

RESOLUTION NO. 2026-3531

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A SETTLEMENT AGREEMENT WITH 9528 BAY DRIVE, LLC; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 20, 2025, the Town of Surfside (“Town”) filed an action in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Case No. 2025-023081-CA-01, requesting a declaratory judgment and injunctive relief, naming 9528 Bay Drive, LLC (“Defendant”) and several other property owners as defendants that had claimed by letters to the Town that certain ordinances adopted by the Town in 2024 violated §28 SB 180 (§28, Ch. 2025-190, Laws of Florida) and/or the Bert J. Harris, Jr. Private Property Rights Protection Act (the “Litigation”); and

WHEREAS, on December 30, 2025, Defendant filed a counterclaim against the Town in the Litigation seeking declaratory and injunctive relief against the Town, and relief pursuant to SB 180; and

WHEREAS, in an effort to avoid the uncertainty and expense of continued and protracted litigation, the Town finds that it is in the best interest and welfare of the public to enter into a Settlement Agreement, in substantially the form attached hereto as Exhibit “A” (the “Settlement Agreement”), with the intent to resolve all claims or potential claims between the Town and Defendant; and

WHEREAS, the Town Commission wishes to authorize the Town Manager to execute the Settlement Agreement, in substantially the form attached hereto as Exhibit “A”, and to take all action necessary to effectuate the settlement of the Litigation; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town and its residents.

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 true and correct and are incorporated herein by this reference.

Section 2. Approving Settlement Agreement. The Town Commission hereby approves the Settlement Agreement, in substantially the form attached hereto as Exhibit "A."

Section 3. Authorization. The Town Manager is authorized to execute the Settlement Agreement, in substantially the form attached hereto as Exhibit "A," and all documents deemed necessary to implement the intent of this Resolution, subject to approval by the Town Attorney as to form, content, and legal sufficiency, and to take such other action as may be necessary and appropriate to implement the terms of the Settlement Agreement and this Resolution.

Section 4. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED on this 9th day of June, 2026.

Motion By: Commissioner Weingot

Second By: Mayor Danzinger

FINAL VOTE ON ADOPTION:

Commissioner Andrea Travani	<u>Yes</u>
Commissioner Gerardo Vildostegui	<u>Yes</u>
Commissioner Dovid Weingot	<u>Yes</u>
Vice Mayor Dayana Benmergui	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>

Shlomo Danzinger

Shlomo Danzinger, Mayor

Attest:

Sandra N. McCready

Sandra N. McCready, MMC
Town Clerk



Approved as to Form and Legal Sufficiency:

[Signature]

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

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement (“Agreement”) is entered into this 10th day of June 2026, (“Effective Date”) by and between 9528 Bay Drive, LLC, a Delaware limited liability company (“9528 Bay Drive”), its successors and assigns, and the Town of Surfside, a Florida municipal corporation (“Town”), including its current and former elected or appointed members, officials, attorneys, representatives, agents, officers, executives and employees, whether acting in their official, individual, or personal capacity. 9528 Bay Drive and the Town are hereinafter collectively referred to as the “Parties”.

RECITALS

WHEREAS, 9528 Bay Drive owns the improved real property located at 9528 Bay Drive, Surfside, FL 33154 in Miami-Dade Town and which real property is identified as Folio Number 14-2235-007-2590 (the “Property”); and

WHEREAS, the Property is located within the H30A zoning district on the Town’s Zoning Map; and

WHEREAS, on October 8, 2024, the Town enacted Ordinances 2024-1785 and 2024-1786, and on December 10, 2024 the Town enacted Ordinance 2024-1788 (“Ordinances”) which in part amended Sections 90-45, 90-47, 90-48, 90-49, 90-50.1, 90-54 and 90-2 of the Town Zoning Code (“Code”) which regulate H30A zoned property regarding floor area ratio, lot coverage, lot standards, setbacks and LEED building standards; and

WHEREAS, in 2025, the Florida Legislature adopted Senate Bill 180 (§28, Ch. 2025-190, Laws of Florida), an act relating to emergencies, providing that municipalities in Florida may not propose or adopt more restrictive or burdensome amendments to its land development regulations between August 1, 2024 and October 1, 2027 (“SB 180”); and

