBER 4, 2012 L-950.02 PLANTING DETAILS OCTOBER 4, 2012 L-950.03 PLANTING DETAILS OCTOBER 4, 2012 L-950.04 PLANTING DETAILS OCTOBER 4, 2012 L-950.05 PLANTING DETAILS OCTOBER 4, 2012 L-950.06 PLANTING DETAILS OCTOBER 4, 2012 L-420.00 OVERALL IRRIGATION PLAN March 11, 2013 L-420.01 IRRIGATION PLAN March 11, 2013 L-420.02 IRRIGATION PLAN March 11, 2013 L-420.03 IRRIGATION PLAN OCTOBER 4, 2012 L-420.04 IRRIGATION LEGEND AND NOTES FEBRUARY 24, 2013 L-420.05 IRRIGATION DETAILS FEBRUARY 24, 2013 L-420.06 IRRIGATION DETAILS FEBRUARY 24, 2013 L-420.07 IRRIGATION DETAILS FEBRUARY 24, 2013 SE3.00 SERVICE LEVEL March 11, 2013 SE3.01 GROUND LEVEL March 11, 2013 SE4.00 SHEET REMOVED SE4.00 SHEET REMOVED

Legal Description: See attached Exhibit "A" "Legal Description"

ADDRESS: 9011 Collins Avenue, Surfside, FL 33154

WHEREAS, on March 4, 2013, the Town's Development Review Group, pursuant to the Town's Zoning Code Section 90.20, met to review the Application and provide technical comments to the Town staff and to the Applicant; and

WHEREAS, the Town's Development Impact Committee, after advertised notice and notice posted on the Town's website, met on March 4, 2013, and during the televised meeting, reviewed the Application and made recommendations to the Town's Planning and Zoning Board in accordance with the criteria set forth in the Town's Zoning Code Section 90.20. Its recommendations for approval, subject to certain conditions set out in the Development Impact Committee Report, are incorporated herein under Section IV. Conditions, and, together with all other conditions imposed by the Planning and Zoning Board and the Town Commission, shall be accepted by the Applicant and owner of the Property and their heirs, successors and/or assigns, and shall be made part of a recorded covenant running with the land; and

WHEREAS, on April 3, 2013, 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 Section 90-41 et seq. of the Town Zoning Code for Site Plan Approval and Section 90- 23-2 of the Town Zoning Code for Conditional Use Approval and the Application's consistency with the Town of Surfside's Comprehensive Plan and recommended the Application for approval by the Town Commission, subject to all of the conditions recommended by the Development Impact Committee and the additional conditions of approval incorporated herein under Section IV. Conditions; and

WHEREAS, on April 23, 2013, the Town Commission, at a duly noticed and televised quasi-judicial public hearing, after reviewing the Application, the recommended conditions, and all accompanying documentation, including written reports from its Town Planner and other consultants, and hearing from its professional staff, the Applicant, and members of the public, found substantial competent evidence that the Applicant's requests for site plan approval and approval of the conditional uses are in compliance with the Zoning Code and the Comprehensive Plan of the Town and maintain the basic intent and purpose of the zoning, subdivision or other land use regulations, which are to protect the general welfare of the public, particularly as it affects the stability and appearance of the community; and, further, found that said requests should be granted, per plans on file, and subject to all of the conditions set forth in this Resolution, which shall be binding upon the Applicant, its heirs, successors and/or assigns, and the execution of any attendant agreements, including a covenant running with the land in a form approved by the Town Attorney, and with a time limitation of twenty-four (24)

months in which to obtain a building permit, subject to extensions as provided in Condition No. 53 of this Resolution.

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 Commission finds that the proposed amended site plan, with the conditions as recommended herein, is in compliance with the requirements and criteria set forth in sections 90.41 "Regulated Uses" and 90.23 "Conditional Uses" of the Zoning Code of the Town of Surfside.

III. APPROVALS.

The approvals set forth in this Section III are subject to all of the conditions set forth in this Resolution and the execution of all attendant agreements prior to the issuance of the Building Permit for the Project.

- A. The Applicant's request for approval of the amended site plan submitted for the property known as the "Surf Club" located at 9011 Collins Avenue, with a general location of the east and west sides of Collins Avenue and 91st Street be, and the same is, hereby granted and said site plan is hereby approved, subject to all of the conditions provided in this Resolution. The failure of performance of any of these conditions shall be deemed grounds for revocation of this approval.
- B. The Applicant's request for approval of conditional uses for a 285 unit condominium/hotel development to be known as "The Surf Club", including a gourmet specialty food product store, a four star hotel with a first class quality spa, roof top decks, pools, 668 parking spaces, tandem parking, and 24 hour valet parking consisting of three 12-story buildings on the east side of Collins Avenue and two 4-story buildings on the west side of Collins Avenue be, and the same is, hereby granted, subject to all of the conditions of approval.

IV. CONDITIONS.

AGREED UPON CONDITIONS:

- 1. All signage, including signage for the accessory uses, shall be submitted, reviewed and approved under a separate application for review by the

Town Planning and Zoning Board prior to the issuance of a Temporary Certificate of Occupancy.

2. The Rooftop common area pool on the roof of the center building on the east side of Collins Avenue shall be limited to the following hours of operation: dawn to 9 p.m.
3. Live, amplified music shall be prohibited outdoors. Recorded music no greater than 75 decibels shall be allowed outdoors from 11:00 a.m. to dusk. This shall be reviewed through the Conditional Use annual review.
4. A bond or equivalent amount of cash shall be posted to 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 building permit.
5. The Applicant shall provide a chain link construction fence with a windscreen, as required by the Town Code. The windscreen shall display a rendering of the project.
6. Prior to consideration of the application by the Town Commission, the Applicant's counsel shall provide a legal opinion that the application does not violate the terms of Section 4 of the Town Charter, the Town's Comprehensive Plan and the Town's Zoning Code or in lieu thereof provide an agreement from Applicant in a form sufficient and acceptable to the Town Attorney to defend and hold harmless/covenant not to sue the Town against any suits, claims or demands arising from approval of the application for conditional use approval and site plan approval.
7. 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.
8. The Applicant shall meet all requirements of the Department of Public Works and Miami-Dade County for storm drainage services.
9. The Applicant shall fund the cost of litter receptacles along Collins Avenue and litter receptacles along 91st Street and Harding Avenue in a quantity, design and location reasonably acceptable to the Department of Public Works. The design of the litter receptacles shall be determined by the Department of Public Works in cooperation with the Applicant and the installation shall occur before issuance of the final certificate of occupancy.

10. 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.
11. The Applicant agrees to design the project as required by the LEED process upon final approval of the site plan by the Town Commission so that the project will be LEED Silver Certifiable. Determination that the building has achieved LEED Silver certification shall be made by LEED at the appropriate time, which the Town realizes may not be issued prior to issuance of a Certificate of Occupancy. Applicant shall make necessary changes during the course of its construction and prior to final determination by LEED to ensure that LEED Silver Certification is achieved but should the cost for such changes become excessive (defined as a cost which is 0.5% greater than the original permitted value plus any change orders), the Applicant shall not be required to make changes beyond this amount and the Applicant may apply for its Certificate of Occupancy at the completion of its construction. Subject to the above, the Applicant will continue to construct and commission the building otherwise in accordance with its LEED certifiable design. Should the cost become excessive as defined above and Applicant opts not to carry out further changes, the Applicant will pay any balance remaining out of the defined amount not already spent on changes during construction or commissioning, required to ensure the building remains LEED Silver certifiable into a Town fund to be used for Town-wide energy conservation programs. In the event LEED certification is not available for the southwest parking garage on the west side of Collins Avenue, then Applicant commits to use its best efforts (not to exceed \$500,000) to maximize environmentally friendly construction practices by controlling construction pollution, utilizing building materials that originated within 500 miles of the site, maximizing water efficiency by implementing an efficient irrigation system, and by landscaping with native plants, recycling of existing asphalt, and installing energy efficient lighting, heating, ventilation and air conditioning systems to optimize the energy performance of the southwest parking garage.
12. The words "Surfside" shall be included in marketing materials. The details shall be formulated six months prior to issuance of the Certificate of Temporary Occupancy. The Town of Surfside and the Applicant shall cooperate in the annual determination of marketing programs utilizing resort tax revenues. The word "Surfside" shall be used to describe the address and location of the Surf Club. The words "Miami Beach Surf Club" "located in Miami Beach" "Bal Harbour Village" and "located in Bal Harbour Village" shall not be used immediately preceding or following the words "Surf Club". The words "Miami Beach", and "Bal Harbour Village" shall not be part of the website address for the Surf Club.

