

RESOLUTION 13- 2136

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, TERMINATING THE EMPLOYMENT OF TOWN ATTORNEY LYNN M. DANNHEISSER PURSUANT TO SECTION 9.A. OF HER EMPLOYMENT AGREEMENT WITH THE TOWN; AUTHORIZING THE MAYOR TO ENTER INTO A SEPARATION AGREEMENT BETWEEN TOWN ATTORNEY LYNN M. DANNHEISSER AND THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, by Resolution No. 2008-1861, the Town Commission approved an Employment Agreement dated September 16, 2008 with Town Attorney Lynn M. Dannheisser (the "Employment Agreement"), which is attached hereto as Exhibit "A.";

WHEREAS, the Town Commission now desires to terminate the employment of Lynn M. Dannheisser without cause effective on the date of this meeting in accordance with Section 9.A. of the Employment Agreement;

WHEREAS, in accordance with Section 9.A. of the Agreement, the Town Commission now desires to enter into the Separation Agreement with Lynn M. Dannheisser attached hereto as Exhibit "B."

WHEREAS, Lynn M. Dannheisser has agreed to accept the terms and conditions set for in the Separation Agreement attached hereto as Exhibit "B."

NOW, THEREFORE, 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 are incorporated herein by this reference.

Section 2. Termination of Employment. The employment of Town Attorney Lynn M. Dannheisser is hereby terminated without cause in accordance with Section 9.A. of the Employment Agreement effective on the date of this meeting.

Section 3. Approval of Separation Agreement. The Separation Agreement between Lynn M. Dannheisser and the Town attached hereto as Exhibit "B" is hereby approved and shall be effective on the date of this meeting.

Section 4. Authorization to Execute. The Mayor is hereby authorized to execute the Separation Agreement attached hereto as Exhibit "B" on behalf of the Town.

Section 5. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 15 day of January, 2013.


Motion by ^{Vice Mayor} Commissioner Karukin, second by Commissioner Kligman

FINAL VOTE ON ADOPTION

Commissioner Joseph Graubart	<u>no</u>
Commissioner Michelle Kligman	<u>yes</u>
Commissioner Marta Olchyk	<u>no</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:



Brett J. Schneider, Special Labor Counsel to the Town

EXHIBIT "A"

EMPLOYMENT AGREEMENT OF TOWN ATTORNEY

This Agreement is made and entered into this 16th day of **September, 2008**, between the Town of Surfside, Florida (herein after the "Town") and Lynn M. Dannheisser (hereinafter the "Employee"), pursuant to the following terms and conditions ("Agreement"):

- A. Whereas, the Town wishes to continue the employment services of Lynn M. Dannheisser as the Town Attorney of the Town of Surfside but as an individual rather than through a firm; and
- B. Whereas, Employee wishes to continue to act as Town Attorney for the Town, under terms and conditions set forth herein.

Now, therefore, in consideration of the mutual promises and covenants contained herein the Town and Employee agree to the following:

SECTION 1. DUTIES

- A. The Town wishes to employ Lynn M. Dannheisser as the Town Attorney of the Town of Surfside to perform the duties and exercise powers as prescribed by the Town Charter, and to perform such other legally permissible and proper duties and functions as assigned by the Town Commission from time to time.
- B. The Town Attorney shall perform the duties of the Town Attorney of the Town in accordance with the terms, conditions and provisions contained in this Agreement and the Charter in a professional and respectable fashion and with full decorum required of Town Attorneys generally and as required by the Rules Regulating the Florida Bar and the Guidelines for Professional Conduct. The Employee recognizes that the position of the Town Attorney is not, and cannot be, a nine-to-five employment position and, while it is agreed and understood that the Town Attorney shall attempt to perform all work on three (3) designated days per week, preferably Monday, Tuesday, and Thursday, as a condition of her employment, she nevertheless agrees to devote the time and energy, which is reasonably necessary to perform the duties required under this Agreement, carryout her responsibilities, regardless of designated days. She shall also use her best efforts to be available whenever a legal emergency arises.