WHEREAS, on August 6, 2025, 9528 Bay Drive issued to the Town a Notice of Impact under the Bert J. Harris, Jr., Private Property Rights Protection Act, §70.001, Florida Statutes (“9528 Bay Drive Bert Harris Claim”); and

WHEREAS, on November 20, 2025 the Town filed an action in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Case No.: 2025-023081-CA-01, requesting a declaratory judgment and injunctive relief, and naming 9528 Bay Drive together with several other property owners as Defendants that had claimed by letters to the Town that the Ordinances violate SB 180 (the “SB 180 Lawsuit”) and/or the Bert J. Harris, Jr. Private Property Rights Protection Act (the “Bert Harris Act”); and

WHEREAS, on December 30, 2025, 9528 Bay Drive filed a counterclaim in the SB180 Lawsuit seeking declaratory and injunctive relief against the Town, alleging that the Town Ordinances violate SB180 (the “SB180 Counterclaim”); and

WHEREAS, the Parties each deny any wrongdoing and liability in the SB 180 Lawsuit and the SB 180 Counterclaim, and the Town denies liability and wrongdoing under the Bert Harris Act, and the Parties enter into this Agreement solely to fully compromise disputed claims and avoid the costs and risks of continued litigation, without any admission of wrongdoing; and

WHEREAS, the Parties wish to settle the SB 180 Lawsuit, the SB180 Counterclaim, and any claims or counterclaims that the Town or 9528 Bay Drive may have relating to the Property through the effective date of this Agreement, including but not limited to the 9528 Bay Drive Bert Harris Claim regarding the Property; and

WHEREAS, the Parties have stipulated that neither Party shall be treated as the prevailing party in either the SB180 Lawsuit, the SB 180 Counterclaim, or in relation to the 9528 Bay Drive Bert Harris Claim, and each party shall bear its own attorneys' fees and costs; and

WHEREAS, the Parties, without establishing precedent or admitting liability, seek to avoid the uncertainties and expense of further litigation by resolving the SB180 Lawsuit, the SB 180 Counterclaim, the 9528 Bay Drive Bert Harris Claim, and any other claims asserted (or that could have been asserted) in the SB180 Lawsuit, the SB 180 Counterclaim, or in 9528 Bay Drive Bert Harris Claim; and

WHEREAS, the public interest of citizens throughout the Town is protected by avoiding the expense and financial risk in litigating the SB 180 Lawsuit, the SB 180 Counterclaim and/or the 9528 Bay Drive Bert Harris Claim; and

WHEREAS, the Town has the authority and policy discretion to exercise the avoidance of expense and financial risk in entering into settlement agreements.

NOW THEREFORE, in consideration of the premises and the mutual undertakings and covenants set forth herein, the receipt, sufficiency and legality of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Floor Area Ratio and Setbacks to be applied on the Property.** The Town agrees that the floor area ratio and setbacks to be applied to the Property for development of a new, detached, single-family home to replace the current single-family home structure on the Property are to be applied in accordance with the Town Zoning Code applicable prior to adoption of the Ordinances as follows:
Minimum Setbacks - Sec. 90-45 of the Zoning Code:
 - a) Front Setback: 20 Feet;
 - b) Interior Side Setbacks: Five feet or ten percent of the lot frontage, whichever is greater;
 - c) Secondary Frontage: 10 Feet; and



d) Rear Setback: 20 Feet.

Setback Modifications: Average setbacks for front and side (both interior side and secondary frontage). In addition to minimum setbacks, homes shall provide additional average front and side setbacks based on the floor area ratio of the home, as follows:

<u>Floor Area Ratio</u>	<u>Add'l Average Side Setback for each side and secondary frontage</u>	<u>Additional Average Front Setback</u>
.5 or less	No additional setback	No additional setback
Greater than .5 and up to .64	1.25 or 2.5% of frontage, whichever is greater	2.5 Feet
Greater than .64 up to maximum .72	2.5 feet or 5% of frontage, whichever is greater	5 Feet

a) Additional average front setback shall be provided as follows:

i. Multiply the required additional average front setback by the width of the allowable building along the frontage (lineal feet between minimum side setbacks);

ii. Multiply the resulting figure in square feet. by the number of stories to arrive at the total area of required additional front setback, in square feet; and

iii. The total area of required additional front setback must be applied in any one or multiple areas throughout the height and width of the first and (if applicable) second stories of the home (further reducing the building envelope created by the minimum required front setback of 20 feet) to reduce the floor width (i.e. parallel to the front lot line) and/or depth (i.e., perpendicular to the front lot line). at the discretion of the design professional. Average front setback may be applied at any point along a floor, or mixed and matched among the floors of the home, as long as the average setback area is contiguous with the minimum front setback. Covered exterior areas may not be used to meet average setback requirements.