13. The Applicant shall feature businesses located in the downtown area of the Town of Surfside as a part of marketing information about the property in any room directory, concierge program or similar information provided to guests.
14. The Ownership Declaration dated March 27, 2013, attached hereto as Exhibit "C", provides the percentage equity for all members/partners owning more than twenty percent interest in Applicant as of said dates. The Ownership Declaration shall be updated pursuant to Condition No. 56 of these Conditions.
15. The Applicant shall provide the Town with a detailed estimated schedule for the construction of the project (the "Construction Schedule") within thirty (30) days of approval of the amended site plan Application by the Town Commission. Failure to meet the estimated achievement dates stated on the Construction Schedule shall not excuse any delay in making the mandatory payments set forth in Condition No. 17 (Traffic Signal Warrant) No. 20 (Tennis Center), Condition No. 21 (91st Street underground and beautification), Condition No. 23 (Community Center/Parks and Recreation Capital Infrastructure) and Condition No. 62 (Downtown Improvement Fund), which dates are set forth in the Construction Schedule described herein and shall govern regardless of any time delay in performance.
16. The average monthly resort tax payments received from The Surf Club for the twelve (12) month period prior to the date of the Town Commission's approval of the Resolution shall continue to be paid to the Town monthly from the time the Surf Club ceases to operate until the issuance of a Temporary Certificate of Occupancy.
17. The Applicant shall contribute \$400,000 for traffic mitigation Townwide prior to the issuance of the Temporary Certificate of Occupancy (the "Traffic Mitigation") in the following manner: Applicant shall provide a detailed traffic signal warrant analysis within sixty (60) days of the reopening of 91st Street, and, based on the outcome of this analysis, fund an amount not to exceed \$400,000, if necessary, for a traffic signal at 91st Street and Collins Avenue. Applicant will work cooperatively with the Town to apply for a traffic signal and will appeal any denial of the traffic signal to FDOT within sixty (60) days of denial. In the event a traffic signal at 91st Street and Collins Avenue is not approved, the Applicant shall contribute the difference between the cost of the traffic signal warrant analysis and the sum of \$400,000 to provide a pedestrian crossing signal or to otherwise enhance pedestrian safety when crossing Collins Avenue between 90th Street and 91st Street, subject to approval by FDOT and all other applicable traffic regulatory agencies. If neither the traffic signal nor the pedestrian signal is approved by the traffic regulatory agencies, including FDOT, or if there are any funds remaining after the installation of the traffic signal or the pedestrian signal, the funds may be

used for traffic mitigation Townwide, as recommended by the Town Manager and approved by the Town Commission. If a traffic signal is not approved after appeal, Applicant will provide a police guard on an as needed basis in consultation with the Town Police Department, at the crosswalk at the intersection of 91st Street and Collins Avenue. If a traffic signal is approved, Applicant will provide a second outbound lane at the proposed curb cut near Collins Avenue and 91st Street.

18. All voluntary proffers and commitments made to the Town of Surfside pursuant to the Resolution and 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 conditional use approval and site plan approval were granted.
19. The Applicant shall design and build a lifeguard stand, subject to the review and approval of the Town, to be located east of the Surf Club in a mutually acceptable location and shall be completed no later than the issuance of the Temporary Certificate of Occupancy. The Applicant agrees to contribute \$30,000 to the Town of Surfside at the issuance of the Temporary Certificate of Occupancy, \$20,000 twelve months thereafter and \$10,000 twelve additional months thereafter towards the operational cost.
20. The Applicant shall contribute \$25,000 to the Town of Surfside for improvements to the public Tennis Center prior to issuance of the Temporary Certificate of Occupancy. Privileges will be provided to the Surf Club residents and guests as shall be determined by future agreement subject to Town Commission approval.
21. The Applicant shall contribute a total of \$500,000 towards the cost of the undergrounding of utilities and the installation of associated landscape, including Medjool palms, and construction of streetscape improvements, along 91st Street from Harding Avenue to Bay Drive (the "91st Street Project"). Upon award of the construction contract by the Town, Applicant shall pay \$250,000; when the 91st Street Project is fifty percent (50%) complete, Applicant shall pay \$125,000 and the remaining \$125,000 shall be paid when the 91st Street Project is complete. Notwithstanding the foregoing schedule of payments, the entire amount of \$500,000 shall be paid to the Town no later than the date of issuance of the Temporary Certificate of Occupancy for the Surf Club, and said funds must be deposited in an account to be used solely for capital improvements. Applicant's obligation to construct 91st Street between Collins Avenue and Harding Avenue, as required in the Site Plan approved by the Town

Commission, is not a part of this obligation to contribute \$500,000 to the 91st Street Project.

22. The Applicant shall fund a total not to exceed \$400,000 for the 90th Street End Project (the 90th Street End Project”) that includes landscape and streetscape improvements from Collins Avenue to the 90th Street beach access point east of the hard pack. Upon the start of construction of the project, which is currently estimated to be January 14, 2014, Applicant shall also sift sand on an as needed basis to remove large stones in the area east of 90th Street from the paved area to the hardpack and dispose of such stones. This 90th Street End Project shall be completed prior to the issuance of the Temporary Certificate of Occupancy. Applicant may contribute the \$400,000 either in cash or by performing the work or by a combination of cash and performing the work. If Applicant elects to contribute the \$400,000 wholly in cash, the funds shall be due upon award of the 90th Street End Project construction contract by the Town Commission. Applicant shall advise Town of its decision whether to pay the cash, or perform the work or provide a combination of cash and work no later than: ninety (90) days after the date of issuance of the Building Permit for the Surf Club.
23. The Applicant shall contribute \$500,000 for the Town’s Parks and Recreation Capital Infrastructure Program. Use of the funds shall be determined by the development and approval of a Parks and Recreation Capital Infrastructure Master Plan. Upon adoption of said plan, and determination by the Town Commission of which projects shall be funded in whole or in part by the Applicant’s voluntary proffer, \$250,000 shall be paid to the Town’s Parks and Recreation Capital Infrastructure Program. Six months thereafter, \$125,000 shall be paid to the Town’s Parks and Recreation Capital Infrastructure Program, and six months thereafter, the remaining \$125,000 shall be paid. Notwithstanding the preceding payment schedule, the entire \$500,000 contribution shall be paid in full prior to the issuance of the first Temporary Certificate of Occupancy for the first new construction building completed.
24. The Applicant shall comply with all requirements contained in the Special COA No. 2012-25-S issued by the Miami-Dade County Historic Preservation Board on March 20, 2013, as the same may be amended from time to time. A copy of the March 20, 2013 letter from the Miami-Dade County Office of Historic Preservation approving the issuance of the Special Certificate of Appropriateness subject to the twelve (12) conditions set forth therein is attached and made a part of this list of conditions as Exhibit “B” to the Resolution.
25. The Applicant 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 construction site in the event construction is abandoned, or ceases prior to completion, or to repair public

infrastructure damaged by construction, and to maintain site during abandonment.