SECTION 2. TERM OF AGREEMENT

- A. The term of this agreement shall be effective immediately (or as soon thereafter as reasonable upon her giving notice to her law firm) and shall continue until terminated, or otherwise amended from time-to-time, by the Town Commission. The Town Attorney shall serve at the pleasure of the Town Commission.

- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Town Commission to terminate the services of the Employee at any time, subject only to the provisions set forth in Section 9 of this Agreement.
- C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from the position of Town Attorney, subject only to the provisions set forth in Section 9 of this Agreement.
- D. Employee agrees to remain in the exclusive employ and neither to accept other employment nor to become employed by any other employer. Notwithstanding anything to the contrary, however, the term "employed" shall not be construed to include teaching, writing, other legal consulting or representation individually or through her firm should she choose to remain a member of same so long as the representation is not a legal conflict of interest, does not impact the employee's ability to fully undertake all obligations under this contract or is an ethical conflict of interest with her job as employee of the Town or military reserve service performed on employee's time off. Notwithstanding anything to the contrary contained within this paragraph, the Town attorney's membership in or relationship to any firm other than her own P.A. shall never obligate the Town of Surfside in any way to do business with or work with said firm.
- E. The Town agrees to retain, with the approval of the Employee, the services of a full time paralegal/assistant who will provide clerical services to the Town Attorney's office and may perform contract administration and such other functions as from time to time may be necessary. The Town agrees to provide Employee with a windowed office (if possible), furniture, and equipment necessary to perform the function of Town Attorney, including but not limited to, a wireless handheld mobile phone/device, computer, printer, etc. and the internet/phone services to operate same. All equipment shall remain the property of the Town.

SECTION 3. SALARY

- A. Effective October 1, 2008, or as soon thereafter as she can resign from her current position and begin employment as an employee, the annual base salary of Employee shall be \$177,656.00, which shall be payable in installments at the same time as other Employees of the Town are paid.
- B. The Town Commission agrees to evaluate the performance of the Employee to determine any adjustment in annual salary and/or benefits at least once annually, pursuant to the terms of this Agreement. Any adjustments in said annual salary and/or benefits should be based upon the results of the performance evaluation, within the sole discretion of the Town Commission.

SECTION 4. AUTOMOBILE ALLOWANCE

Employee shall receive an automobile allowance not less than the current Town Manager receives, or, thereafter, if that amount is increased in the future, not less than what is received by the Town Manager

SECTION 5. RETIREMENT/DEFERRED COMPENSATION

- A. The Town shall continue to contribute into a Retirement Program chosen by the Employee, a monthly contribution equivalent to 15 % of annual salary.
- B. If Employee desires to participate in the ICMA deferred compensation programs, the Town agrees to execute all necessary documents or agreements provided by the ICMA Retirement Corporation and contribute into the ICMA deferred compensation programs on behalf of Employee at the level provided in paragraph (A) above.

If an ICMA 457 account (voluntary employee contribution only retirement account) is available for employee contribution, the Town agrees to make the necessary deductions for contribution into that amount.

- C. Notwithstanding anything to the contrary in this contract, the Town's contribution to any and all retirement plans shall not exceed 15% of annual salary.

SECTION 6. HEALTH, LIFE, AND DISABILITY INSURANCE

- A. Employee and her spouse shall receive health, dental, and vision insurance benefits currently provided to Town employees at no cost to Employee.
- B. The Town shall provide Employee with a term life insurance policy equal to her salary.
- C. The Town shall provide Employee with a long term disability policy at the basic plan level that is available from the Town's existing insurance provider.

SECTION 7. VACATION, PERSONAL LEAVE, SICK LEAVE AND HOLIDAYS

Commencing upon the effective date of this agreement, Employee shall be accredited with four (4) weeks vacation days per year. Employee shall be accredited with twelve (12) sick days per year. In the event of a long-term illness during the first year of employment, the Town shall pay Employee salary for the period of time uncovered by sick leave, prior to any disability policy taking effect not to exceed 90 days. Employees shall be entitled to holidays and personal days at the same rate as other Employees of the City.

