

RESOLUTION NO. 2010 - 1964

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE AGREEMENT WITH NORMAN ATKIN FOR THE SIX MONTH LEASE OF LOT 18, BLOCK 4, ALTOS MAR NO. 5, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 8, PAGE 92 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA ; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND POLICE DEPARTMENT FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the "Town") wishes to lease the above described lot for the purpose of providing parking for police vehicles; and

WHEREAS, the Town Commission finds that approval of the Agreement between Norman Atkin and the Town is in the best interest of the Town.

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

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

**Section 2. Approval of Agreement.** The Agreement between Norman Atkin and the Town of Surfside to lease the above described property, a copy of which is attached as Exhibit "A", together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

**Section 3. Authorization of Town Officials.** The Town Manager and/or his designee and the Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

**Section 4. Authorization of Fund Expenditure.** Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance, the Town Manager is authorized to expend Police Department funds to implement the terms and conditions of the Agreement.

**Section 5. Execution of Agreement.** The Town Manager is authorized to execute the Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any extensions and/or amendments to the Agreement, subject to the approval as to form and legality by the Town Attorney.

**Section 6. Effective Date.** This resolution shall take effect immediately upon adoption.

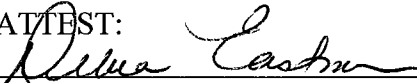
PASSED AND ADOPTED this 14<sup>th</sup> day of October, 2010.

Motion by Commissioner Kapelman, second by Commissioner Graubart.


FINAL VOTE ON ADOPTION

Commissioner Michael Karukin	<u>yes</u>
Commissioner Edward Kopelman	<u>yes</u>
Commissioner Marta Olchyk	<u>yes</u>
Vice Mayor Joseph Graubart	<u>yes</u>
Mayor Daniel Dietch	<u>yes</u>

  
\_\_\_\_\_  
Daniel Dietch, Mayor

ATTEST:  
  
\_\_\_\_\_  
Debra E. Eastman, MMC  
Town Clerk

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

  
\_\_\_\_\_  
Lynn M. Dannheisser  
Town Attorney

SIX MONTH LEASE BETWEEN THE TOWN OF SURFSIDE AND  
NORMAN ATKIN WITH OPTIONS TO RENEW

This lease agreement ("Lease") is entered into this 30th day of September, 2010, by and between Norman Atkin ("Lessor") and the Town of Surfside, a Florida municipal corporation ("Lessee").

The Lessor this day leases unto the Lessee and the Lessee does take as tenant, the following space within the Town of Surfside, Miami-Dade County Florida;

LEGAL

Lot 18, Block 4, ALTOS DEL MAR NO. 5, according to the Plat thereof, recorded in Plat Book 8, Page 92 of the Public Records of Miami-Dade County, Florida

subject to the following terms and conditions as set forth herein:

- A. Commencement Date October 1, 2010;
- B. Termination Date March 31, 2011, subject to the right of extension as set forth herein. The period of time commencing on the Commencement Date and terminating on the Termination Date shall be the "Lease Term".
- C. During the Lease Term, the monthly rent shall be \$350.00;
- D. This Lease shall be subject to, and its effectiveness contingent upon the approval of the Town Commission of the Town of Surfside ("Town Commission"). In the event the Town Commission does not approve the terms hereof by the Commencement Date, this Lease shall be of no force and effect

The following express stipulations and conditions are made a part of this Lease and are hereby agreed to by the parties:

1. Use.

The Premises shall be used for police parking and ancillary purposes for the Town of Surfside. Lessor and Lessee agree that this non-residential lease shall be governed by Part I of Chapter 83, Florida Statutes and are not subject to residential tenancy provisions of the Florida Statutes.

2. Permitted Alterations.

Any permitted alterations, fixtures or improvements made by the Lessee except movable equipment shall become the property of the Lessor and remain on the Premises upon termination of the Lease as a part thereof and be surrendered to Lessor with the Premises without cost to the Lessor. Lessor acknowledges that Lessee has disclosed its intention to

use the Premises as a parking facility and consents to all necessary, reasonable improvements, at Lessor's cost, which will allow for the use of the Premises as a parking facility and its ancillary purposes, including but not limited to the removal of perimeter fences.

3. Personal Property — Risk of Loss.

All personal property placed or moved in the Premises above described shall be at the risk of the Lessee or owner thereof, and Lessor shall not be liable for any damage to said personal property. Lessor shall not be liable to the Lessee as a result of any act of negligence of any co-tenant or occupants of any adjacent real property. Lessor represents that as of the date hereof, all such facilities are in good and proper working order.

4. Compliance with Laws and Insurance Directives.

The Lessee shall promptly comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government and of any and all their Departments and Bureaus applicable to said Premises, including, but not limited to, directives for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said Premises during said term; and shall also promptly, at its own cost and expense, comply with and execute all rules, orders and regulations of the Lessor's and Lessee's insurance carriers for the prevention of fires.