26. The Applicant shall reimburse the Town for any work performed by the Town resulting from the Applicant's need to provide water and sewer service along Collins Avenue, 91st Street and Harding Avenue. Any work necessary within the FDOT ROW shall comply with FDOT regulations.
27. The proposed market shall be a Gourmet Specialty Food Product Store, as defined by the following: a retail store that sells gourmet specialty food products. It may not offer money order and wire services, dry cleaning/laundry, photo processing, banking, ATM machines and pharmaceutical services. A Gourmet Specialty Food Product Store must be a member of the National Association for the Specialty Food Trade or its successors in interest within two years of opening the store. Gourmet Specialty Food Products are defined as foods and beverages that exemplify quality, innovation and style in their category. Their specialty nature derives from some or all of the following characteristics: their originality, authenticity, ethnic or cultural origin, specific processing, ingredients, limited supply, distinctive use, extraordinary packaging or specific channel of distribution or sale. By virtue of their differentiation in these categories, such products maintain a high perceived value and often command a premium price. No sales of any type, including food service shall be made through an open window to any street or sidewalk. There shall be no direct pedestrian access to the Gourmet Specialty Food Product Store from any street or sidewalk.
28. The proposed spa shall be a first class quality spa and part of a Four Star Hotel. In the event the Four Star Hotel Rating is lost for any reason, the Applicant shall have two years to regain said rating. If no cure is obtained during the two-year term, the Applicant must then appear before the Town Commission for an extension or an adjustment to this requirement.
29. In the event that the municipal resort tax authorized under Chapter 67-930, Laws of Florida, as amended by Chapter 83-363, Laws of Florida, is further amended to make sales of spa treatments, services and products subject to the resort tax, or, in the event the State of Florida otherwise provides for collection of resort tax on sales of spa treatments, services and products, the Applicant agrees to collect and remit this tax.
30. During peak hours defined as 10 a.m. to 6 p.m., there shall be a sufficient number of valet attendants to assure no queuing exists on Collins and Harding Avenues and 91st Street. Should there be special events, sufficient additional valet attendants shall be added to minimize the impact on traffic. Three months prior to issuance of the Temporary Certificate of Occupancy, Applicant shall submit for review and approval by the Town Manager an operating plan for ingress/egress to each parking facility.

31. All gates shall be of a decorative design to enhance the aesthetics of the buildings.
32. Prior to issuance of any building permit, Applicant shall execute a recordable covenant running with the land, binding upon its heirs, successors and assigns, subject to the approval of the Town Attorney, which shall be recorded in the public records of Miami-Dade County, FL at Applicant's sole expense, which shall include, in addition to all of the other conditions and provisions required by this Resolution to be included in a recorded covenant, a provision that any building containing any tandem parking spaces shall provide twenty-four (24) hour valet parking service. This recorded covenant may be amended from time to time and shall be re-recorded at the Applicant's sole expense after approval by the Town Attorney. Such amendments shall occur each time any modifications or changes are made to this Resolution. If minor changes are made to the original site plan, the covenant shall be amended as set forth above if, in the opinion of the Town Manager or the Town Attorney, such changes require changes to the recorded covenant.
33. All pedestrian features shall comply with the Americans With Disabilities Act (ADA), including but not limited to detectable warning features at driveway locations and be identified with details of ADA conforming handicapped ramps at the time of engineering permit.
34. The new sidewalk, curbs, and gutter along Collins Avenue and Harding Avenue must be approved and permitted by FDOT.
35. The Applicant shall comply with all applicable conditions and permit requirements of Miami-Dade County's Department Regulatory and Environmental Resources, the Miami-Dade County Fire/Rescue Department, the Water and Sewer Department, Florida Department of Environmental Protection (FDEP), the Florida Department of Transportation (FDOT) and all other applicable regulatory agencies.
36. 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 from the construction site.
37. No building permits shall be issued (except for demolition, temporary power and construction trailers) unless the Applicant has submitted all documents required under this approval as of that date, in form and

content subject to the approval of the Town Attorney and Town Manager, and shall have paid all professional and other payments required by the Code of the Town of Surfside to be paid as of that date, including but not limited to, the connection and development fees in accordance with Section 78-83 of the Code of the Town of Surfside, entitled “development fee imposed; time of payment” are paid. The Town acknowledges that the work, including issuance of building permits required for preserving the original Surf Club structure and/or the historic cabanas, may be initiated earlier than the new construction. Should this occur, the cost of permits for that work shall be calculated separately and paid prior to initiation of work.

38. 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 and the Town Attorney within 60 days of the effective date of this resolution. The Applicant shall present evidence of a construction parking plan for the provision of off-street parking for construction workers during the period of construction of the approved project prior to the issuance of a building permit. The construction parking plan shall be subject to the review and approval of the Town Manager. The construction parking plan shall provide that all workers shall park on the site and that (a) Applicant’s general contractor shall direct all workers to park their vehicles on the Surf Club site during work hours; (b) no workers shall park their vehicles in residential neighborhoods, and (c) Applicant shall provide monthly reports to the Town Manager of any problems or complaints with regard to workers parking their vehicles off site and in residential neighborhoods and, as the Town Manager may deem necessary, shall provide more frequent reports and develop additional preventive measures to protect the residential neighborhoods.
39. 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.
40. The Town Manager and/or his/her designee, in review of any application prior to the issuance of a building permit, or thereafter, if there are any material amendments to the site plan approval, may refer any such application presented to such engineering, planning, legal, technical or environmental consultant or professional(s) employed by the Town as the Town Manager shall deem reasonably necessary to enable him/her to review such application as required by law. Charges made by the Town shall be in accord with reasonable hourly rates made by such consultants or the hourly rates of employed professionals and shall be paid within thirty (30) days of submission of Town voucher. Determination of whether a change is considered material or minor shall be in the sole discretion of the Town Manager in the absence of controlling language in the Town’s

Zoning Code. A material change shall be processed in the same manner as the original site plan. A minor change shall be reviewed and approved by the Town Manager or, in his sole discretion, may be referred to the Town Commission for review and approval in the same manner as the original site plan.

41. The Applicant shall furnish payment and performance bond, cash or letter of credit issued in a form and by a bank reasonably acceptable to the Town to ensure Applicant's performance of the public improvements pursuant to the site plan approval, including the street end at 90 Street to the hardpack and 91 Street between Collins and Harding if work is done by the Applicant. Any such bond shall be issued by a surety having a minimum rating of A-1 in the Best's Key Rating Guide, Property/Casualty edition, shall be subject to the approval of the Town and shall include this legend: "This bond may not be cancelled or allowed to lapse until 30 days after receipt by the Town, by certified mail, returned receipt requested, addressed to: "Town Manager with a copy to: Town Attorney, both addressed to: Town of Surfside, 9293 Harding Avenue, Surfside, FL 33154-309" of written notice from the issuer of the bond of its intent to cancel or to not renew." As improvements are made, the Town, within its reasonable discretion, may reduce or eliminate the bond amount. These rights reserved by the Town with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the Town may have under this Resolution, in law or in equity.
42. Proof of an FDOT permit shall be required prior to any work being performed within the Collins Avenue and Harding Avenue rights-of-way.
43. Applicant shall have provided copies of approvals from Miami-Dade County for sanitary sewer, and from the Miami-Dade Public Health Unit for water.
44. An irrigation plan shall have been approved by the Town within thirty (30) days from the date of approval of this Resolution by the Town Commission.
45. The Applicant shall provide detailed civil sheets with typicals and calculations on the wells and exfiltration within thirty (30) days from the date of approval of this Resolution by the Town Commission.
46. The Applicant acknowledges the Florida Department of Environmental Protection's Beach Erosion Control Plan, and that there will be a lease between the Florida Department of Environmental Protection and Miami-Dade County and a management agreement between Miami-Dade County and the Town of Surfside, the terms of which will be binding on Applicant, its heirs, successors and assigns, to the extent that it applies.