b) Additional average side setback shall be provided as follows:

i. Multiply the required additional average side setback by the depth of the allowable building on that side (lineal feet between minimum front and rear setback)

ii. Multiply the resulting figure in square feet by the number of stories to arrive at the total area of required additional side setback for each side in square feet.

iii. The total area of required additional side setback for each side shall be applied in any one or multiple areas throughout the height and depth of the first and (if applicable) second stories of the home (further reducing the building envelope created by the minimum required side setbacks) to reduce the floor width (*i.e.* parallel to the front lot line) and/or depth (*i.e.* perpendicular to the front lot line). at the discretion of the design professional. Average side setback may be applied at any point along a floor mixed and matched among floors, and/or joined with setbacks taken from the opposite side elevation. as long as the average side setback area is contiguous with the minimum side setback for that side. Area used to satisfy average front yard setback area shall not be counted to satisfy average side setback.

- c) The front facade of each home shall include at least one inside corner of at least 5 feet by 5 feet that is open on two sides or at least 50% open to the sky.
- d) A continuous wall along a consistent plane shall not exceed 50% of the lot depth.
- e) A space counted towards average setback on the second floor may not be covered and must be fully open on at least two sides.

3. **Applicable Land Development Regulations and Development Rights.** The Town and 9528 Bay Drive hereby agree that the floor area ratio and setbacks outlined above shall apply to the Property under the terms and conditions of this Agreement. In addition, the Town and 9528 Bay Drive agree that land development regulations contained in Town Zoning Code Secs. 90-2, 90-47, 90-48, 90-49, 90-50.1 and 90-54, shall be applied as these regulations existed and were applied prior to the adoption of the Ordinances.

The rights of 9528 Bay Drive to develop the Property in accordance with the Town's land development regulations in effect as of August 1, 2024, shall continue as long as 9528 Bay Drive submits a development application for a new, detached single-family home to be constructed on the Property within 2 years of the Effective Date of this Agreement, and 9528 Bay Drive applies for building permits for a new, detached single-family home on the Property within 3 years of the Effective Date of this Agreement. The Parties agree that the failure to submit a development application and building permit in the time as provided for above renders this Agreement null and void.

Nothing in this Settlement Agreement shall be construed as waiver or modification of the Town's single-family development review and approval process, including but not limited to site plan review by the Town Planning and Zoning Board, as set forth in Chapter 90 of its Code of Ordinances or Chapter 90, Exhibit "A" – Design Guidelines for Single Family Residential Properties, Multifamily and Commercial Properties. This paragraph is strictly limited to the process and in no way allows the Town, through the process, to impose any new regulation or design guideline or reimpose any regulation or design guideline that was enacted after August 1, 2024. Nothing in this Settlement Agreement prevents 9528 Bay Drive, in its sole discretion, from developing the Property pursuant to Town regulations or design guidelines adopted after the effective date of this Settlement Agreement that permit greater development capacity or more permissive land development regulations than allowed under the Town's land development



regulations in effect as of August 1, 2024.

4. **Voluntary Dismissal of Plaintiff, 9528 Bay Drive from Lawsuit.** Within five (5) business days following the Effective Date of this Agreement, the Town and 9528 Bay Drive agree as follows:

The Parties will work together to have Defendant, 9528 Bay Drive, LLC dismissed with prejudice from the case identified as *Town of Surfside v. Joel Zelik Lusky, et al.*, Case No. 2025-023081-CA-01 filed in the Circuit Court, Eleventh Judicial Circuit, in and for Miami-Dade County, Florida and agree that the Parties will not seek further judicial review of the claims or counterclaims in the SB 180 Lawsuit as it relates to Defendant, 9528 Bay Drive, LLC.

