

RESOLUTION NO. 13-2134

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA (“TOWN”) APPROVING THE AMENDMENT TO THE SETTLEMENT AGREEMENT BETWEEN TOWN OF SURFSIDE AND INDIAN CREEK VILLAGE (“VILLAGE”), PROVIDING FOR AUTHORIZATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission of the Town of Surfside, Florida (“Town”) and Indian Creek Village (“Village”) executed a Settlement Agreement on July 11, 2001; and

WHEREAS, the Town and Village wish to bring closure to elements of the Settlement Agreement; and

WHEREAS, the Town Manager and Village Manager have addressed several issues involving both municipalities including payment procedures, drainage improvements and undergrounding of utilities on 91st Street (Surfside Boulevard); and

WHEREAS, to bring closure to this matter, it is in the best interest of the Town to approve the attached Amendment to Settlement Agreement Between Town of Surfside and Indian Creek Village. (Attachment “A”)

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

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

Section 2. Approval of Amendment. The Amendment to Settlement Agreement Between Town of Surfside and Indian Creek Village, Attachment “A” is approved.

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

Section 5. Execution of Amendment. The Town Mayor is authorized to execute the Amendment on behalf of the Town and the Town Manager is authorized to execute any required agreements and/or documents to implement the terms and conditions of the Amendment and to execute any extensions and/or amendments to the Amendment.

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

PASSED and **ADOPTED** on this day 15 day of January 13

Motion by Commissioner Graubart, Second by Vice Mayor Karukin Commissioner Karukin.

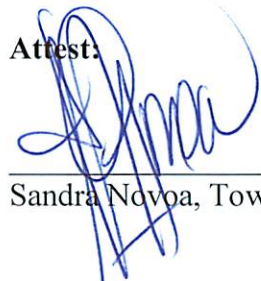
FINAL VOTE ON ADOPTION:

| | |
|-------------------------------|------------|
| Commissioner Joseph Graubart | <u>yes</u> |
| Commissioner Michelle Kligman | <u>yes</u> |
| Commissioner Marta Olchyk | <u>yes</u> |
| Vice Mayor Michael Karukin | <u>yes</u> |
| Mayor Daniel Dietch | <u>yes</u> |




Daniel Dietch, Mayor

Attest:



Sandra Novoa, Town Clerk

**Approved as to form and legal sufficiency
For the Town of Surfside only:**



Lynn M. Dannheisser
Town Attorney

**AMENDMENT TO SETTLEMENT AGREEMENT BETWEEN
TOWN OF SURFSIDE AND INDIAN CREEK VILLAGE**

This Amendment to the Settlement Agreement is made and entered into as of this ___ day of November, 2012, by and between Town of Surfside, a Florida municipal corporation (“Surfside”) and Indian Creek Village, a Florida municipal corporation (“Indian Creek”).

WITNESSETH

WHEREAS, on July 11, 2001, Surfside and Indian Creek entered into that certain Settlement Agreement (hereinafter the “Settlement Agreement”) settling certain claims between them in connection with litigation filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida in Case No. 98-4509 CA (11) and Case No. 98-11209 (10); and

WHEREAS, Section 7 of the Settlement Agreement pertains to certain Project improvements to Surfside Boulevard, including drainage, beautification and safety improvements, and provides for a mechanism and schedule for payment of said improvements; and

WHEREAS, the parties wish to amend section 7 of the Settlement Agreement to reflect a change in the improvements constructed and to be constructed by Surfside and Indian Creek’s payment schedule for said improvements;

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration and the mutual covenants set forth in this Amendment, the receipt and adequacy of which are hereby acknowledged, Surfside and Indian Creek agree as follows:

Section 1. Amendment Controls; Defined Terms. In the event of any conflict between this Amendment and the Settlement Agreement, it is agreed that this Amendment shall govern and control. This Amendment shall be construed as part of the Settlement Agreement. All defined terms in this Amendment shall have the same meaning as in the Settlement Agreement, except as otherwise noted.

Section 2. Amendment to Settlement Agreement. The parties hereby agree to amend Section 7 of the Settlement Agreement to reflect that Surfside has made and continues to make certain improvements to the public right-of-way of Surfside Boulevard in lieu of those improvements set forth for the Project in Section 7, and to modify the payment schedule for Indian Creek to pay and reimburse Surfside for the Project costs. The Parties acknowledge and agree that Surfside has or will make the following improvements to the public right of way of Surfside Boulevard: phased utility upgrades, drainage improvements, traffic calming devices and improvements, and beautification and landscaping along Surfside Boulevard. Indian Creek shall be responsible to pay and reimburse Surfside the total amount of \$150,000 for the Project. The first payment in the amount of \$100,000 shall be due and payable by Indian Creek to Surfside on or before December 31, 2012. The second and final payment in the amount of \$50,000 shall be due and payable by Indian Creek to Surfside upon the completion by Surfside of fifty percent (50%) of the installation of underground utilities, specifically, electrical lines, along Surfside Boulevard and within thirty (30) days of a written request, provided that such written request contains reasonable evidence and documentation that the underground utility improvements along Surfside Boulevard have achieved fifty percent (50%) completion and that Surfside has already paid for such expense. All other costs of the Project shall be paid by Surfside.

Section 3. No Further Modifications. All other provisions of the Settlement Agreement, other than as specifically amended herein by this Amendment, shall remain in full force and effect and are hereby ratified.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Amendment upon the terms and conditions above stated as of the day and year first above written.

SURFSIDE:

TOWN OF SURFSIDE,
A Florida municipal corporation

_____, Town Manager

ATTEST:

Date Executed: November ___, 2012

Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Town Attorney

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, as Town Manager of Town of Surfside, a Florida municipal corporation, who is [] personally known to me, or who [] has produced a _____ driver's license as identification.

Notary Public
Print Name: _____
My Commission expires: _____

(seal)

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Amendment upon the terms and conditions above stated on the day and year first above written.

INDIAN CREEK:

INDIAN CREEK VILLAGE,
A Florida municipal corporation

Bernard Klepach, Village Mayor

Date Executed: November ____, 2012

ATTEST:

Village Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Village Attorney

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of November, 2012, by Bernard Klepach, as Mayor of Indian Creek Village, a Florida municipal corporation, who is [] personally known to me, or who [] has produced a _____ driver's license as identification.

Notary Public

Print Name: _____

My Commission expires: _____

(seal)