47. The Applicant shall provide a unity of title in a form acceptable to the Town Attorney for all parcels prior to issuance of the Building Permit. The unity of title shall be recorded in the Public Records of Miami-Dade County, FL, at the sole expense of the Applicant.
48. The Applicant shall provide water/sewer fees to the Town of Surfside in the amount prescribed in the Code Section 78-83 and calculated using all fixtures in the buildings. Said fee shall be paid at the issuance of the Building Permit. There shall be no off-set for existing fixtures if such off set is prohibited by law.
49. Applicant shall comply with all requirements of the Florida Department of Environmental Protection, Miami-Dade County, and any other applicable regulatory agency, including but not limited to construction of a bulkhead. Applicant shall provide Town Manager with a copy of the exemption from construction of the bulkhead, or with the Florida Department of Environmental Protection approved plans for the bulkhead, at the time of Building Permit Application.

Other Conditions:

50. In the event of a hurricane warning, all removable items from the beach, pool decks, roof decks and other outdoor spaces shall be removed and secured.
51. There shall be no service of glass or aluminum containers, and to the extent feasible, biodegradable straws shall be used on the beach by Applicant, and Applicant shall use good faith efforts to ensure that there shall be no service of plastic straws on the beach.
52. The Applicant shall obtain a certificate of occupancy and certificate of use from the Town upon compliance with all terms and Conditions. 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.
53. The site plan shall remain valid for a period of 24-months from the date of approval of this Resolution by the Town Commission. If no building permit is issued within the 24-month time period, the site plan shall be considered null and void and of no force and effect unless extensions of time are requested and obtained pursuant to law but subject to Condition No. 15 which states in pertinent part: "Failure to meet the achievement dates stated on the construction schedule shall not excuse any delay in making the mandatory payments set forth in Condition No. 17 (Traffic Signal Warrant) No. 20 (Tennis Center), Condition No. 21 (91st Street underground and beautification) and Condition No. 23 (Community Center/Parks and Recreation Capital infrastructure)." Neither the

expiration of permits or expiration of the site plan and conditional use approval, nor the obtaining or failure to obtain extensions of time shall excuse or delay the obligation of the Applicant, its heirs, successors and/or assigns to make the mandatory payments as set forth in these Conditions. The Applicant shall pay the building permit fee to the Town by September 30, 2013, whether or not the building permit has been issued by that time. The amount of the fee due to be paid if the building permit is not issued by September 30, 2013, shall be determined by agreement between the Town Building Official, Town Manager, and Applicant.

54. The Applicant, its successors and assigns shall comply with all Town ordinances applicable to development and permit approvals at the time of approval of the site plan and in the event the Applicant does not commence construction within six (6) months from the date a permit is issued, 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.
55. The Applicant shall collect and remit the Town's Resort Tax on all hotel room stays, including stays that are booked through an online third party travel agent.
56. Any change in the ownership of the current owner, The Surf Club, Inc., greater than twenty percent (20%) shall be fully disclosed in writing to the Town Manager and Town Attorney immediately upon said change occurring. Said change of ownership 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.
57. Hours of service and delivery using the 90th Street entry into the Southeast Building on the site (the "90th Street Entry") shall be limited to the following hours: Monday through Friday: between the hours of 9 a.m. and 4 p.m.; Saturday: between 9 a.m. and 12 p.m. (Noon). No service or delivery using the 90th Street Entry shall be made on Sundays or before or after the above stated hours on any other day. This schedule applies to, by way of example and not limitation, garbage trucks, recycling collectors, other waste haulers, and moving vans. This requirement shall be included in any Condominium Documents recorded on the property, as the same may be amended from time to time and shall become part of the covenant running with the land to be recorded in the Public Records of Miami-Dade County, Florida.

58. The Applicant has provided an unexecuted perpetual, irrevocable easement in favor of the public encumbering the eastern area of the Property, including the area commonly referred to as the “hardpack” (“the “Easement”), which is attached as Exhibit D to the Town Commission resolution of approval. The Easement shall be executed by the Applicant prior to the Town Commission approval of the Application and held in escrow by Shutts & Bowen, LLP. Upon the Applicant’s election to proceed under the approval of the Application pursuant to section 66 herein, the Easement shall be released from escrow and recorded by the Applicant in the Public Records of Miami-Dade County.
59. The Applicant agrees to develop a job-training program designed to provide employment opportunities for Surfside residents who meet the requirements of the hotel and related services. The program will be provided to the Town Manager for review three months prior to the issuance of the Temporary Certificate of Occupancy. The Applicant agrees to the use of local vendors as reasonably possible.
60. Applicant shall comply with the following landscaping condition prior to issuance of Building Permit:

Coordinate with Public Works and the Town’s landscape reviewer to relocate any utility/service lines and structures interfering with the landscaping to an area that will not be in conflict with the anticipated landscaping.
61. 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.
62. The sum of \$400,000 shall be contributed by the Applicant to the “Town of Surfside Downtown Improvement Fund” prior to the issuance of the Certificate of Occupancy for the Surf Club, in the following manner: \$200,000 shall be paid within thirty (30) days of Applicant’s receipt of written notice from the Town of the award by the Town of capital construction project(s) benefitting the Downtown (the “Project”), and the remaining \$200,000 shall be paid at the time of capital construction Project(s) contract completion as determined by the acceptance of any final change order by the Town Commission closing out the Project(s). Notwithstanding the foregoing schedule, the entire \$400,000 shall be paid to the Town prior to the issuance of the Certificate of Occupancy for the Surf Club with the condition that this amount shall be earmarked in a special account to be used solely for the capital Project.

63. Applicant shall obtain and maintain designation as a member of the State of Florida Department of Environmental Protection's (FDEP) *Green Lodging* program, a designation for best practices in water, energy, and waste efficiency standards. Proof that the designation has been obtained shall be submitted to the Town Manager within twelve months of the issuance of the Temporary Certificate of Occupancy for the project and proof of its continuing participation in the program shall be submitted to the Town Manager annually thereafter.
64. Applicant shall prohibit all employees of the Surf Club from parking in the residential neighborhoods while working at the Surf Club. Such prohibition shall be incorporated into a plan approved by the Town Manager prior to issuance of the Temporary Certificate of Occupancy.
65. Applicant agrees that, to the extent cabanas are not fully occupied by hotel guests and /or residents, they shall be open to the public for rental.
66. No later than five business days after the expiration of the period required by law to appeal the approval of the Application by the Town Commission, Applicant shall notify (by US Mail certified receipt) the Town Manager whether it chooses to proceed under said approval or under Resolution 12-Z-03. Should the Applicant choose to proceed under said approval, then Resolution 12-Z-03 immediately shall become null and void. Should the Applicant instead choose to proceed under Resolution 12-Z-03, then this approval of the Application shall become null and void.
67. Applicant will provide \$25,000 to the PTA of the Ruth K. Broad Bay Harbor Islands K-8 Center for the sole purpose of paying for capital improvements for the PRIDE OUTSIDE campaign.

V. **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.

VI. **EFFECTIVE DATE.** This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 23rd day of April, 2013

Motion by Commissioner Kligman,

Second by ~~Commissioner~~ Vice Mayor Karukin.

FINAL VOTE ON ADOPTION

Commissioner Joseph Graubart

yes

Commissioner Michelle Kligman

yes

Commissioner Marta Olchyk

Absent

Vice Mayor Michael Karukin

yes

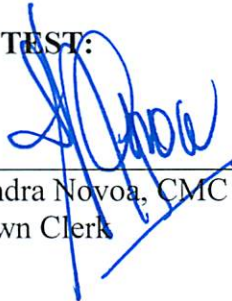
Mayor Daniel Dietch

yes



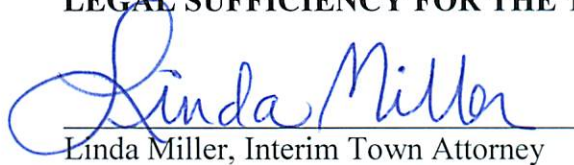
Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, CMC
Town Clerk

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



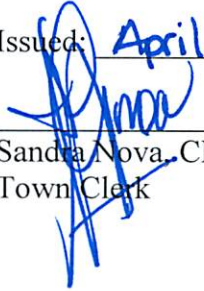
Linda Miller, Interim Town Attorney

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

I, Sandra Novoa, CMC, 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.13-Z- 06 adopted by the Town Commission at its meeting held on the 23rd day of April, 2013.

