

RESOLUTION NO. 09- 1895

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO EXECUTE A SETTLEMENT AGREEMENT WITH CARLISLE ON THE OCEAN CONDOMINIUM ASSOCIATION, INC.; PROVIDING FOR IMPLEMENTATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Carlisle on the Ocean Condominium Association, Inc. is indebted to the Town of Surfside for unpaid water, sewer and sanitation service charges, including late fees and interest;

WHEREAS, the Town of Surfside entered into negotiations with Carlisle on the Ocean Condominium Association, Inc. to settle outstanding water, sewer and sanitation service charges, fees and interest;

WHEREAS, the Town of Surfside desires to enter into a settlement agreement with Carlisle on the Ocean Condominium Association, Inc. for repayment of all outstanding debts per the agreement attached as Exhibit "A";

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

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

**Section 2.**    **Authorization.** The Town Commission hereby authorizes the Town Manager and Town Attorney to execute the contract documents attached as Exhibit "A".

**Section 3. Implementation.** The Town Manager and Town Attorney are hereby authorized to take any and all action necessary to implement this Resolution and Agreement in accordance with the terms, conditions, and purposes of this Resolution and Agreement.

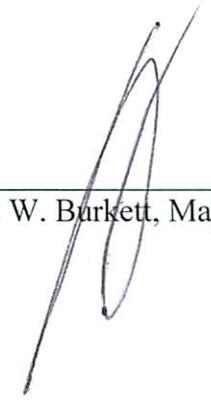
**Section 4. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** this 15 day of July, 2009.

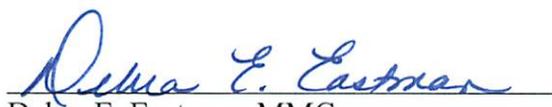
Motion by Commissioner Weinberg, second by Commissioner Levine.

FINAL VOTE ON ADOPTION

Commissioner Elizabeth Calderon	yes
Commissioner Steven Levine	yes
Commissioner Howard Weinberg	yes
Vice Mayor Marc Imberman	yes
Mayor Charles Burkett	yes

  
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Charles W. Burkett, Mayor

**ATTEST:**

  
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Debra E. Eastman, MMC  
Town Clerk

**Approved as to form and legality for the use  
and benefit of the Town of Surfside only:**

  
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Lynn M. Dannheisser  
Town Attorney

# EXHIBIT A

## SETTLEMENT AGREEMENT

THIS AGREEMENT ("Agreement") entered into this 20<sup>th</sup> day June, 2009 by and between **CARLISLE ON THE OCEAN CONDOMINIUM ASSOCIATION, INC** (hereinafter "Carlisle") and **THE TOWN OF SURFSIDE** (hereinafter "Surfside"):

### WITNESSETH:

WHEREAS, **Carlisle On the Ocean Condominium Association, Inc.**, is a Florida non-profit corporation that is the corporate entity responsible for managing the affairs of the Carlisle on the Ocean Condominium, a condominium located within the Town of Surfside, with the following property address: *9195 Collins Avenue, Surfside, Florida*.

**Carlisle** hereby acknowledges and agrees that it is indebted to the **Town of Surfside** for unpaid Water and Sewer Services (including late fees and interest), supplied by **Surfside** for the period from August 7, 2007 through April 2, 2009, with the total outstanding amount due to **Surfside**, by **Carlisle** being \$25,851.75. Furthermore, **Carlisle** hereby acknowledges that the Association is also indebted to **Surfside** for unpaid Sanitation Services and Recycling Services (including late fees and interest) for the period from February 6, 2006 through April 2, 2009 with the total outstanding amount due to **Surfside**, for such services totaling \$ 43,891.57. **Carlisle hereby agrees and acknowledges that the total amount due to Surfside for all prior unpaid services rendered by the Town of Surfside (including late fees and interest) as of April 17, 2009 is \$69,743.32.**

WHEREAS, the **Town of Surfside** has agreed to enter into a settlement agreement with **Carlisle on the Ocean Condominium Association, Inc.**, for the repayment of all outstanding debts owed to Surfside, for the total amount of \$69, 743.32. During the repayment term period, Surfside shall waive all interest and late fees on the above referenced accounts, so long as **Carlisle** abides by all of the provisions of this Agreement. **Surfside** has agreed to enter into this settlement agreement, on the contingency that any and all amounts due to Surfside are paid by **Carlisle** no later than **eighteen (18) months** from the date of execution of this Agreement, and **Carlisle** shall provide assurance of payment in accordance with the terms and conditions set forth herein; and