SECTION 8. PROFESSIONAL EXPENSES AND DEVELOPMENT

Subject to Town policy, State law, the Town agrees to pay the reasonable professional expenses, dues, subscriptions travel and seminar fees required by the Florida Bar to maintain the Florida Bar license in active status and to continue professional development or adequately pursue necessary official and other functions of the Town, including, but not limited to, Local Government Lawyers' seminars and the International/Florida Municipal Attorneys Association Seminar.

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SECTION 9. TERMINATION AND SEVERANCE

- A. In the event that the Town terminates the Employee, not for cause or for any reason as outlined in paragraph B of this section, and the Employee is willing and able to perform her duties under this agreement, the Town agrees to pay the employee's salary only a for period of six (6) months. Employee shall be entitled to any accumulated vacation and sick time at the time of termination.
- B. In the event Employee is terminated for cause, the Town shall have no obligation to pay Town Attorney in accordance with Paragraph 9 A. above. For the purposes of this Section "for cause" shall be defined as: (i) breach of any material term or condition of this Agreement; (ii) violation of any applicable laws or codes (*except for traffic infractions*); (iii) misconduct; (iv) gross insubordination; (v) willful neglect of duty; or (vi) violation of the Florida Code of Ethics for Public Officers and Employees, the Miami-Dade Conflict of Interest and Code of Ethics, the Town Charter, or the Town's Conflict of Interest Ordinance.
- C. Upon payment of the severance payment specified in Section A, or resignation as provided for in Section D. hereinbelow, the Town shall have no further financial obligations to Employee. **The severance payment shall constitute agreed, stipulated, and liquidated damages and constitute the maximum amount of financial liability for which the Town may be liable in the event of termination or breach of contract for any contractual claim.**
- D. In the event that Employee voluntarily resigns during the Term of this Agreement, Employee shall provide the Town with sixty (60) days advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by Employee under this Section, Employee shall not be entitled to receive the severance package specified in Section A. hereinabove but the Town shall pay Employee all accrued unused vacation leave calculated at Employee's rate of pay in effect upon the date of termination
- E. In the event that the Town Attorney voluntarily resigns with less than 60 days advance written notice, the Town Commission may elect to terminate Employee immediately or allow her to continue to serve until the date specified in the Employee's resignation. In the event of a resignation or termination under this paragraph, notwithstanding any other provisions of this Section, Employee shall not be entitled to receive either severance payment or vacation leave unless the Town Commission authorizes payment of same.
- F. If the Town Attorney is unable to perform her duties for a period of 30 consecutive days, or a period of 60 non-consecutive days during the Term of this Agreement, due to either disability, sickness, accident, or injury as certified by a physician, this Agreement shall be deemed terminated. In the

event of Employee's death, this Agreement shall be deemed terminated. If the Agreement is terminated under this Section, then the severance payment specified in Section A. hereinabove shall not be applicable.

- G. Unless otherwise specified in this Agreement, upon termination or expiration of this Agreement, Employee or her beneficiaries, shall be entitled to receive payment of any accrued or unused sick or vacation leave in accordance with the terms of this Agreement, as may be amended from time to time. If Employee is terminated for cause, sick, severance and vacation leave shall not be paid.

SECTION 10. OTHER CUSTOMARY BENEFITS

The Town shall afford the Employee the right to participate in any other benefits or working conditions as provided for the Administrative and Management Employees of the Town.

SECTION 11. INDEMNIFICATION

The Town shall defend, save harmless and indemnify the Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in connection with the performance of the Employees duties as Town Attorney. The Town, or its insurance carrier, will pay or settle any such claim or suit or judgment rendered thereon.