Issued: April 25, 2013



Sandra Novoa, CMC
Town Clerk

Lot B, Block 3 and Lot U, Block 4, AMENDED PLAT ALTOS DEL MAR NO. 4, according to the Plat thereof, as recorded in Plat Book 34, Page 7, of the Public Records of Miami-Dade County, Florida, Less right of way.

AND:

Lot A, and Lots 1 to 9, inclusive, Block 1, ALTOS DEL MAR NO. 4, according to the Plat thereof, as recorded in Plat Book 10, Page 63, of the Public Records of Miami-Dade County, Florida, Less right of way.

AND:

That portion of land lying East of said Lot A, and Lots 1 to 9, inclusive, Block 1, ALTOS DEL MAR NO. 4; bounded on the North by the Easterly extension of the North line of said Lot A, Block 1; bounded on the East by the EROSION CONTROL LINE, according to the plat thereof, as recorded in Plat Book 105, Page 62, of the Public Records of Miami-Dade County, Florida; bounded on the South by the Easterly extension of the South line of said Lot 1, Block 1; bounded on the West by the East line of said Lot A, and Lots 1 to 9, inclusive, Block 1.



miamidade.gov

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

March 20, 2013

Joseph N. Benton
Fort Capital Management
176 NE 43rd Street
Miami, Florida 33137

Dear Mr. Benton:

Please be advised that on March 6, 2013, the Miami-Dade County Historic Preservation Board voted to approve Special Certificate of Appropriateness #2013-06-S for revisions to the previously approved restoration, relocation, and new construction plans for the Surf Club, located at 9011 Collins Avenue in Surfside, FL.

The votes for each board member were the following:

Ruth Campbell	yes
Adriana Cantillo	yes
Rick Cohen	absent
Paul George	absent
Robert McKinney	yes
Mitch S. Novick	yes
JoEllen Phillips	yes
Edmundo Perez	yes
Enid Pinkney	yes
Ronda Vangates	absent

Please note that the approval included several conditions, which are as follows:


1. The upper two stories for the new southern building shall be designed so that they recede away from the front façade, as the original proposed building did, to minimize the visibility from the street. Staff approval shall be sufficient without the need to return to the Board.
2. The treatment of the column/support system at the ground level of the north end of the southern tower shall be clearly detailed, with approvals to be finalized by county staff, so as to not create a large expanse of plain ceiling or wall that would be visible from the street, and shall be designed so that it does not look so disproportional as to create a feeling of top-heaviness. Staff approval shall be sufficient without the need to return to the Board.
3. The southern portion of the north tower complex shall not be located any closer to the historic club than was originally approved.

Delivering Excellence Every Day

4. Staff will continue to be apprised of the progress of the historic restoration, with monthly progress reports provided to staff once the demolition phase has begun.
5. The developer shall work with a local contractor experienced in moving historic structures and having documented experience with local historic preservation projects for the relocation and restoration of the wooden cabanas. Additionally, if the cabana structures get damaged beyond repair because of the move, they are to be reconstructed on the sites of the proposed cabana locations.
6. The relocated cabanas shall include one cabana that is used as the Winston Churchill cabana and will be a replication of the cabana as he may have used it, including the use of Surf Club artifacts and memorabilia.
7. Original and/or historic furniture, fixtures, paintings or other items from the Surf Club that are uncovered throughout the restoration process will be utilized within the new design and spaces.
8. Cleaning and construction methods that would be detrimental to historic materials, such as sandblasting, shall not be utilized in the restoration of the historic club.
9. At least one area of publically accessible space within the historic surf club will display historical photographs, explanatory text and other memorabilia, either in display cases or on the walls that describe the historic architectural features, uses and functions of the club throughout its history. (Similar to the way they have a wall of that at The Breakers.)
10. Photographic documentation shall be made of the Surf Club portions that are to be demolished. Copies of photographic documentation shall be provided to the County's Office of Historic Preservation for record-keeping.
11. Contractor and/or construction manager shall refer to the historic preservation consultant on the architect's staff, and to the County's Office of Historic Preservation, if during the course of construction, historic elements are uncovered that were not previously identified to determine the best way to save, restore and/or document those elements.
12. Every attempt shall be made to preserve any original materials including windows, doors, columns, brackets, braces, flooring, tile work or other elements original to the Surf Club.

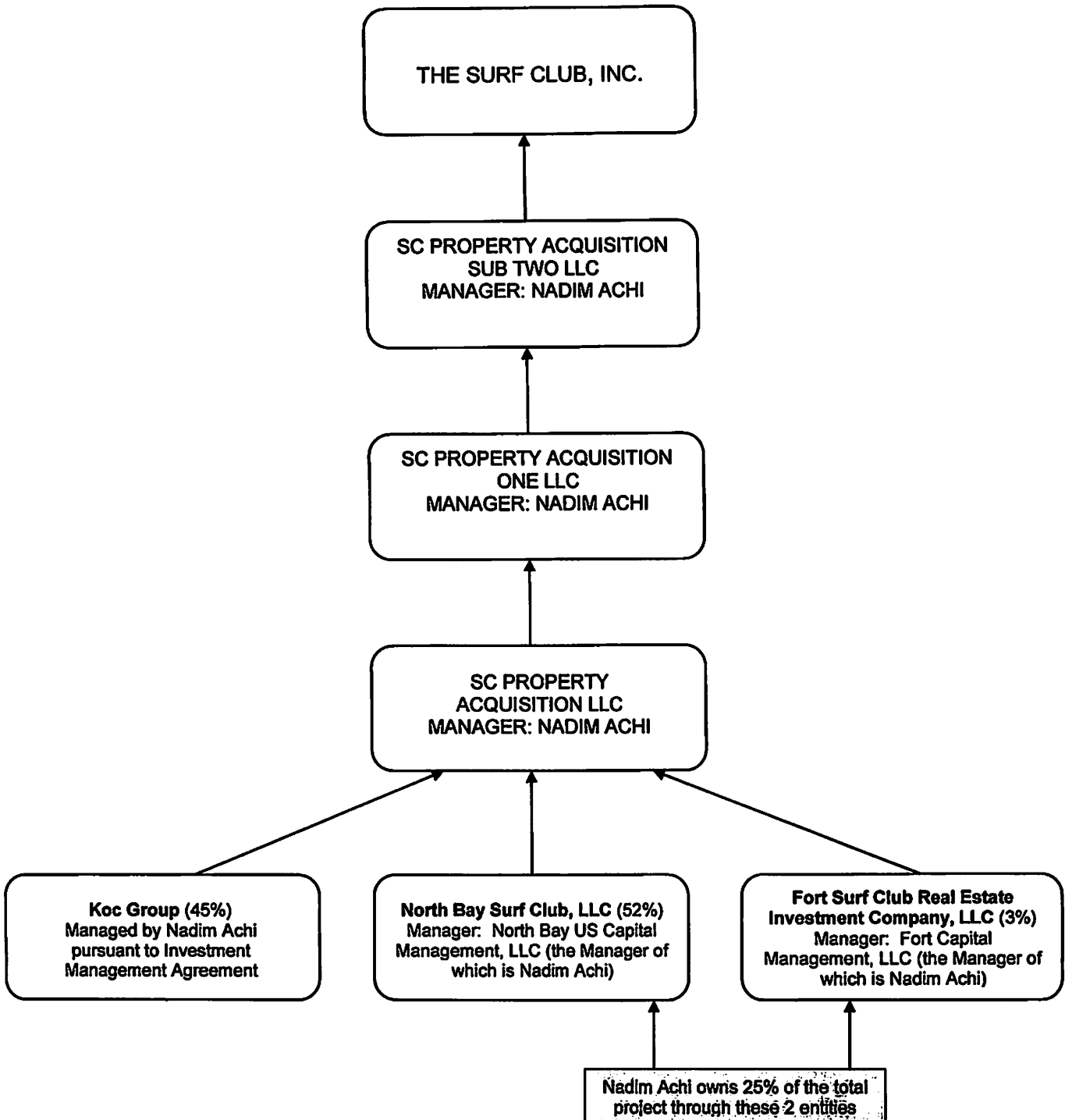
Should you have any questions regarding this matter, please do not hesitate to contact our office and we will be happy to assist you.

