

RESOLUTION NO. 17 - 2456

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE RELEASE OF A COVENANT BURDENING PROPERTY GENERALLY LOCATED AT 9380, 9372, 9364, 9348, 9340, 9332, 9316 AND 9300 COLLINS AVENUE; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Eden Surfside, LLC is the Owner (“Owner”) of that property legally described in Exhibit "A" (collectively, the "Property") and generally located at 9380, 9372, 9364, 9348, 9340, 9332, 9316 and 9300 Collins Avenue, within the Town of Surfside, Florida (the "Town"), and

WHEREAS, the Property will be developed under a single unified plan of development as approved by Resolution No. 17-Z-2418 of the Town; and

WHEREAS, Owner’s predecessor in title to a portion of the Property (Lots 6 and 19, Block 3, of Altos del Mar No. 5, Plat Box 8, Page 92) executed a Restrictive Covenant in favor of the Town, recorded in Official Records Book 6369, Page 397, of the public records of Miami-Dade County (the “Covenant”), unifying Lots 6 and 19 and requiring that Lot 19 be used for parking purposes in conjunction with the operation of an apartment building on Lot 6, for so long as the apartment building remained on Lot 6, attached hereto as Exhibit 1; and

WHEREAS, the apartment building and the use of the portion of the Property described in the Covenant has been demolished and discontinued and therefore the Owner has requested to release the Property from the Covenant, and seeks the approval of the Town for such release (the “Request”); and

WHEREAS, the use for which the covenant was established no longer exists, a new unified plan of development has been approved and the Town finds the need for the Covenant no longer exists; and

WHEREAS, the site plan approval for the unified development plan requires that Owner record a Unity of Title joining all the lots together; and

WHEREAS, in conjunction with the Unity of Title, Owner has provided a release of the Covenant as provided in Exhibit 2, attached hereto; and

WHEREAS, the Town Commission has reviewed the Request and desires to release the Covenant, making the Property available for redevelopment; and

WHEREAS, the Town Commission finds the release of the Covenant to be in the best interest of the Town.

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

Section 1. Recitals. The above-stated recitals are hereby adopted and confirmed.

Section 2. Approval of Release. The Covenant recorded April 17, 1969 in Official Records Book 6369, Page 397, of the public records of Miami-Dade County is hereby released as provided herein.

Section 3. Implementation. The Town Manager and/or designee are hereby authorized to take execute the release and take any and all action necessary to implement this Resolution.

Section 4. Effective Date. This Resolution shall be effective immediately from adoption hereof.

PASSED AND ADOPTED this 10th day of October, 2017.

Motion by Commissioner Karukin,
Second by Commissioner Gielchinsky


FINAL VOTE ON ADOPTION

Commissioner Daniel Gielchinsky	<u>yes</u>
Commissioner Michael Karukin	<u>yes</u>
Commissioner Tina Paul	<u>NO</u>
Vice Mayor Barry Cohen	<u>Absent</u>
Mayor Daniel Dietch	<u>yes</u>



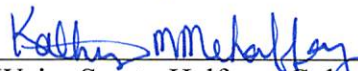
Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, MMC, Town Clerk

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



Weiss Serota Helfman Cole and Bierman, P.A.
Town Attorney

RESTRICTIVE COVENANT

THIS AGREEMENT entered into this 11 day of March, 1969, by and between CHARLES A. BORNMANN, an unmarried man, and BERTHA BORNMANN, a widow (hereinafter referred to as Owners), JOHN DAVALA and ISABELLE DAVALA, his wife (hereinafter referred to as Mortgagees), and the TOWN OF SURFSIDE, a municipal corporation under the laws of the State of Florida;

WITNESSETH:

WHEREAS, Owners are the fee simple owners of the following described property situate in the Town of Surfside, County of Dade, State of Florida:

Lots 6 and 19, in Block 3, of ALTOS DEL MAR NO. 5, according to the Plat thereof, recorded in Plat Book 8, at Page 92, of the Public Records of Dade County, Florida.

and

WHEREAS, Mortgagees are the owners and holder of a mortgage encumbering the said property dated May 27, 1968, filed May 27, 1968, and recorded under Clerk's File No. 68R-91444 of the Public Records of Dade County, Florida, and

WHEREAS, there was heretofore entered into a certain document entitled Easement from Max Gottlieb to Wayne P. Mitchell, as Town Clerk of the Town of Surfside, as Trustee, and his successors in office, relating to parking of automobiles on the subject property, which Easement was dated April 6, 1950, filed August 1, 1956, recorded in Deed Book 4310, Page 398 of the Public Records of Dade County, Florida, and

WHEREAS, there is presently located on the said property an apartment type building on Lot 6 of the said property, and

WHEREAS, the Town of Surfside requires by ordinance certain off street parking to be provided for the apartment type building, and

WHEREAS, the parties hereto have agreed to cancel and nullify the aforesaid Easement recorded in Deed Book 4310, Page 398 of the Public Records of Dade County, Florida, and to cause a restrictive covenant to be executed and recorded affecting the subject property, as hereinafter more fully set forth.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid by each of the parties to the others, and in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. All of the recitals heretofore made are hereby incorporated and made a part of this agreement.

