

RESOLUTION NO. 2010- 1968

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A STIPULATION OF SETTLEMENT AGREEMENT IN CANDY MILLER V. SURFSIDE, CASE NO. 2010-49676-CA-01 CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA; AUTHORIZING THE TOWN ATTORNEY TO EXECUTE THE STIPULATION OF SETTLEMENT AGREEMENT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 13, 2010 Candy Miller filed suit in the 11th Circuit in and for Miami-Dade County against the Town of Surfside (“Town”) regarding the Town’s revocation of her business tax receipt; and

WHEREAS, in accordance with the executive session held on September 27 , 2010, the Town Attorney entered into settlement negotiations with counsel for Candy Miller who agreed to dismiss the lawsuit upon execution of the Stipulation of Settlement Agreement attached hereto as Exhibit “A;” and

WHEREAS, the Town Commission believes that it is in the best interest of the Town to enter into the Stipulation of Settlement Agreement an agreement with Candy Miller.

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

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

Section 2. Authorization. The Town Attorney is authorized to enter into the Stipulation of Settlement Agreement attached hereto as Exhibit “A”, the Mayor is authorized to

execute this Agreement on behalf of the Town, and the Town Manager and Town Attorney are authorized to do what is necessary to effectuate the terms of this Agreement.

Section 3. Effective Date. This Resolution will become effective upon adoption.

PASSED AND ADOPTED this 9th day of November, 2010

Motion by Commissioner Karukin, second by Commissioner Olchyk.


FINAL VOTE ON ADOPTION

| | |
|------------------------------|--------|
| Commissioner Michael Karukin | yes |
| Commissioner Edward Kopelman | absent |
| Commissioner Marta Olchyk | yes |
| Vice Mayor Joseph Graubart | yes |
| Mayor Daniel Dietch | yes |




Daniel Dietch, Mayor

ATTEST:



Deborah Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICITON DIVISION

Case No. 2010-49676-CA-01

CANDY MILLER,
Plaintiff,

v.

TOWN OF SURFSIDE, FLORIDA,
a Florida Municipal Corporation,
Defendant.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made as of November __, 2010 between the TOWN OF SURFSIDE, FLORIDA ("Surfside" or "Defendant") and CANDY MILLER ("Miller" or "Plaintiff"), who agree as follows:

WHEREAS, Plaintiff Miller filed and served a Complaint against Defendant in the Circuit Court, Miami-Dade County, Florida, as captioned, seeking to reinstate the Business Tax Receipt that was issued and revoked by Surfside; and

WHEREAS, Defendant Surfside disputed the claim; and

WHEREAS, the Parties are desirous of settling their disputes in order to avoid the costs and uncertainties of continued litigation and to settle the all disputes between them, including all of the claims or causes of action which were asserted in the litigation herein; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The above recitals are true, correct and are incorporated herein.
2. **Settlement Consideration.**

1. Within seven (7) days of the execution and acceptance of this agreement, the Defendant Surfside shall reinstate the Plaintiff's Business Tax Receipt, under the classification "personal consulting" and allow the Plaintiff to resume business operations at 9532 Harding Avenue, Suite 103, Surfside, Florida, 33154, (hereinafter "the premises") in the same manner in which she had conducted those operations prior to the revocation, including specifically, the provision of services related to psychic reading, advising, and consultation, as well as related practices such as palmistry, clairvoyance, astrological interpretation, tarot card reading and other means of fortune telling and spiritual consultation. The classification of "personal consulting" shall continue to be construed to include these activities.

2. The Town agrees that it will allow the Plaintiff to display signage, in accordance with any and all lawful rules, ordinances and regulations of signage that apply to businesses operating within the Town, and that the Plaintiff will be permitted to include on her signage the phrase "Psychic Reader and Advisor" as a description of the nature of the business operation and services rendered.

3. Subject to the foregoing, Plaintiff agrees to be bound by the recommendations of the Design Review Board, to the extent those recommendations are lawful and in accordance with the standard customs and procedures followed by that board.

4. **Dismissal of the Litigation:** Upon written notification that the Town has reinstated of the Plaintiff's Business Tax Receipt, the Plaintiff shall file a Notice of Voluntary Dismissal with Prejudice of Circuit Court Case number 2010-49676-CA-01. It is agreed that this agreement shall not be construed as an admission of liability on the part of any party to the agreement.

5. **Attorney Fees, Costs and Damages:** The parties agree that they will bear their own costs, attorney's fees or any other expenses incurred in relation to this matter, and that neither shall be liable for damages or other monetary obligations to the other. The parties hereby waive any claim for money damages against one another to the extent that those claims are derived from the dispute referenced herein.

6. **General Release:** With the execution of this Agreement, each party hereby releases the other, and their respective heirs, officers, directors, employees, shareholders, successors, predecessors and assigns, of and from any and all claims, damages, debts, dues, defenses, causes of action and obligations which were brought in the instant lawsuit, and each party shall bear their own attorneys fees and costs, from the beginning of the world to the date of these presents.

7. **Cooperation:** The Parties hereto agree that they will execute such other and further documents as may be required to effect the purpose of this Settlement Agreement.

8. **Counterparts and Governing Law.** This Agreement may be executed in counterparts and via facsimile, which, together, shall constitute one and the same instrument. This Agreement shall be governed, enforced and interpreted according to Florida law and any dispute will be located in Miami-Dade County, Florida.

9. **Merger/modification.** Each Party acknowledges that is the entire agreement among them about this subject and supersedes any prior agreements, promises, representations, or inducements, written or oral, express or implied between them. No modifications to this Agreement shall be binding unless reduced to writing and signed by representatives of the Parties. This agreement shall be construed as having been drafted by all of the parties hereto and no inference shall be drawn against any party as having drafted the agreement.

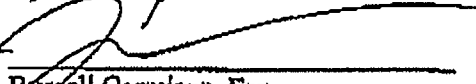
10. **Authority and Advice of Counsel.** All parties acknowledge that they have full authority to enter this agreement and they continuously have been represented by

counsel with the terms contained herein being the result of negotiation and participation by all parties.

IN WITNESS WHEREOF, the Parties signed this Agreement as of November 2,
2010

CANDY MILLER:


By: Candy Miller


Russell Cormican, Esq.
Attorney for Plaintiff

TOWN OF SURFSIDE:

By: Daniel Dietch, Mayor

Lynn M. Dannheisser, Esq.
Attorney for Defendant