SECTION 12. MISCELLANEOUS

- A. Complete Agreement. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- B. Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portions thereof, shall not be affected and shall remain in full force and effect.
- C. No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

- D. Obligations Personal. The rights and obligations herein granted are personal in nature and cannot be transferred by the Town Attorney.
- E. Florida Law. This Agreement shall be governed by Florida Law and any litigation which may arise from this Agreement shall be filed and litigated in Dade County, Florida.
- F. If either party must enforce the terms of this agreement through a mediation or court proceeding, the prevailing party may recover attorney's fees.
- G. This contract is subject to the ratification of the Town Commission of the Town of Surfside.

IN WITNESS WHEREOF, the Town of Surfside, by signature of the Mayor as authorized by Commission by motion made on September 11, 2008, and Town Attorney (Employee) have signed and executed this Agreement the day and year first above written.

ATTEST:


Beatris M. Arguelles, Town Clerk

TOWN OF SURFSIDE

By: _____
Charles Burkett, Mayor

Approved as to form and legal sufficiency:


Jeff Cazacu, Assistant Town Attorney

Town Attorney


Lynn M. Dannheisser

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Agreement") is entered into by and between Lynn M. Dannheisser ("DANNHEISSER") and the Town of Surfside, Florida (the "TOWN"), jointly referred to herein as the "Parties."

WHEREAS, DANNHEISSER is employed by the TOWN as Town Attorney pursuant to an Employment Agreement dated September 16, 2008 (the "Employment Agreement");

WHEREAS, the TOWN now desires to terminate the employment of DANNHEISSER without cause and without objection by DANNHEISSER, effective January 15, 2013, in accordance with Section 9.A. of the Employment Agreement; and

WHEREAS, DANNHEISSER has fully and well performed her duties as Town Attorney and in recognition of DANNHEISSER's distinguished service on behalf of the TOWN, and in accordance with their obligations under the Employment Agreement, the Parties wish to enter into this Agreement.

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Recitals. The Recitals above are incorporated herein.
2. Last Day of Employment. The Parties agree that, upon the approval of the Town Commission, DANNHEISSER's last day of employment as Town Attorney shall be January 15, 2013.

3. **Full and General Waiver of All Rights and Claims.**

A. DANNHEISSER hereby knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which she has or may have against the TOWN (including but not limited to, its current and former employees, agents, administrators, representatives, Town Commission, successors and assigns) from the beginning of the world until the date of execution of this Agreement or the approval of this Agreement by the Town Commission, whichever shall occur later, including, but not limited to, any claim(s) under:

- The Employment Agreement;
- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- The Florida Civil Rights Act of 1992;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Constitutions of the United States and the State of Florida;
- The Age Discrimination in Employment Act;
- The Older Workers Benefit Protection Act;
- Florida Wage and Hour laws;
- Florida and federal whistle-blower laws, including § 112.3187, Florida Statutes;
- The Internal Revenue Code;
- The Rehabilitation Act;
- The Consolidated Omnibus Budget Reconciliation Act;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990;
- The Fair Labor Standards Act;
- The Equal Pay Act of 1963;
- The Family and Medical Leave Act of 1993;
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance;
- The TOWN's employment policies, whether written or oral, and regardless of whether contained in the TOWN Charter, Code, employment manual/handbook or elsewhere; and/or
- Any public policy, contract or common law claims, including any tort claims (e.g., negligent or intentional infliction of emotional distress; negligent retention,

supervision or training; defamation; assault; battery; false imprisonment; wrongful termination; loss of consortium; etc.), whether based on common law or otherwise.

B. The TOWN hereby knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which it has or may have against DANNHEISSER from the beginning of the world until the date of execution of this Agreement or the approval of this Agreement by the Town Commission, whichever shall occur later.

C. DANNHEISSER and the TOWN acknowledge and agree that this release and waiver bars any claim or demand for damages, costs, fees, or other expenses, including attorneys' fees, incurred in connection with DANNHEISSER's employment with the TOWN, her separation from employment, or with any of the above-referenced claims. DANNHEISSER and the TOWN understand and agree that with respect to the claims they are waiving in this Agreement, they are waiving not only the right to recover money or other relief in any action they might institute, but also that they are waiving any right to recover money or any other relief whatsoever in any action that might be brought on their behalves by any other person or entity, including but not limited to, the United States Equal Employment Opportunity Commission or any other federal, state or local government agency or department.