5. Events of Default.

Rent is due promptly on the first day of each month for which the rent is to be paid. In the event of the failure of the Lessee to pay the rental specified herein promptly, then upon written notice and demand by Lessor served upon the demised Premises, if Lessee does not make such payment within five (5) days from the date of delivery of such notice, Lessor, at its option, may declare an acceleration of the full balance of the rental payments due hereunder and may take such legal action as Lessor deems advisable for the collection thereof, including institution of suit. In the event Lessor obtains possession as a result of default, whether through surrender or abandonment of the Premises or through legal process, Lessor shall be entitled to charge to Lessee any costs expended in order to make the Premises tenantable. In addition to the foregoing remedies, Lessor reserves the right to bring an action for distress if the same be permitted under the laws of Florida and to take any other actions permitted in law or in equity; taking of any one action shall not be exclusive and shall not bar the taking of any other action or actions by the Lessor. In the event of the reentry into the Premises by Lessor, the Lessor shall be entitled to remove from the Premises all personally of the Lessee without obligation to hold, store, sell, or recover the value thereof for the benefit of Lessee. Should any check tendered by Lessee or Lessor to pay any obligation due under the terms of this Lease be dishonored for insufficient funds, such dishonor shall be deemed an immediate default in the payment of rent entitling Lessor to any and all rights previously set forth in this paragraph in addition to any other rights and remedies under any other provisions of law. Lessor shall be under no obligation to redeposit any check that has been initially dishonored. Notwithstanding the foregoing Lessee shall be given fifteen business days in which the make the first monthly payment due under this Lease. Notwithstanding the

foregoing, any sums due to Lessor hereunder not timely paid, except as set forth in this paragraph, shall bear interest at the maximum rate allowed by law.

6. Abandonment.

Should Lessee abandon the Premises before the end of the term of this Lease and suffer the rent to be arrears, then subject to the aforesaid notice provisions Lessor may retake possession.

7. Attorney's Fees and Costs.

In the event either party retains an attorney to enforce any provision of this Lease, the party who is determined to be in default under this Lease shall be responsible for the other party's attorney fees.

8. Utilities.

The Lessee agrees that Lessee will pay all charges for electricity, sanitation and for all water used on said Premises, and should said charges for light or water remain due and unpaid for more than thirty (30) days from the due date thereof, then Lessor may serve demand and notice on Lessee as in the case of a violation for the nonpayment of rent and may employ against Lessee such remedies as are accorded to Lessor for a nonpayment of rent. If Lessor be required to advance payment of any such utilities, Lessor may bring appropriate action available for the collection of same.

9. Quiet Enjoyment.

Upon paying Rent and keeping and performing the terms, covenants, conditions and provisions of this Lease, Lessee may lawfully and quietly hold and enjoy the Premises during the Term without hindrance, ejection, molestation, or interruption.

10. Entry for Repairs.

The Lessor, or any of its agents, shall have the right to enter the Premises during all reasonable business hours, with prior notice, to examine same, to make such repairs additions and/or alterations as may be necessary for the safety, comfort and/or preservation thereof.

11. Condition and Maintenance.

Subject only to such addenda or sketches as may be attached hereto and initialed by the parties, Lessee otherwise accepts the Premises in the condition they are "as is" at the beginning of this Lease and agrees to maintain said Premises in the same condition, order and repair as they are at the commencement of said term, excepting only reasonable wear and tear arising from the use thereof under this Lease. During the term of this Lease, Lessee shall provide for maintenance of the surface and for landscape of the Premises.

12. Indemnification.

Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, Lessee does hereby indemnify and hold harmless Lessor from and against any and all liabilities, damages, claims, costs or expenses whatsoever (including reasonable attorneys' fees and costs at both the trial and appellate levels) arising from Lessee's exercise of its rights under this Lease, except for any Claims arising due to the acts of Lessor. Subject to the limitations contained herein, Lessee does hereby indemnify Lessor from all third party claims asserted against Lessor based upon either the grossly negligent or tortuous acts or omissions of Lessee, its agents, contractors, successors and assigns, in exercising or discharging Lessee's rights pursuant to this Lease.

13. Cumulative Effect.

The rights of Lessor under this Lease are cumulative, and failure of Lessor to exercise any of such rights shall not be deemed a waiver or forfeiture of such rights by the Lessor or estopp Lessor from enforcing such rights.

14. Work Done by Lessee.

It is further agreed between the parties hereto that should it become necessary for Lessor, in Lessor's reasonable discretion, to cause to be repaired and/or corrected any damage to the Premises caused by Lessee, it's employees, agents, and/or any person in or near the Premises at the expressed or implied invitation of Lessee Lessee shall immediately pay Lessor the cost of same upon Lessor presenting Lessee with a copy of the bill(s) for same. Lessee's failure to pay Lessor, within thirty (30) days, such sums shall be deemed a default in the payment of rent, entitling Lessor to all remedies provided in this Lease for non-payment of rent.