Sincerely,



Kathleen Kauffman
Preservation Chief

Ownership Declaration (as of March 27, 2013)



Prepared by and Return to:

Alexander I. Tachmes, Esq.
Shutts & Bowen LLP
1500 Miami Center
201 South Biscayne Blvd.
Miami, FL 33131

GRANT OF PERPETUAL BEACH ACCESS EASEMENT AGREEMENT

THIS GRANT OF PERPETUAL BEACH ACCESS EASEMENT AGREEMENT (the "Agreement") is made as of April __, 2013, by and between THE SURF CLUB, INC., a Florida not-for-profit corporation ("Grantor") and the TOWN OF SURFSIDE, FLORIDA, a municipal corporation under the laws of the State of Florida ("Grantee").

RECITALS

WHEREAS, Grantor is the owner of that certain real property situated, lying and being in the Town of Surfside, Miami-Dade County, Florida more particularly described in Exhibit A attached hereto and made apart hereof (the "Property"); and

WHEREAS, the Grantor intends to develop a condominium/hotel and related improvements on the Property (the "Project") in accordance with that site plan prepared by Richard Meier & Partners Architects LLP and Kobi Karp Architecture & Interior Design, Inc. dated March 11, 2013, which was approved by the Town pursuant to Resolution _____ on April 23, 2013 (the "Site Plan"); and

WHEREAS, Grantee is a municipal corporation authorized under its charter to provide for the general welfare of the people of the Town of Surfside, Florida and in order to provide for the general welfare it deems it necessary to obtain a non-exclusive perpetual easement over and across and non-exclusive right to utilize that portion of the Property described in Exhibit B attached hereto and made a part hereof (the "Easement Parcel") for public recreational uses, as hereinafter provided.

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Recitals**. The Recitals to this Agreement are true and correct and hereby incorporated by reference and made a part hereof.
2. **Grant of Easement**. Grantor hereby grants and conveys to Grantee a non-exclusive easement over and across and the non-exclusive right to utilize for public beach and recreation uses the Easement Parcel.

3. Improvements by Grantor and Grantee. Grantor and Grantee shall not construct any improvements within the Easement Parcel, other than the sand roadway within the Hard Pack Area, as hereinafter defined.
4. Maintenance of Easement Parcel. Grantee, at its sole cost and expense, shall maintain the Easement Parcel in good condition and repair, as currently maintained by Grantee.
5. Hard Pack Parcel. That portion of the Easement Parcel more particularly described on Exhibit C attached hereto and made a part hereof (the "Hard Pack Parcel") is currently improved with a hard pack sand roadway running north and south (the "Hard Pack Area"). Grantor and Grantee agree not to obstruct the Hard Pack Area except as permitted pursuant to Section 7 below.
6. Restrictions. The Easement Parcel shall be used by Grantee and Grantor only for lawful purposes in conformance with all applicable laws and no use or operation shall be made, conducted or permitted which is in violation of any applicable law.
7. Temporary Construction. Grantor reserves the right to utilize the Easement Parcel as reasonably necessary in connection with the construction and maintenance of the Project provided such construction activities shall not unreasonably interfere with the use of the Easement Parcel. Prior to undertaking any construction that utilizes the Easement Parcel, Grantor shall obtain all permits and approvals required by all applicable governmental agencies, including the Town of Surfside, Florida, Miami-Dade County, Florida and the State of Florida.
8. Representation of Grantor. Grantor represents and warrants to Grantee that:
 - A. Grantor owns fee simple title to the Easement Parcel free and clear of all liens and encumbrances other than taxes and assessments which are not now due and payable.
 - B. Grantor is a duly formed company in good standing in the State of Florida.
 - C. Grantor is duly authorized to execute and deliver this Agreement and all company action required to authorize the execution of this Agreement by Nadim Achi as President on behalf of Grantor has been taken.
 - D. This Agreement is the valid and binding obligation of Grantor enforceable in accordance with its terms.
9. Condominium Association. Grantor covenants and agrees, that if Grantor elects to submit the Property to the condominium form of ownership that this Agreement shall be binding upon the condominium association.
10. Covenant Running with Land. All covenants, conditions, restrictions, reservations and other provisions contained in this Agreement shall constitute covenants running with the land and shall be binding on the parties hereto and their successors or assigns.

11. Public Access. The Easement Parcel shall be used in perpetuity for the uses herein authorized; provided, however, that Grantee may determine by resolution of the Town of Surfside, Florida after a duly advertised public hearing that it is in the best interest of the health, safety and welfare of the public to discontinue such use, in whole or part, in which case the Grantee shall execute an amendment or termination of this Agreement, as appropriate. This Agreement may not be terminated, modified or amended except by an instrument in writing signed by the parties.
12. Limitation of Liability. To the extent applicable, the easement granted by Grantor pursuant to this Agreement is for outdoor recreational purposes in accordance with Section 375.251, Florida Statutes and Grantor's liability shall be limited in accordance with the provisions of that statute, to the extent applicable.
13. No Joint Venture. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint ventures or of any other association or agency relationship between the parties.
14. Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to the easements granted herein, and all prior representations, negotiations, and understandings are superseded hereby.
15. Headings. The section headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof. The parties hereto acknowledge that the terms and provisions of this Agreement have been fully negotiated between the parties and that each party has been afforded the opportunity to engage, if such party desires, legal counsel to assist in the preparation, negotiation, and drafting of this Agreement. Accordingly, the terms and provisions of this Agreement shall not be interpreted for or against either party as the drafting party. The terms "herein", "hereby", "hereof", "hereto", "hereunder" and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used.

[Signatures appear on following page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day first above written.

WITNESSES:

GRANTOR:

The Surf Club, Inc., a Florida not-for-profit corporation

Signature

Print name

By: _____
Nadim Achi, its President

Signature

Print name

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____ April, 2013, by Nadim Achi, as President of The Surf Club, Inc., a Florida not-for-profit corporation on behalf of the company. He is personally known to me or produced _____ as identification and did not take an oath.

Notary Public

Typed, printed or stamped name
of Notary Public

My Commission Expires:

ATTEST:

TOWN:

TOWN OF SURFSIDE, a Florida Municipal Corporation

Sandra Novoa, CMC
Town Clerk

Roger Carlton
Town Manager

APPROVED AS TO FORM
LEGALITY FOR USE AND
RELIANCE OF THE TOWN OF
SURFSIDE, FLORIDA

Town Attorney

Date

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of April, 2013, by Roger Carlton, as Town Manger of Town of Surfside, Florida, a municipal corporation an behalf of the municipal corporation. He is personally known to me or produced _____ as identification and did not take an oath.

Notary Public

Typed, printed or stamped name
of Notary Public

My Commission Expires:

EASEMENT

EXHIBIT "A"

Legal Description of Property

PARCEL 1: Lot "B", of AMENDED PLAT OF A PORTION OF ALTOS DEL MAR NO. 4, according to the Plat thereof, as recorded in Plat Book 34, Page 7, of the Public Records of Miami-Dade County, Florida.

PARCEL 2: Lot "U", of AMENDED PLAT OF A PORTION OF ALTOS DEL MAR NO. 4, according to the Plat thereof, as recorded in Plat Book 34, Page 7, of the Public Records of Miami-Dade County, Florida.