D. DANNHEISSER and the TOWN understand that the foregoing waiver and release fully and finally resolves and releases any and all disputes they may have against each other with respect to any alleged acts occurring before the Effective date of this Agreement, whether those disputes presently are known or unknown, suspected or unsuspected.

4. No Pending Lawsuits, Claims or Charges and Covenant Not to Sue.

DANNHEISSER and the TOWN represent that each have no charges or claims pending against the other with any federal, state or local agency or department and that they do not have pending before any court any dispute of any kind against the each other. DANNHEISSER and the TOWN further represent and agree that they will not hereinafter pursue, initiate, or cause to be instituted any dispute released herein against the each other, and represent that they have not heretofore assigned or transferred, or purported to have assigned or transferred, to any entity or person, any dispute released herein. If it is determined that DANNHEISSER or the TOWN have any lawsuit, charge or claim of any kind pending against each other, the Parties agree to dismiss all such charges, claims and/or lawsuits with prejudice immediately upon execution of this Agreement. DANNHEISSER also agrees that, for a two (2) year period following the Effective Date of this Agreement, she will not represent any party in any matter before the TOWN and will not represent any party whose interests are adverse to the TOWN.

5. Consideration. In consideration of DANNHEISSER's waiver and release of all claims against the TOWN and the other consideration provided to it under this Agreement, the TOWN agrees to provide only the following severance benefits to DANNHEISSER:

- a. A lump sum severance payment equivalent to six (6) months of DANNHEISSER's current annual base salary (i.e., base pay) as of January 15, 2013 (less any applicable withholdings and appropriate payroll deductions) in accordance with Section 9.A. of the Employment Agreement. Such payment shall be made within ten (10) calendar days of the Effective Date of this Agreement as set forth in Paragraph 9 of this Agreement.
- b. A lump sum payment for all of DANNHEISSER's accrued and unused vacation and sick leave as of January 15, 2013 (less any applicable withholdings and appropriate payroll deductions) in accordance with Section 9.A. of the Employment Agreement. Such payment shall be made within ten

(10) calendar days of the Effective Date of this Agreement as set forth in Paragraph 9 of this Agreement.

- c. The TOWN agrees to pay for the first six (6) months (i.e., February 1, 2013 through July 31, 2013) of DANNHEISSER's COBRA continuation coverage for health, dental and vision insurance (employee only). If DANNHEISSER wishes to continue to participate in the TOWN's health, dental and/or vision insurance policies through COBRA beyond July 31, 2013, DANNHEISSER shall be solely responsible for the premium payments for such COBRA continuation coverage.

The Parties agree and acknowledge that the benefits delineated above constitute good, valuable and sufficient consideration for DANNHEISSER's full wavier and release of all claims, and her fulfilling all of her promises as set forth herein.

6. Indemnification. In accordance with Section 11 of the Employment Agreement, the TOWN shall defend, save harmless and indemnify DANNHEISSER against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in connection with the performance of DANNHEISSER's duties as Town Attorney. The TOWN, or its insurance carrier, will pay or settle any such claim or suit or judgment rendered thereon.

7. Time to Consider Signing Agreement. DANNHEISSER acknowledges that she has been given a reasonable period of time of not less than twenty-one (21) calendar days within which to decide whether to sign this Agreement. DANNHEISSER understands and agrees that any changes or amendments to this Agreement, whether material or not, will not re-start the twenty-one (21) day period. DANNHEISSER understands, and agrees that she can use all or any part of the twenty-one (21) day period to decide whether to sign this Agreement. DANNHEISSER further acknowledges that she has, in fact, taken a reasonable period of time to consider this Agreement.