2. That the Easement from Max Gottlieb to Wayne P. Mitchell, as Town Clerk of the Town of Surfside, as Trustee, and his successors in office, dated April 6, 1950 and recorded in Deed Book 4310, Page 398, be and it is hereby canceled and nullified and the Town of Surfside does hereby remise, release and quitclaim unto the said Charles A. Bornmann, an unmarried man, and Bertha Bornmann, a widow, and their heirs, executors, administrators and assigns forever, all of the estate, right, title, interest and easement which the Town of Surfside, or any of its officers, agents or employees has or ever has had in and to the real property situate, lying and being in the Town of Surfside, County of Dade, State of Florida, described as follows:

Lots 6 and 19, in Block 3, of ALTOS DEL MAR NO. 5, according to the Plat thereof, recorded in Plat Book 8, at Page 92, of the Public Records of Dade County, Florida.

TO HAVE AND TO HOLD the same to the proper use and benefit of the said Charles A. Bornmann, an unmarried man, and Bertha Bornmann, a widow, their heirs, executors, administrators and assigns forever.

3. The Owners do hereby agree that they will and hereby

do set aside:

Lot 19, Block 3, of ALTOS DEL MAR NO. 5,
according to the Plat thereof, recorded
in Plat Book 8, at Page 92, of the Public
Records of Dade County, Florida,

or such portions thereof as may be required for parking purposes,
for such off-street parking as may be required pursuant to the
ordinances of the Town of Surfside, in conjunction with the
operation of the apartment building erected upon:

Lot 6, in Block 3, of ALTOS DEL MAR NO. 5,
according to the Plat thereof, recorded in
Plat Book 8, at Page 92, of the Public
Records of Dade County, Florida,

and that said

Lot 19, in Block 3, of ALTOS DEL MAR NO. 5,
according to the Plat thereof, recorded
in Plat Book 8, at Page 92, of the Public
Records of Dade County, Florida,

shall be used solely, as may be necessary, for such purpose so
long as the said apartment building remains on the said

Lot 6, in Block 3, of ALTOS DEL MAR NO. 5,
according to the Plat thereof, recorded
in Plat Book 8, at Page 92, of the Public
Records of Dade County, Florida,

and that said

Lot 6, in Block 3, of ALTOS DEL MAR NO. 5,
according to the Plat thereof, recorded in
Plat Book 8, at Page 92, of the Public
Records of Dade County, Florida,

shall not be sold, leased or assigned or the title thereto other-
wise alienated in any manner unless the title to

Lot 19, in Block 3, of ALTOS DEL MAR NO. 5,
according to the Plat thereof, recorded in
Plat Book 8, at Page 92, of the Public
Records of Dade County, Florida,

is transferred in connection therewith.

4. John Davala and Isabelle Davala, his wife, as owners
and holders of the above-described mortgage on the above-
described property are made parties to this agreement and have

executed the same for the purpose of consenting to the various provisions as hereinabove set forth.

IN WITNESS WHEREOF, CHARLES A. BORNMANN, an unmarried man, and BERTHA BORNMANN, a widow, as Owners, and JOHN DAVALA and ISABELLE DAVALA, his wife, as Mortgagees, have executed these presents, and the TOWN OF SURFSIDE, a municipal corporation under the laws of the State of Florida, has caused these presents to be executed by its proper officers, who are duly authorized to do so on behalf of the said Town of Surfside.

Signed, sealed and delivered in the presence of:

G. K. Wenger Charles A. Bornmann (Seal)
Charles A. Bornmann, an unmarried man

Bertha Bornmann (Seal)
Bertha Bornmann, a widow

G. K. Wenger John Davala (Seal)
John Davala

Isabelle Davala (Seal)
Isabelle Davala

Town of Surfside, a municipal corporation

Betty M. Dancy
Jeanette S. Ralston By David Dancy
Attest J. P. ...

STATE OF FLORIDA)
 : ss
COUNTY OF DADE)

I HEREBY CERTIFY that on this 11th day of March, 1969, personally appeared before me, CHARLES A. BORNMANN, an unmarried man, and BERTHA BORNMANN, a widow, to me personally known, and acknowledged before me that they executed the same freely and voluntarily for the uses and purposes therein expressed.

WITNESS my hand and official seal at Miami, Dade County, Florida, this 11th day of March, 1969.