WHEREAS, the parties desire to enter into an agreement to assure each other that no action will be brought or continued by any party against the other by reason of any manner, cause or event occurring at any time prior to the effective date of this settlement agreement which relates directly or indirectly to or arises from or is based in whole or in part upon the matters set forth herein;

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed and covenanted by and among the parties to this Agreement as follows:

1. **Payments** **CARLISLE ON THE OCEAN CONDOMINIUM ASSOCIATION, INC.**, hereby agrees to make payments to **TOWN OF SURFSIDE** as follows:

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- (a) **CARLISLE shall pay SURFSIDE the amount of Four Thousand Dollars (\$4,000.00) for a period of eighteen (18) consecutive monthly payments. The amount of \$4,000.00 shall be broken down into two (2) separate payments, with one payment for outstanding Water/Sewer and the second payment being used to pay off the outstanding Sanitation and Recycling Invoices. The amount of the two (2) payments, shall be broken down into the following:**
- **Payments for April 2009- September 2010 (17 Months)**
    - **Water/Sewer Payment**--in the amount of \$1,487.73 per month
    - **Sanitation/Recycling Payment** —in the amount of \$ 2,512.27 per month
  - **Final Payment October 2010 (18 Month)**
    - **Water/Sewer Payment**—final payment of \$ 560.34
    - **Sanitation/Recycling Payment**—final payment of \$1,182.98
- (b) The above referenced payments shall commence and be received on or before the fifteen (15<sup>th</sup>) of each month, beginning on the date of the execution of this Agreement and shall continue to be received by the close of business on the 15<sup>th</sup> day of each month thereafter. In the event that the fifteen (15<sup>th</sup>) day of any month falls on a Saturday, Sunday, or recognized holiday, the payment for that month will be due on the immediately following business day. Furthermore, **CARLISLE** shall make its first payment, immediately upon the execution of this Agreement by all Parties.
- (c) All funds shall be payable in the form of Cash, Certified Funds, or Money Order. All payments shall be made payable to the Town of Surfside, and by the fifteenth (15<sup>th</sup>) of each month.
- (d) Furthermore, **CARLISLE**, hereby agrees and acknowledges that the above referenced payments shall be made in addition to any and all amounts due on the current monthly statements for the Water/Sewer and Sanitation and Recycling Services. **CARLISLE** hereby agrees that it shall begin making all regular monthly payments for the services rendered (current services) on the first billing cycle after April 2, 2009. **CARLISLE** hereby acknowledges that the Association shall be responsible for the payment of regular monthly invoices in addition to the payments outlined in this Agreement (This Agreement shall only address amounts delinquent to the Town of Surfside as of April 2, 2009. **CARLISLE** shall be liable for all future payments to the Town for services rendered). In the event that **CARLISLE** fails to make all regular payments to **SURFSIDE** for all current monthly services rendered, **CARLISLE** shall immediately be deemed in breach of this Agreement and shall be subject to the provisions of Paragraph 3 of this Agreement.

  
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2. **Authority.** The Parties hereby agree and acknowledge that the execution of this Agreement is contingent on the written approval of the Commission of the Town of Surfside, Florida. This Agreement shall be valid and enforceable only after the receipt of such approval. Each party represents and warrants to the other party that it has all necessary power and authority to enter into and all necessary consents and approvals of any persons, entities, governmental or regulatory authorities and securities exchanges have been obtained to effectuate the validity of this Agreement.

3. **Default.** In the event that Carlisle fails to remit payment as set out in paragraph 1 of this Agreement by the close of business on the fifteen (15<sup>th</sup>) day of any month, Carlisle will be deemed in default of this Agreement. Pursuant to any default in payment, Surfside may then fax a notice of default to the attention of Kristy L. Phillips, Esquire at Glazer & Associates, P.A. (fax no. (954) 333-3983), counsel for Carlisle demanding cure of default within two (2) days. Carlisle hereby agrees that if it fails to so cure within two (2) days, Surfside shall be entitled to all interest and late fees which have been waived pursuant to this Agreement. Upon any such default by Carlisle, the Town of Surfside shall have the immediate right to file a lien against any and all condominium units at the Carlisle Condominium without any additional notice, with the exception of the written demand for payment by Town of Surfside. Furthermore, if Carlisle shall be deemed in default and fail to cure such default, the Town of Surfside shall be entitled to immediately pursue a collections action (including but not limited to the following: filing of a lien on the Condominium Property, foreclosure and/or civil suit for breach of this settlement agreement). In the event of a default, all amounts described herein will be Void and may increase due to the additional interest, and late fees that have accrued during the Agreement Period (prior to the default), less the amounts already paid by Carlisle pursuant to this Agreement.