8. **Seven (7) Day Period to Revoke.** DANNHEISSER understands that she can revoke this Agreement within seven (7) calendar days after she signs it. (The seven day revocation period is counted by calendar days. If the seventh day falls on a Saturday, Sunday or legal holiday, the seventh day will be the next business day.) Any revocation within this period must be in writing and must be received by hand or by certified mail by the TOWN's Human Resources Director, Yami Slate-McCloud, by 5:00 p.m. on the seventh (7) day following her execution of the Agreement. DANNHEISSER understands and agrees that, in the event that she revokes this Agreement, this Agreement will become null and void, and the TOWN will owe nothing pursuant to this Agreement.

9. **Effective Date.** This Agreement will become effective when each of the following conditions is met: 1) DANNHEISSER executes this Agreement; 2) the seven (7) day revocation period set forth in Paragraph 8 above expires; and 3) the Town Commission publicly approves this Agreement. When the Agreement becomes effective, the TOWN will execute it. In the event that the Town Commission does not publicly approve the Agreement, the Agreement is null and void.

10. **Confidentiality.** DANNHEISSER agrees that, except as required by a lawful order of a court of competent jurisdiction or to the extent that she has received written authorization from the TOWN, she will not, at any time or in any manner whatsoever, either directly or indirectly, reveal, divulge, disclose, or communicate to any person, firm or corporation any TOWN documents or information that are exempt or confidential under Chapter 119, Florida Statutes, including but not limited to documents or information that constitute non-public attorney work product or attorney-client privileged communications under Chapter 119, Florida Statutes.

11. **Non-Disparagement.** DANNHEISSER agrees that she will not engage in any conduct or communication designed to disparage the TOWN, its elected officials, Town Manager or Town employees. The TOWN's elected officials, Town Manager and Department Heads agree that they will not engage in any conduct or communication designed to disparage DANNHEISSER.

12. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida. The Parties voluntarily waive any right to trial by jury in the event of any litigation between the Parties which in any way arises out of this Agreement. The prevailing party in any dispute under this provision shall be entitled to recover its/her reasonable attorneys' fees and costs from the non-prevailing party.

13. **Severability.** If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction and if it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly construed for or against either party. If the waiver language of this Agreement is declared unenforceable because of actions taken by DANNHEISSER or on her behalf, DANNHEISSER shall return all monies paid to her under this Agreement with ten (10) calendar days of the date on which the Agreement is declared unenforceable and this Agreement shall immediately become null and void, and the TOWN will owe nothing further pursuant to that Agreement.

14. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties and shall supersede any and all prior agreements, understandings, whether written or oral, between the parties, except as otherwise specified in this Agreement. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to each other in connection with their respective decisions to sign this Agreement except for those set forth in this Agreement.

15. **Amendment.** This Agreement may not be amended except by written agreement signed by all parties and approved by the Town Commission.

16. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which that party believes is a violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

18. **Headings.** Section headings are used herein for convenience of reference only and shall not affect the meaning of any provisions of this Agreement.


19. **Acknowledgment.** The Parties agree that they have carefully read, understand and fully considered this Agreement consisting of nine (9) pages. The Parties also acknowledge that they enter into this Agreement voluntarily, without any pressure or coercion and with full knowledge of its significance. The terms of this Agreement are the product of compromise between the TOWN and DANNHEISSER.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this

Agreement as of the date set forth below.

Lynn M. Dannheisser

Town of Surfside


By: 
Lynn M. Dannheisser

By: 
Daniel Dietch, Mayor

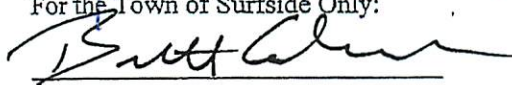
Date: 1/8/13

Date: 1-16-2013

Attest:

 1/17/2013
Sandra Novoa, Town Clerk

Approved as to Form and Legal Sufficiency
For the Town of Surfside Only:


Brett J. Schneider, Special Labor Counsel to the Town