15. Signs.

All signs placed on the Premises by Lessee shall be in strict accordance with all applicable ordinances and laws of the Town of Surfside, the County of Miami-Dade, and the State of Florida. Any such sign or signs to be erected shall first be submitted to and approved by Lessor, whose consent shall not be unreasonably withheld.

16. Mechanic's Liens.

It is strictly understood and agreed by and between both of the parties hereto, that under no circumstances, whatsoever, is the Lessee and/or anyone acting on behalf of Lessee to cause, incur or allow any mechanic's lien, or any other kind of lien, to be placed or occur against the Premises, or any part thereof, for any reason whatsoever. Moreover, in the event that the acts and doings of the Lessee result in a mechanic's lien, or any other kind of lien being placed against said Premises, or any part thereof, the Lessee, at this own cost and expense, shall immediately cause the removal of said lien, and the failure so to do shall be considered a default of the Lessee's covenants under this Lease.

17. Insurance.

Lessee shall, at Lessee's expense, obtain and keep in force during the term of this Lease a policy of comprehensive general liability insurance insuring Lessor and Lessee against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be issued by a Florida admitted carrier rated A or better in "Best's Key Rating Guide"; insurance limits shall be in the amount of not less than \$500,000.00 for injury or death of one person in any one accident or occurrence and in the aggregate amount of not less, than \$1,000,000.00 for injury or death of more than one person in any one accident or occurrence. Such insurance shall further insure Lessor and Lessee against liability for property damage of at least \$50,000.00. Such insurance policy shall require the insurer to provide notice of termination and/or cancellation to Lessor simultaneously with notice provided to Lessee. Lessor, at Lessor's sole option, may either elect to purchase such coverage for the benefit of Lessor and demand immediate payment therefore from Lessee or declare this Lease terminated, whereupon Lessee shall be considered a holdover tenant subject to Paragraph 28 below. Lessor shall maintain hazard insurance coverage on the building. Simultaneously with the execution of the Lease, Lessee must deliver to Lessor a binder for the required insurance coverage. No later than August 1, 2007, Lessee shall deliver to Lessor a Certificate of Insurance setting forth the required minimum limits of coverage and naming the Lessee' as the named insured and the Lessor as an additional insured. Lessee shall furnish a true copy of the entire insurance policy to Lessor by no later than the date of occupancy.

18. Alteration.

This Lease may not be altered, changed or amended, except by an instrument in writing, and signed and executed by both of the parties.

19. Subordination.

This Lease is hereby made expressly subject and subordinate, at all times, to any and all mortgages, deeds of trust, assignment, ground or underlying leases, affecting the Premises, which have been executed and delivered, or which, may at any time hereafter be executed and delivered, and any and all extensions and renewals thereof. This Lease is also always subordinate to any and all deeds that may be hereafter executed and delivered. Lessee hereby agrees to execute any instrument which the Lessor may deem necessary to effect the subordination of this Lease, as herein mentioned.

20. Holding Over.

In the event that the Lessee shall hold over, after the expiration or the termination of this Lease, Lessee shall pay to the Lessor, double rent plus real estate tax proration and insurance costs incurred by Lessor for the entire hold over period. Holding over by the Lessee shall not operate to extend the term of this Lease.

21. Additional Provisions.

If there are any other, or additional provisions, or modifications of the foregoing Lease, agreed to by the parties, the same shall be in writing and by addendum or instrument in writing signed by the parties and attached hereto.

22. Recordation.

This Lease shall not be recorded.

23. Renewal or Extension of Lease

On or before ninety (90) days of Lease expiration, so long as Lessee sends Lessor written notice (by Federal Express or equivalent overnight delivery service requiring a signature acknowledging Lessor's receipt) of Lessee's intent to renew this Lease for an additional term, Lessor shall have the option to renew this Lease for a one (1) year term beyond the expiration of the Lease, upon the same terms and conditions as set forth above with the exception of the Rental Payment which shall be negotiated between the parties, but shall not be increased by more than five percent (5%).

24. Notices.

All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to Lessee:

Mr. Roger Carlton  
Town Manager  
Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154

With a copy to:

Lynn M. Dannheisser  
Town Attorney  
Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154

If to Lessor:

Dr. Norman Atkin  
13614 Verde Drive  
Palm Beach Gardens, FL 33410



Any Notice required by this Lease to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given only if delivered by hand, evidenced by written receipt; sent by certified mail, return receipt requested, postage and fees prepaid; or sent by overnight delivery service, evidenced by written receipt. A Notice sent by certified mail shall be deemed given as of the receipt date indicated on the return receipt. All other Notices shall be deemed given when received.

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

Signed, sealed and delivered  
in the presence of:

LESSOR:

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
NORMAN ATKIN

Signed, sealed and delivered  
in the presence of:

LESSEE:

Town of Surfside, a Florida municipal  
corporation

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_