PARCEL 3: Lot "A", and Lots 1 through 9, inclusive, Block 1, of ALTOS DEL MAR NO. 4, according to the Plat thereof, as recorded in Plat Book 10, Page 63, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH that portion of land lying East of said Lot "A", and Lots 1 through 9, inclusive, Block 1, of ALTOS DEL MAR NO. 4, according to the Plat thereof, as recorded in Plat Book 10, Page 63, of the Public Records of Miami-Dade County, Florida; bounded on the North by the Easterly extension of the North line of said Lot "A", Block 1; bounded on the East by the EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105, Page 62, of the Public Records of Miami-Dade County, Florida; bounded on the South by the Easterly extension of the South line of said Lot 1, Block 1; bounded on the West by the East line of said Lot "A", and Lots 1 through 9, inclusive, Block 1.

LESS AND EXCEPT a portion of Lots 1 and 2, Block 1 of ALTOS DEL MAR NO. 4, according to the Plat thereof, as recorded in Plat Book 10, Page 63, of the Public Records of Miami-Dade County, Florida, more particularly described as follows:

Commence at the intersection of the Southerly extension of the West line of said Block 1 with the Westerly extension of the South line of said Block 1; thence run Northerly, along the West line of said Block 1 and its Southerly extension, for a distance of 84.53 feet to the point of curvature of a circular curve concave to the Northeast, said point of curvature also being the POINT OF BEGINNING of the parcel herein described; thence run Southerly and Southeasterly, along the arc of said circular curve concave to the Northeast, having a radius of 229.18 feet, through a central angle of 19°41'36", for an arc distance of 78.77 feet, to a point of compound curvature of a circular curve concave to the Northeast; thence run Southeasterly to Easterly, along the arc of the last mentioned curve, having a radius of 13.00 feet, through a central angle of 67°18'51", for an arc distance of 15.27 feet, to the point of tangency with the aforementioned South line of said Block 1; thence run Westerly, along the South line of Said Block 1, for a distance of 1.26 feet, to the point of curvature of a circular curve to the right; thence run Easterly to Northwesterly along the arc of said circular curve to the right, having a radius of 25.00 feet, through a central angle of 87°00'27", for an arc distance of 37.96 feet, to the point of tangency with the West line of said Block 1; thence run Northerly, along the West line of said Block 1, for a distance of 60.79 feet to the POINT OF BEGINNING.

EASEMENT

EXHIBIT "B"

Legal Description of Easement Parcel

Exhibit "B" (cont'd)

EXHIBIT "A"

LEGAL DESCRIPTION: Easement Area

A portion of land lying East of Lot A and Lots 1 through 9, Block 1, ALDOS DEL MAR NO. 4, according to the Plat thereof, as recorded in Plat Book 10, Page 63, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Lot A; thence N 88°55'43" E along the North line of said Lot A and its Eastern extension thereof for 337.83 feet to the Point of Beginning of the hereinafter described Easement Area; thence continue N 88°55'43" E along said Eastern extension of the North line of Lot A for 37.85 feet; thence S 05°38'53" E along the Erection Control Line of the Atlantic Ocean, according to the plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida for 818.82 feet; thence S 87°00'03" W along the Eastern extension of the South line of said Lot 1, also being the North right of way line of 90th Street for 40.12 feet; thence N 05°34'35" W for 72.05 feet; thence N 04°41'15" W for 180.08 feet; thence N 06°05'55" W for 132.19 feet; thence N 04°42'11" W for 132.06 feet; thence N 06°18'25" W for 108.18 feet; thence N 05°42'41" W for 168.19 feet; thence N 05°15'19" W for 23.97 feet to the Point of Beginning.

SURVEYOR'S NOTES:

- This site lies in Section 35, Township 32 South, Range 42 East, Town of Surfside, Miami-Dade County, Florida.
- Bearings hereon are referred to an assumed value of N 06°03'41" W for the East right of way line of Collins Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- This is not a "Boundary Survey" but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch #2012-059-NQVD.

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on March 20, 2013, and meets the applicable codes as set forth in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

*Not valid without the signature and the original sealed seal of a Florida Licensed Surveyor and Mapper

FORTIN, LEAVY, SKILES, INC., LB3653

By: Daniel C. Fortin, For The Firm
 Surveyor and Mapper, LS2853
 State of Florida.

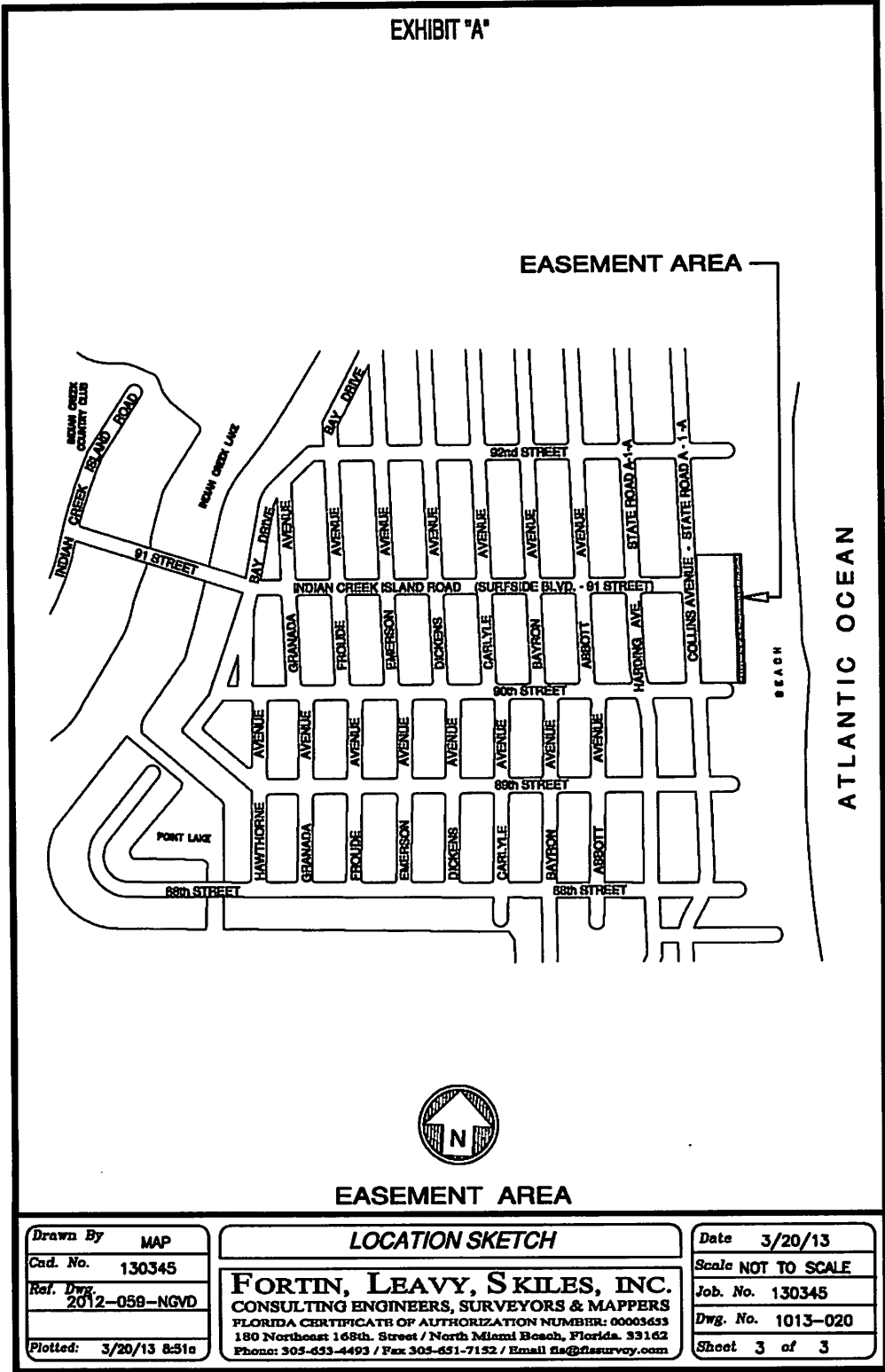
EASEMENT AREA

Drawn By	MAP
Cad. No.	130345
Rel. Dwg.	2012-059-NQVD
Plotted:	3/20/13 B-51a

DESCRIPTION, NOTES, AND CERTIFICATION	
FORTIN, LEAVY, SKILES, INC.	
CONSULTING ENGINEERS, SURVEYORS & MAPPERS	
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003453	
180 Northeast 168th Street / North Miami Beach, Florida, 33162	
Phone: 305-433-4493 / Fax: 305-431-7132 / Email: map@fortinleavy.com	

