



AGENDA ITEM MEMORADUM

Item No. 14 j

Town Manager's Office

Bud Bentley

Department

Assistant Town Manager

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input checked="" type="checkbox"/> February 14, 2012	

*Subject to Change

- | | | | |
|---------------------------------------|---|--|---------------------------------------|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input checked="" type="checkbox"/> Consent | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Quasi-Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

SUBJECT TITLE: A1A North Enhancement Project – Acceptance of a Landscape Easement from the Ocean Sounds Condominium

EXPLANATION: At the January 24^h Commission meeting, staff advised about the Ocean Sounds Condominium request for the Town to install landscaping in front of their properties as part of the A1A Enhancement Project. However, because the State right-of-way is located at the back of the sidewalk at this location, the project did not include any landscaping in that area. In order to accomplish this, the Condominium Board has executed a Landscape Easement (**Exhibit 1**) for the ten (10) feet next to the State right-of-way line on the east and west side of Ocean Drive (A1A).

This Easement allows the Town to install and maintain the landscaping as part of the A1A Enhancement Project. The Town will be able to install about six (6) trees/palms between the east and west Easements, the cost of which will be under \$3,000. The additional cost of the landscaping is available from the savings from the deduction of the Sea Ranch Center improvements.

RECOMMENDATION: We recommend the Town accept the Landscape Easement by authorize the Town Manager to execute the Easement (**Exhibit 1**).

Reviewed by Town Attorney

Yes No

Town Manager Initials

This Instrument Prepared by:
Harlene S. Kennedy, Esq.
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Boulevard
Suite 700
Coral Gables, Florida 33134

NON-EXCLUSIVE EASEMENT AGREEMENT

THIS NON-EXCLUSIVE EASEMENT AGREEMENT (the “**Agreement**”) is made this ____ day of _____, 2012, by and between Ocean Sounds Condominium, with offices at 1770 S. Ocean Blvd., Lauderdale-By-The-Sea, Florida 33308 (“**Grantor**”) and the Town of Lauderdale-By-The-Sea, with offices at 4501 North Ocean Drive, Lauderdale-by-the-Sea, Florida (“**Grantee**”).

RECITALS:

WHEREAS, Grantor is the fee simple owner of certain real property located in Broward County, Florida, with a street address of 1770 S. Ocean Blvd., Lauderdale-By-The-Sea, Florida 33308; and

WHEREAS, Grantee is constructing certain improvements in the area adjacent to the Grantor’s property as part of the A1A Enhancement Project; and

WHEREAS, Grantor has requested that Grantee include landscaping on a part of Grantee’s property specifically described on **Exhibit "A"** attached hereto and made a part hereof (the “**Property**”); and

WHEREAS, in the interest of obtaining this landscaping, Grantor is willing to grant Grantee an easement in accordance with the provisions expressed herein for the purpose of allowing Grantee the necessary access to install the landscaping; and

WHEREAS, Grantor has evidenced the authority for the grant of this easement by providing Grantee minutes of their Board meeting; and

WHEREAS, the parties wish to impose certain covenants, conditions and restrictions with respect to the installation of the landscaping for the mutual benefit of the parties, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants, benefits and agreements of the parties hereto and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

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

2. **Non-Exclusive Easement.** Grantor does hereby grant to Grantee and its agents, employees, invitees, guests, mortgagees, tenants, visitors and licensees, a perpetual non-exclusive easement for purposes of installation of landscaping over and upon the Property.

3. **Maintenance and Obligations Relating to the Property.** The parties shall mutually agree in advance to the landscaping to be placed on Property by Grantee. The Grantor shall, at its sole cost and expense, maintain the Property and keep the Property watered and in good condition and clean and clear and free of debris. The Grantee shall have no obligation with regard to maintenance or other requirements relating to the Property, other than as specifically set forth herein. The Grantee shall periodically trim and fertilize the trees planted on the Property by Grantee; however the Grantee makes no warranty regarding the landscaping or any features relating to the Property.

4. **Insurance.** Grantor shall secure and maintain throughout the period of the landscaping, general liability insurance, with combined single limits of no less than \$1,000,000.00 per occurrence for bodily injury and property damage coverage, naming the Grantee as an additional insured, in a form of endorsement acceptable to the Grantee. Simultaneously with the execution of this Agreement, the Grantor shall furnish the Grantee with an endorsement or certificate of insurance coverage in the minimum amount stated above, together with the endorsement. This policy shall not be affected by any insurance carried by Grantee. The insurance shall:

- (i) be in the form and substance approved by the Department of Insurance of the State of Florida (DOI) and issued by a company licensed by DOI,
- (ii) be delivered to Grantee upon execution of this Easement Agreement,
- (iii) be with a carrier having an A.M. Best's Rating of not less than A, Class VII,
- (iv) provide that the policy(ies) may not be canceled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon Grantee and shall not be invalidated as to the interest of Grantee by any act, omission or neglect of Grantees.