Rose Farley
Notary Public, State of Florida

My commission expires:
Mar 31, 1969

This instrument was prepared by
and is to be returned to:

Name: Neisen O. Kasdin
Address: Akerman, LLP
98 SE 7 Street
Suite 1100
Miami, Florida 33131

Folio Nos:

(Space reserved for Clerk)

**UNITY OF TITLE
AND
RELEASE OF RESTRICTIVE COVENANT**

WHEREAS, the undersigned is the Owner of that property legally described in **Exhibit "A"** (collectively, the "Property") and located at 9380, 9372, 9364, 9348, 9340, 9332, 9316 and 9300 Collins Avenue, within the Town of Surfside, Florida (the "Town"), and

WHEREAS, the Property is contiguous, with no gaps, hiatuses or gores; and

WHEREAS, the Property has been aggregated and will be improved under a single unified plan of development pursuant to Resolution No. 17-Z-2418 of the Town as recorded in Official Records Book 30402, Page 4115, of the public records of Miami-Dade County, as may be amended; and

WHEREAS, in recognition of the Owner's current desire to utilize the Property under a single unified plan of development and for other good and valuable consideration, the Owner desires to restrict the use of the Property through this Unity of Title;

WHEREAS, Owner's predecessor in title to a portion of the Property (Lots 6 and 19, Block 3, of Altos del Mar No. 5, Plat Box 8, Page 92) executed a Restrictive Covenant in favor of the Town, recorded in Official Records Book 6369, Page 397, of the public records of Miami-Dade County (the "Covenant"), unifying Lots 6 and 19 and requiring that Lot 19 be used for parking purposes in conjunction with the operation of an apartment building on Lot 6, for so long as the apartment building remained on Lot 6; and

WHEREAS, the apartment building and the use of the portion of the Property described in the Covenant has been demolished and discontinued and therefore the Owner desires to release the Property from the Covenant, and seeks the approval of the Town for such release; and

NOW THEREFORE, for purposes of being able to develop and maintain the Property in a single unified manner, the Owner hereby agrees to restrict the use of the Property in the following manner:

1. **Unity of Title.** That the Property shall be considered as one plot and parcel of land and that no portion of said plot and parcel of land shall be sold, transferred, devised or assigned separately (except under a condominium form of ownership), except in its entirety as one plot or parcel of land.
2. **Term and Release.** This instrument is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this instrument is recorded, after which time it shall be extended automatically for successive periods of ten (10) years each, unless released in writing in part or in its entirety by the Town upon approval by the resolution of the Town Commission after public hearing. Said Release shall be granted at the request of the Owner upon demonstration and affirmative finding by the Commission that (1) the Property is made to conform with applicable zoning regulations; or (2) the use or structure is removed from the Property and the Property, without said instrument, is in compliance with the building code, applicable zoning regulations, and the Town's comprehensive plan. Should approval of the release or partial release of the Unity of Title in this instrument be granted by the Town Commission, the Town Manager or designee, shall forthwith execute such written instrument effectuating and acknowledging such release or partial release of the Unity of Title.
3. **Acceptance of Declaration.** Acceptance of this instrument by the Town does not obligate the Town in any manner, other than to recognize that the Property may be developed as a single parcel of land under the Town's comprehensive plan and its land development regulations, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise.
4. **Release of Covenant.** The Covenant is hereby terminated, released and of no further force and effect. The Town hereby joins in this instrument in order to release the Property from the Covenant.
5. **Owner.** The term "Owner" includes Eden Surfside, LLC, a Florida limited liability company, its heirs, successors and assigns.
6. **Recordation.** This instrument shall be filed of record in the public records of Miami-Dade County, Florida, at the cost of the Owner.

IN WITNESS WHEREOF, Eden Surfside, LLC, a Florida limited liability company, has caused these present to be signed in its name on this ____, day of _____, 2017.

WITNESSES:

Eden Surfside, LLC, a Florida limited liability company

Signature

By: _____

Print Name: Menachem Boymelgreen

Title: Manager

Print Name

Address: 1286 President Street

Brooklyn, NY 11213

Signature

Print Name

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by Menachem Boymelgreen, as Manager of Eden Surfside, LLC, a Florida limited liability company, on behalf of said company, who is personally known to me or has produced _____ as identification.

My Commission Expires:

Notary Public – State of _____

Printed Name

IN WITNESS WHEREOF, Town of Surfside has caused these present to be signed in its name on this ____, day of _____, 2017 in order to release the Property from the Covenant.

TOWN:

Town of Surfside, a Florida municipal corporation

By: _____
Guillermo Olmedillo, Town Manager

ATTEST:

Sandra Novoa, Town Clerk

Approved as to Form and Legal Sufficiency:

Weiss Serota Helfman Cole & Bierman P.L.
Town Attorney

EXHIBIT A

LEGAL DESCRIPTION

Lots 1 through 12, and Lot 19, inclusive, Block 3 of Altos Del Mar No. 5 according to the plat thereof, as recorded in Plat Book 8, Page 92, of the Public Records of Miami-Dade County Florida.