5. **Tolling and Non-Severability.** If this Agreement is appealed or challenged and any portion of this Agreement is finally adjudicated to be invalid, the entire Agreement is void unless the Parties mutually agree otherwise. If the Agreement is void, the Town may immediately proceed with the SB 180 Lawsuit as if this Agreement had never been entered into by the Parties and any applicable time periods, filing deadlines and statutes of limitation shall be deemed tolled as of the filing date of such challenge and shall begin to run again upon such final adjudication.

6. **Attorneys' Fees and Costs/Consideration.** As additional consideration for the mutual promises and covenants contained here, the Town insurer shall remit to 9528 Bay Drive within twenty (20) days of the effective date of this settlement the sum of Twenty Thousand Dollars and 00/100 (\$20,000.00). In connection with any litigation brought by the Parties to enforce this Agreement, the prevailing party shall be entitled to recover all attorneys' fees and costs incurred therein, including attorneys' fees and costs at trial or on appeal.

7. **Releases.**

a. **Release by 9528 Bay Drive, LLC:** Subject to the full and complete satisfaction of all conditions set forth herein, 9528 Bay Drive and each of its past and present predecessors, successors, successors in business or interest, affiliates, subsidiaries, members, parents, divisions, partnerships and joint ventures hereby releases, acquits and forever discharges the Town, its elected officials, officers, attorneys, associates, representatives, employees, agents, and all others acting or claiming by, through, under or in concert with any of the foregoing from any and against all claims and causes of action arising out of the 9528 Bay Drive Bert Harris Claim, the SB 180 Lawsuit and the SB 180 Counterclaim and including any other claims and/or counterclaims for the recovery of any attorneys' fees or costs. Notwithstanding the foregoing, this release shall not extend to claims for breach of this Agreement or the warranties or representations contained herein.

b. **Release by Town:** Subject to the full and complete satisfaction of all conditions set forth herein, the Town hereby releases, acquits and forever discharges 9528 Bay Drive, including any of its predecessors, successors, successors in business or interest, affiliates, subsidiaries, parents, divisions, partnerships, joint ventures, attorneys, associates, shareholders, representatives, owners, members, managers, heirs, assigns, directors, officers, employees, agents, and all others acting or

claiming by, through, under or in concert with any of the foregoing from any and all claims and causes of action arising out of the SB 180 Lawsuit and the SB 180 Counterclaim and including any other claims for the recovery of attorneys' fees or costs. Notwithstanding the foregoing, this release shall not extend to claims for breach of this Agreement or the warranties or representations contained herein.

8. **Land Development Code.** The terms of this Agreement shall not be construed as making the Property or its development pursuant to the terms in this Agreement in any way non-conforming with the Town's Comprehensive Plan, Zoning Code, or Code of Ordinances.

9. **Town Cooperation.** None of the Town's elected officials, officers, employees, contractors, representatives or agents shall in any way obstruct the efforts of 9528 Bay Drive to achieve development of the Property with a new, detached, single-family home as defined in the Comprehensive Plan and H30A zoning district prior to the adoption of the Ordinances, as contemplated in this Agreement, with regard to all approvals and permits necessary from all applicable governmental entities with regulatory authority, including the Town of Surfside.

10. **Applicable Law.** This Agreement is to be construed and enforced according to the laws of the State of Florida. Any action filed to enforce the terms of this Agreement shall exclusively be filed in federal district court or Florida circuit court having jurisdiction in Miami-Dade County, Florida.

11. **Judicial Interpretation.** Should any of the provisions of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that the Parties and their agents have participated in the preparation hereof.

12. **Authority.** The signatories to this Agreement have the authority and are expressly authorized to resolve all matters as set forth herein and by their signatures here represent and affirm their authority to execute this Agreement.

13. **Entire Agreement.** This is the entire agreement by and between the Town and 9528 Bay Drive, and no verbal or written assurance or promise by any party hereto is effective or binding unless included in this document. This Agreement may not be modified or amended without a written instrument signed by both Parties.

14. **Binding Effect: Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of all Parties to this Agreement.

15. **Agreement Runs with the Land.** The Parties acknowledge that the rights, covenants, restrictions, terms and conditions set forth in this Agreement touch and concern the Property and run with the land. The Parties intend the Agreement to be binding upon and inure to the benefit of any future owner of the Property.