Date	3/20/13
Scale	NOT TO SCALE
Job No.	130345
Dwg. No.	1013-020
Sheet	1 of 3

Exhibit "B" (cont'd)



EASEMENT

EXHIBIT "C"

Legal Description of Hard Pack Parcel

Exhibit "C" (cont'd)

EXHIBIT "A"

LEGAL DESCRIPTION: Hard Pack Area

A portion of land lying East of Lot A and Lots 1 through 9, Block 1, ALTOS DEL MAR NO. 4, according to the Plat thereof, as recorded in Plat Book 10, Page 63, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Lot A; thence N 86°55'43" E along the North line of said Lot A and its Easterly extension thereof for 337.83 feet to the Point of Beginning of the hereinafter described Hard Pack Area; thence continue N 86°55'43" E along said Easterly extension of the North line of Lot A for 18.73 feet; thence S 06°22'26" E for 48.16 feet; thence S 05°00'39" E for 59.81 feet; thence S 05°14'00" E for 59.89 feet; thence S 05°48'51" E for 47.88 feet; thence S 04°43'16" E for 29.89 feet; thence S 05°09'21" E for 168.41 feet; thence S 05°23'27" E for 95.16 feet; thence S 05°31'58" E for 107.89 feet; thence S 05°33'04" E for 179.11 feet; thence S 05°38'41" E for 19.51 feet; thence S 87°00'03" W along the Easterly extension of the South line of said Lot 1, also being the North right of way line of 80th Street for 18.50 feet; thence N 05°34'35" W for 72.05 feet; thence N 04°41'15" W for 180.08 feet; thence N 08°05'55" W for 132.19 feet; thence N 04°42'11" W for 132.08 feet; thence N 08°18'25" W for 108.18 feet; thence N 05°42'41" W for 188.19 feet; thence N 05°15'19" W for 23.97 feet to the Point of Beginning.

SURVEYOR'S NOTES:

- This site lies in Section 35, Township 52 South, Range 42 East, Town of Surfside, Miami-Dade County, Florida.
- Bearings hereon are referred to an assumed value of N 06°03'41" W for the East right of way line of Collins Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- This is not a "Boundary Survey" but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch #2012-059-NGVD.

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on March 20, 2013, and meets the applicable codes as set forth in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

*Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper

FORTIN, LEAVY, SKILES, INC., LB3653

By: _____
 Daniel C. Fortin, For The Firm
 Surveyor and Mapper, LS2853
 State of Florida.

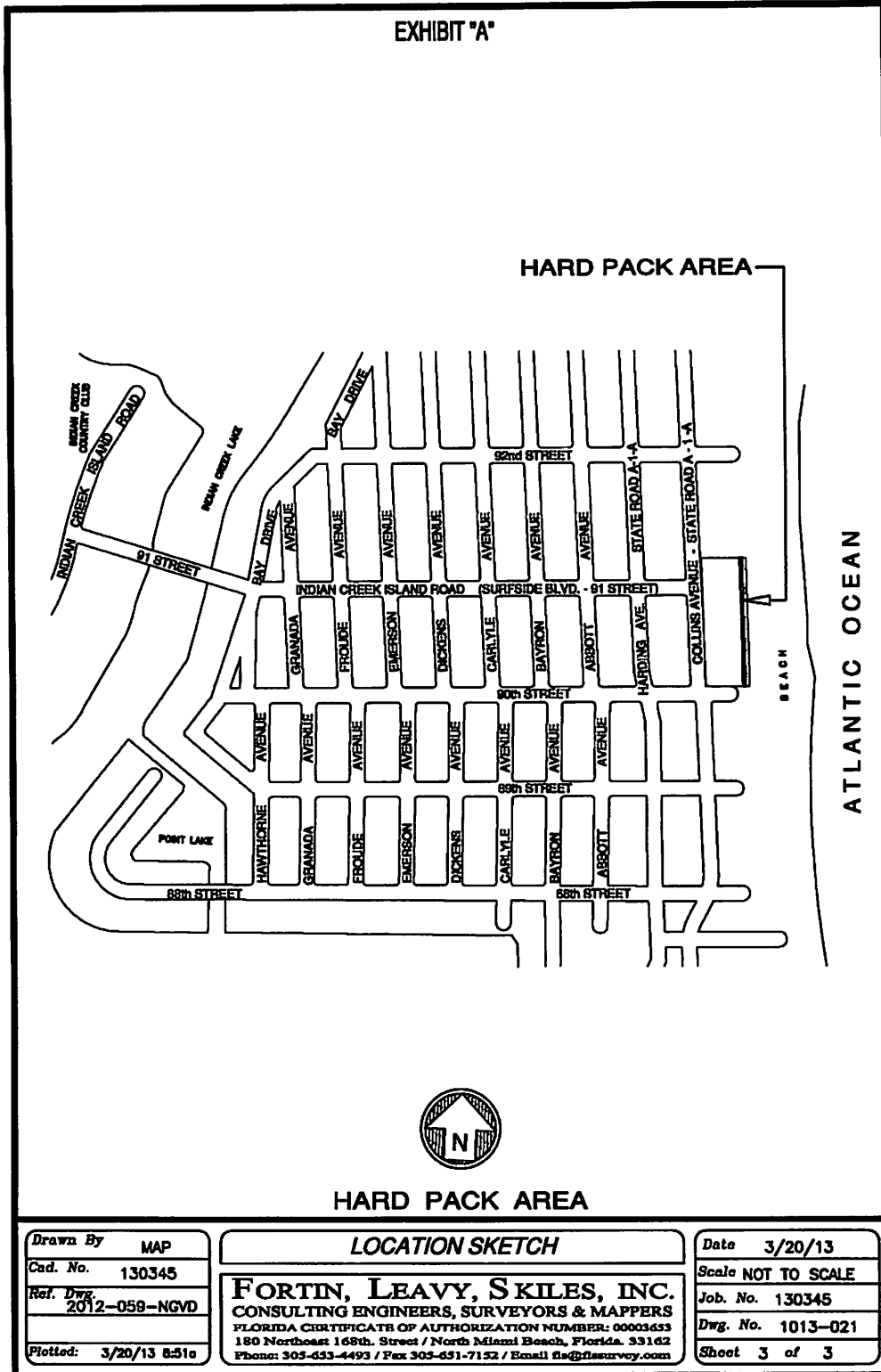
HARD PACK AREA

Drawn By	MAP
Cad. No.	130345
Ref. Dwg.	2012-059-NGVD
Plotted:	3/20/13 8:51a

DESCRIPTION, NOTES, AND CERTIFICATION
FORTIN, LEAVY, SKILES, INC. CONSULTING ENGINEERS, SURVEYORS & MAPPERS FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003453 180 Northeast 168th. Street / North Miami Beach, Florida. 33162 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flsurvey.com

Date	3/20/13
Scale	NOT TO SCALE
Job. No.	130345
Dwg. No.	1013-021
Sheet	1 of 3

Exhibit "C" (cont'd)



Drawn By	MAP
Cad. No.	130345
Ref. Dwg.	2012-059-NGVD
Plotted:	3/20/13 8:51a

LOCATION SKETCH

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003453
 180 Northeast 168th Street / North Miami Beach, Florida. 33162
 Phone: 305-633-4493 / Fax 305-651-7152 / Email fls@flsurvey.com

Date	3/20/13
Scale	NOT TO SCALE
Job. No.	130345
Dwg. No.	1013-021
Sheet	3 of 3