4. **General Provisions.**

(a) This Settlement Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes any prior and contemporaneous agreements and understandings of the Parties; there are no warranties, representations, or other agreements except as expressly set forth herein. No supplementation, modification, waiver, termination, or rescission of this Settlement Agreement shall be binding unless executed by the Parties in writing.

(b) No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

(c) Each of the Parties agrees that it will execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the terms hereof.

  
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(d) This Settlement Agreement may be executed in counterparts and, as so executed, shall constitute one agreement binding on all Parties. A copy or facsimile of a signature on this Settlement Agreement shall have the same force and effect as an original ink signature.

(e) This Settlement Agreement shall be binding upon **Carlisle on the Ocean Condominium Association, Inc.**, and the **Town of Surfside** and all of their respective attorneys, agents, affiliates, owners, shareholders, officers, directors, principals, partners, members and employees. This Settlement Agreement shall inure to the benefit and shall be binding upon the Parties' respective heirs, successors and assigns.

(f) All references herein to the masculine gender shall be deemed to apply equally to the feminine and neuter genders and vice-versa. All references herein to the singular shall be deemed to apply equally to the plural and vice-versa.

(g) Each signatory will bear its own fees and costs in connection with the Action, including the negotiation and execution of this Settlement Agreement.

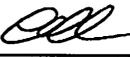
(h) All Parties hereto acknowledge that they have each been represented by independent counsel of their own choice throughout all of the negotiations that preceded and resulted in the execution of this Settlement Agreement. This Settlement Agreement shall be construed fairly as to all Parties and not in favor of or against any of the Parties regardless of who prepared the Settlement Agreement.

(i) The Parties agree and acknowledge that the terms of this Settlement Agreement shall be construed in accordance with Florida law, and that Florida law applies to any disputes arising under the Settlement Agreement. In the event that any party to this Settlement Agreement institutes legal proceedings for breach of the terms of the Settlement Agreement, it is stipulated and agreed that such claim shall be heard by a judge and not a jury in Miami-Dade County, Florida. It is further agreed that the prevailing party in such a dispute shall be entitled to its reasonable attorney and paralegal fees, expenses, and costs.

(j) This Settlement Agreement will not become effective until it is fully and properly executed by **Carlisle on the Ocean Condominium Association, Inc.**, and the **Town of Surfside** (as indicated in the signature block below).

5. **Acknowledgment.** **Carlisle** and **Surfside** have each read, understood, and fully and carefully considered this Settlement Agreement and all of its terms. **Carlisle** and **Surfside** hereby acknowledge and agree that this Settlement Agreement is the product of mutual negotiation and compromise between them. **Carlisle** and **Surfside** freely and knowingly elect to enter into this Settlement Agreement, to fulfill the covenants, promises, and agreements set forth herein, and to receive the benefits set forth herein.

6. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or agreements, written or verbal, between the parties hereto regarding the subject matter contained herein. This Agreement may be

  
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amended, supplemented, modified or discharged only upon an agreement in writing executed by all of the parties hereto.

7. **Recitals.** The foregoing recitals are represented by each party to be true and correct, and incorporated herein by reference and made a part hereof.
8. **Separability.** Each and every covenant and agreement herein shall be separate and independent from any other and the breach of any covenant or agreement shall in no way or manner discharge or relieve the performance of any other covenant or agreement.
9. **Time of the Essence.** Time is of the essence in all matters specified in this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

**Carlisle on the Ocean Condominium Association, Inc.**

By: [Signature]  
Name: COLEEN HEDRICK  
Title: ASSOCIATION PRESIDENT  
Date: 6/26/09

By: [Signature]  
Name: LARS P. SKAARUD  
Title: ASSOCIATION VICE PRESIDENT  
Date: 26 JUN 09

**Town of Surfside**

By: [Signature]  
Name: GARY L. WARD  
Title: TOWN MANAGER  
Date: 7/20/09

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FOR LEGAL SUFFICIENCY:  
By: TOWN ATTORNEY'S  
Name: LYNN DANHOLLER  
Title: TOWN ATTORNEY  
Date: 7/21/09

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