16. **Waiver.** The waiver by one party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant or condition herein. The waiver by either party of the time for performing any act shall not constitute a waiver at the time for performing any act by the other party required to be performed at a later date. Additionally, the exercise of any remedy provided by law in the provisions of this Agreement shall not exclude other remedies unless they are expressly excluded.

17. **Recorded.** This Agreement shall be recorded by the Town in the public records of Miami-Dade County, Florida, at the sole expense of 9528 Bay Drive, within fourteen (14) calendar days after the Effective Date as defined below.

18. **Effective Date.** Upon submission to the Town Attorney of this Agreement, fully executed by 9528 Bay Drive, the Commission shall hold a quasi-legislative public hearing on whether to approve this Agreement. Said hearing shall be set and noticed pursuant to the requirements of Section 166.041, Florida Statutes within eight (8) weeks of receipt by the Town Attorney of the executed Agreement. This Agreement shall become effective upon execution by the Mayor of the Town of Surfside after approval by at least a majority of the Town Commission.

19. **Counterparts.** This Agreement may be executed by the Parties hereto individually or in combination, in one or more counterparts, each of which shall be an original and all of which constitute one and the same Agreement. The Parties may execute counterparts of this Agreement by facsimile or electronic mail in PDF format and accordingly agree and intend that an electronic signature delivered by facsimile machine or electronic mail shall bind the party so signing with the same effect as though the signature were an original signature.

20. **Further Assurances.** The Parties agree to execute and deliver any other documents reasonably required to carry out the terms of this Agreement.

21. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given when (a) hand delivered, or (b) delivered via Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) transmitted via email or facsimile, provided a copy is sent the next business day by method (a) or (b). Notices shall be deemed delivered on the date hand delivered or on the date shown on the receipt. All notices shall be addressed as follows:

Town: Town Manager
 9293 Harding Avenue
 Surfside, FL 33154

With a copy to: Town Attorney
 9293 Harding Avenue
 Surfside, FL 33154



9528 Bay Drive: Owner
 9528 Bay Drive
 Surfside, FL 33154

With a copy to: Ian E. DeMello, Esq.
 Shubin Law Group
 100 SE 2nd Street
 Suite 4020
 Miami, Florida 33131

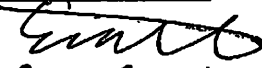
22. **Third Party Rights.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to benefit a third party directly or substantially by this Agreement. The Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement. Nothing herein shall be construed as consent by either party to be sued by third parties in any manner arising out of this Agreement, or other obligations, whether known or unknown to the Parties.

23. **Compromise of Disputed Claim; No Admission of Liability.** The terms and conditions set forth above are in compromise of disputed claims between the Parties, including the claims raised by the Town in the SB180 Lawsuit, 9528 Bay Drive's SB180 Counterclaim, and 9528 Bay Drive's Bert Harris Claim, as well as any other claims or counterclaims that the Town or 9528 Bay Drive may have relating to the Property, and shall not be construed as an admission of liability or fault by either party, which is expressly denied by both parties.

24. **Breach of Agreement.** For breach of any provision of this Agreement, the Parties will have such remedies and rights as are available at law or in equity.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the undersigned officials as duly authorized.

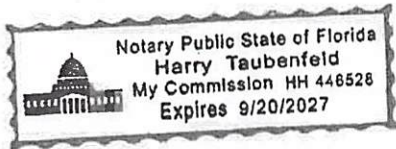
BY 9528 BAY DRIVE:


By: ERIC EDIDIN
Print Name: _____
Title: Authorized Signatory

an

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that the foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization, this 1st day of JUNE, 2026, by ERIC EDEN, as Authorized Signor for 9528 BAY DRIVE, LLC.



[Signature]
Notary Public – State of Florida
Name of Notary: HARRY TAUBENFELD

Personally Known OR Produced Identification Type of Identification Produced _____

BY TOWN:

By: [Signature]
Print Name: Mario A. Diaz
Title: Town Manager

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that the foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization, this 10th day of June, 2026, by Mario A. Diaz, as Town Manager for the TOWN OF SURFSIDE.



[Signature]
Notary Public – State of Florida
Name of Notary: Sandra N. McCreedy

Personally Known OR Produced Identification Type of Identification Produced _____

[Handwritten mark]