5. **Covenants Running with the Land.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the Parcels and create equitable servitudes in favor of the real property benefitted thereby, and shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs and personal representatives.

6. **Attorney's Fees.** In the event a party institutes any legal action or proceedings for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its cost and reasonable attorney's fees incurred in the preparation and prosecution of such action or proceeding.

7. **Severability.** Each provision of this Agreement and the application thereof to the Property is hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision in this

Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared or corrected, as necessary.

8. **Governing Laws.** The laws of the State of Florida shall govern the interpretation, validity, performance and enforcement of this Agreement. Venue shall be in Broward County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement the day and year first above written.

WITNESS:

Carol Klein
Signature of Witness

Carol Klein
Printed Name of Witness

GRANTOR:

[Signature]
Signature of Grantor

Robert Steller
Printed Name of Grantor

Date: 2-6-12

**TOWN OF LAUDERDALE-BY-THE-SEA,
FLORIDA**

BY: _____
Constance Hoffmann
Town Manager

Date: _____

ATTEST:

JUNE WHITE, CMC, TOWN CLERK

APPROVED AS TO FORM:

[Signature]
Susan L. Trevarthen, Town Attorney

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing Instrument was acknowledged before me this 6 day of FEBRUARY, 2012, by John Stalker, as Treasurer. He/She is personally known to me or has produced FD ID # SS201 40196 04392 as identification and who did take an oath.

REV of Ocean Sounds

My Commission Expires

Linda Connors
Signature of Notary Public

Notary Seal



LINDA CONNORS
Printed Name of Notary Public

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by _____, as Town Manager of the Town of Lauderdale-by-the-Sea, Florida, a Political Subdivision of the State of Florida

My Commission Expires:

Signature of Notary Public

Notary Seal

Printed Name of Notary Public

February 5, 2012

R. Mederos, Arborist

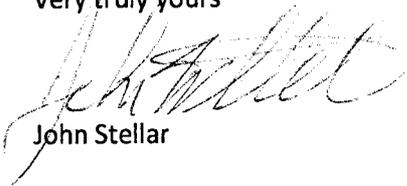
B. Bentley, Assistant Town Manager

On February 4, 2012 a special meeting of the landscape committee was held to notify the town of Lauderdale by the Sea to proceed with A1A Sidewalk and Landscaping Improvement Project. Also in attendance were 3 Board Members, namely Charles Bacci, Nick Pennente and John Stellar.

A certified copy of liability insurance was requested and is enclosed.

Thank you for your attention to this matter.

Very truly yours

A handwritten signature in cursive script, appearing to read "John Stellar".

John Stellar

Board of Directors, Treasurer

Ocean Sounds Condo Association

(201) 679-9599



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/3/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Jeffrey C. Samas 2601 So. Bayshore Drive, #1600 Coconut Grove FL 33133	CONTACT NAME: PHONE (305) 443-4884 FAX (305) 441-0460
	INSURER AFFORDING COVERAGE INSURER A: Western World Insurance Company
INSURED Ocean Sounds Condominium Assn., Inc. 17710 South Ocean Blvd. Pompano Beach FL 33062	INSURER B:
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES **CERTIFICATE NUMBER:** CofL ID 256942 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS. LTR.	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EXP. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LOC		WFP1316902	8/11/2011	8/11/2012	EACH OCCURRENCE \$ 1,000,000. DAMAGE TO RENTED PROPERTIES (Per occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NONOWNED AUTOS					COMBINED SINGLE LIMIT (Per accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE COV. RETENTIONS					EACH OCCURRENCE \$ AGGREGATE \$ COV. STATE/TERRITORY LIMITS <input type="checkbox"/> OTHER STATES <input type="checkbox"/>
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in FL) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			E.L. EACH ACCIDENT \$ E.L. DISEASE - SA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 this Certificate Holder is hereby named only for the AIA enhancement project providing landscaping.

CERTIFICATE HOLDER Town of Lauderdale by the Sea 4301 N. Ocean Drive Lauderdale by the Sea FL 33062	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE