

RESOLUTION NO. 11-2030

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AN AFTER-THE-FACT EXPENDITURE FOR CONCESSIONAIRE SERVICES FOR SURFSIDE COMMUNITY CENTER AND POOL FACILITY WITH IMPORT INTERNATIONAL, LLC, A FLORIDA LIMITED LIABILITY COMPANY, D/B/A SURF CAFÉ.

WHEREAS, The Town of Surfside , Florida, a municipal corporation of of the State of Florida, (hereinafter referred to as “Town”), agrees to employ Import International, LLC, d/b/a Surf Café, (hereinafter referred to as “Surf Café”), to operate concessionaire services for the Surfside Community Center and Pool Facility pursuant to the specifications outlined in RFP No. 11-02; and

WHEREAS, Surf Café was selected by the Town as the most qualified Proposer in response in RFP No. 11-02; and

WHEREAS, Surf Café is qualified, willing and able to provide the desired services on the terms and conditions set forth in agreement (attached as exhibit “A”).

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. Purchase Order Approved. Surf Café (attached as Exhibit “A”) is hereby approved after-the-fact and the Town Manager is hereby authorized to have made and issued payment on behalf of the Town.


Section 3. Effective Date. This Resolution shall be effective immediately from adoption hereof.

PASSED and ADOPTED on this 14 day of June, 2011.

Motion by Commissioner Kopelman, second by Commissioner Karukin.

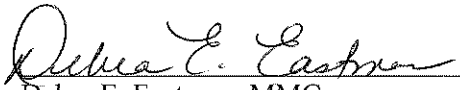
FINAL VOTE ON ADOPTION

Commissioner Michael Karukin	<u>yes</u>
Commissioner Edward Kopelman	<u>yes</u>
Commissioner Marta Olchyk	<u>yes</u>
Vice Mayor Joseph Graubart	<u>yes</u>
Mayor Daniel Dietch	<u>yes</u>



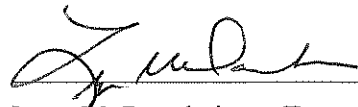
Daniel Dietch, Mayor

ATTEST:



Debra E. Eastman, MMC
Town Clerk

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



Lynn M. Dannheisser, Town Attorney

**AGREEMENT WITH IMPORT INTERNATIONAL, LLC,
d/b/a SURF CAFÉ FOR CONCESSIONAIRE SERVICES
FOR SURFSIDE COMMUNITY CENTER AND POOL FACILITY**

THIS CONTRACTOR AGREEMENT made and entered into this 24 day of MAY 2011 by and between the Town of Surfside, Florida, a municipal corporation of the State of Florida, (hereinafter referred as to "Town") and IMPORT INTERNATIONAL, LLC, a Florida limited liability company, d/b/a SURF CAFÉ, authorized to do business in the State of Florida, (hereinafter referred to as "Contractor or "Licensee").

WHEREAS, the Town wishes to employ Contractor to operate concessionaire services for the Surfside Community Center and Pool Facility pursuant to the specifications outlined in RFP No.11-02; and

WHEREAS, the Contractor was selected by the Town as the most qualified Proposer in response to RFP No. 11-02; and

WHEREAS, the Contractor is qualified, willing and able to provide the desired services on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein named, the parties hereto agree as set forth below:

1. **RECITALS.** The Recitals set forth above are hereby incorporated into this Agreement and made a part of hereof for reference.

2. **SERVICES TO BE PERFORMED.** Contractor shall perform the required services in compliance with the terms and conditions specified in RFP No. 11-02, which are incorporated herein. Contractor agrees to furnish all labor and materials in a good and workmanlike and professional manner. The Services shall be performed by Contractor to the full satisfaction of the Town. Contractor agrees to immediately inform the Town via telephone and in writing of any problems that could cause damage to property and persons to the or concession stand area located at the Surfside Community Center and Pool Facility, 9301 Collins Avenue, Surfside, Florida 33154 (the "Premises").

3. **CONCESSION PAYMENTS TO THE TOWN.** In consideration for the terms of this Agreement, the Contractor shall pay the Town the concessionaire fees as proposed by Contractor in response to RFP No. 11-02 from sales received by the Contractor from the sales at the Surfside Community Center and Pool Facility Concession Agreement terms:

3 Year Program



First Year Base Concession Fee Due \$550.00 per month due on the first of each month

Second Year Base Concession Fee Due \$600.00 per month due on the first of each month

Third Year Base Concession Fee Due \$650.00 per month due on the first of each month

Additionally there is a monthly concession fee of five percent (5%) of gross sales (excluding business taxes). On or before the end of each month throughout the term of this Agreement Licensee shall furnish to the Town Manager a report of gross sales receipts during the preceding month signed by the Licensee certifying its accuracy. If the five percent (5%) of gross sales is lower than the fixed monthly concession fee due, no additional amount is due. If the five percent (5%) of gross sales is greater than the fixed monthly concession fee, then the difference is due in addition to the base rent. The five percent (5%) of gross sales is due on the 15th of each month. Gross earnings shall not include any sales or excise taxes imposed by any governmental entity. Payment to the Town shall be sent to the Town no later than the fifteenth (15th) day of each month. Payments received from the fifteenth (15th) of each month to the twenty fifth (25th) of each month shall be considered delinquent and shall be assessed a ten percent (10%) penalty. Payments received after the twenty-fifth (25th) of each month shall be assessed an additional ten percent (10%) penalty. Failure by the Contractor to tender the required report and/or the payment to the Town within thirty (30) days of any payment due date shall be sufficient cause for the Town to terminate this Agreement.

4. **TERM.** This Agreement shall be for a term of three (3) years with a renewal options of an additional three (3) years on the same terms and conditions beginning concurrently with the Town's opening of the Community Center and Pool Facility, projected to be on or about June 10, 2011, and agreed to by both parties, unless terminated sooner pursuant to paragraph 12 of this Agreement. Services shall commence upon execution by both parties of this Agreement (the "Commencement Date"). Any changes in fees, terms, or conditions shall be accomplished by written amendment to this Agreement with approval by the Town and Contractor.

5. **LICENSE TO USE PREMISES; NO LEASE OR SUBLEASE INTENDED.** The Town agrees that the Licensee may use the Premises for the sole purpose of operating a concession stand. Contractor understands this Agreement is not intended to, nor should it be construed as, a lease of the premises. The license is personal to Contractor who is hereby granted permission to use the premises for the operation of a concession stand under the terms of this agreement. It shall have no right to sublease or otherwise convey any interest of any kind granted by this agreement to any person or persons whatsoever without prior written consent and approval by the Town. This agreement shall not be construed to grant Contractor any right or property interest in the premises except to the extent of the obligations under this agreement. Request to use the Surfside Community Center and Pool Facility after hours must be made in writing to the Town Manager or his designee.



6. RECORDS AND ACCOUNTS. Contractor shall keep true and accurate books and records showing all of its business sales transactions related to this Concession Agreement in separate records of account for the concession operation, in a manner acceptable to the Town. The Town shall have the right, through its representatives, and at all reasonable times, to inspect such books and records, including State of Florida sales tax records. The Town may require Contractor, at his expense, to have his records audited by an auditor acceptable to the Town and shall present said audit to the Town Manager or his designee within thirty (30) days after the completion of the audit. Audits will be up to once per year. If Contractor fails to provide the required audit, the Town shall contract to have an audit performed at the Contractor's expense.

7. CONDITION OF PREMISES. The taking of possession of the subject premises by Contractor shall, in itself, constitute acknowledgment that the premises are in good and tenantable condition. Contractor agrees to accept said premises as constructed but may propose minor modifications to ensure efficient operations. Contractor shall not construct or modify said premises without the prior written approval by the Town Manager or his designee. Any plans for such construction, if applicable, shall be submitted to the Town for approval. Such construction or modification shall be without cost to the Town. Once the premises are accepted however, Licensee shall be governed by the terms of Section 11.5 hereinbelow.

8. SIGNS. All signs, names or placards shall be approved by the Town Manager or his designee prior to installation. All signs must meet all requirements and specifications as set forth by the Town.

9. DAMAGE TO/DESTRUCTION OF PREMISES. Should the subject premises or the building and other improvements in which the subject premises are situated be totally or partially damaged or destroyed, the Town shall promptly repair the same, except that the Town shall have the option to terminate this Agreement if (a) the subject premises or the building improvements in which the premises are situated cannot reasonably be expected to be restored under existing law to substantially the same condition as existed prior to such damage or destruction within ninety (90) days from the date that the insurance proceeds become available to the Town; or (b) if the costs of such restoration would exceed one-half (1/2) of the full insured value of the building and other improvements in which the subject premises are situated; or (c) if the damage or destruction results from a casualty not customarily insured against by a policy of standard fire and extended coverage insurance having vandalism and malicious mischief endorsements. Any notice of termination given here shall be given to Contractor within fifteen (15) days after Town determines the period of time required for and the estimated cost of such repair or restoration.

10. OBLIGATIONS OF CONTRACTOR.

10.1 MINIMUM AMOUNT OF SERVICE BY CONTRACTOR. Contractor agrees to devote the hour's necessary to perform the services set forth in this Agreement in an efficient and effective manner. Contractor may represent,

perform services for and be employed by additional individuals or entities, at Contractor's sole discretion, as long as the performance of these extra-contractual services does not interfere with or present a conflict with Town's business.

Contractor understands that for certain special events only and within the Town Manager's discretion, the Town may, award a Contract to other caterers on a case by case basis.

- 10.2 **HOURS OF OPERATION.** Contractor agrees to perform the services as set forth in this Agreement within the hours of operation reasonably established by the Town Manager or his designee.
- 10.3 **PERMITS.** Contractor is required to provide Town, prior to commencement of operation of the concessions, a copy of all licenses and/or certificates necessary to operate its business in the Town.
- 10.4 **TAXES.** Contractor agrees to pay all lawful taxes, assessments or charges which may be levied by any government entity.
- 10.5 **EQUIPMENT.** Town, at its own expense, shall completely equip the concession stand and keep all rental equipment, if any, in good repair and in safe operating condition to the satisfaction of the Town and Contractor throughout the term of this Agreement. Daily inspections of the Contractor's equipment must be maintained and available for review upon request of the Town Manager or his designee. The contractor will provide all routine maintenance and cleaning on equipment to also include the necessary training of all staff on each equipment use. Town of Surfside will pay for one of two refrigerators being purchased by contractor. Town of Surfside will pay 50% of contractors purchase of pizza oven.

QUALITY OF SERVICE/CONTROLLED RATES AND CHARGES: The Town has the right to inspect and schedule the prices and rates of goods sold, entrance fees, and equipment rental prices upon the subject premises. The Town reserves the right to prohibit the sale of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. Contractor shall post rates and prices of all items in such places as designated by the Town. The Contractor is prohibited from selling alcohol on the premises. Licensee shall conduct its operations in an orderly manner so as not to annoy, disturb, or be offensive to customers or patrons including but not limited to the conduct and demeanor of its employees. It shall use its best efforts to promptly satisfy any complaint by any person. Licensee shall furnish good prompt and efficient service and will sell quality food products and maintain clean and sanitary conditions. Signs or placards must be approved by the Town.



10.6 **TOOLS AND INSTRUMENTALITIES:** Contractor shall provide all tools and instrumentalities to perform the services under this Agreement, except the equipment furnished by Town pursuant to subparagraph 10.5 above.

10.7 **INDEPENDENT CONTRACTOR RELATIONSHIP.** The Contractor, including its employees, is an independent Contractor and shall be treated as such for all purposes. Nothing contained in this agreement or any action of the parties shall be construed to constitute or to render the Contractor an employee, partner, agent, shareholder, officer or in any other capacity other than as an independent Contractor other than those obligations which have been or shall have been undertaken by the Town. Contractor shall be responsible for any and all of its own expenses in performing its duties as contemplated under this agreement. The Town shall not be responsible for any expense incurred by the Contractor. The Town shall have no duty to withhold any Federal income taxes or pay Social Security services and that such obligations shall be that of the Contractor other than those set forth in this agreement. Contractor shall furnish its own transportation, office and other supplies as it determines necessary in carrying out its duties under this agreement.

10.8 **INDEMNIFICATION.**

a. For other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, Contractor agrees to indemnify, defend and hold harmless, the Town, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the negligent acts, errors, omissions or other wrongful conduct of the Contractor, agents or other personnel entity acting under Contractor's control in connection with the Contractor's performance of services under this Agreement and to that extent the Contractor shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorneys' fees expended by the Town in defense of such claims and losses including appeals. That the aforesaid hold-harmless agreement by Contractor shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of Contractor or any agent or employee of Contractor regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

b. Town agrees to indemnify, defend and hold harmless, the Contractor, its officers, agents, and employees from, and against any and all claims, actions,



liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the negligent acts, errors, omissions or other wrongful conduct of the Town, its agents or other personnel entity acting under Town's control in connection with the Town's obligations under this Agreement and to that extent the Town shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorneys' fees expended by the Contractor in defense of such claims and losses including appeals. That the aforesaid hold-harmless agreement by Town shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of Town or any officer, agent or employee of Town regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages provided however, nothing in this agreement shall be deemed or otherwise interpreted as waiving the Town's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

- 10.9 **INSURANCE.** Contractor shall, at its sole cost and expense, during the period of any work being performed under this Agreement, procure and maintain the following minimum insurance coverage to protect the Town and Contractor against all loss, claims, damage and liabilities caused by Contractor, its agents, sub-Contractors or employees, as indicated below:

Comprehensive General Liability ("CGL") insurance, with minimum limits of Five-Hundred Thousand Dollars (\$500,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, and One Million Dollars (\$1,000,000) aggregate.

Worker's Compensation, as required by law, but with no less than \$1,000,000 for Employer's Liability.

Business Automobile Liability which shall include coverage for all business owned and business hired vehicles for minimum limits of not less than Five Hundred Thousand (\$500,000) per occurrence, Five Hundred Thousand (\$500,000) per accident for bodily injury and Two Hundred Fifty Thousand Dollars (\$250,000) per accident for property damage.

Insurance required of the Contractor shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Town.

Such insurance shall not diminish Contractor's indemnification and obligations hereunder. The insurance policy(ies) shall be issued by companies authorized to do business under the laws of the State of Florida

and acceptable to the Town with a minimum A.M. Best rating of A-Excellent. Before any work under this Agreement is performed, and at any time upon request, Contractor shall furnish to the Town certificates of insurance evidencing the minimum required coverage and shall be appropriately endorsed for contractual liability, with the Town named as additional insured. All policies shall contain a waiver of subrogation endorsement. All policies and certificates shall be in forms and issued by insurance companies acceptable to the Town's Clerk. All insurance policies and certificates of insurance shall provide that the policies may not be canceled or altered without thirty (30) days prior written notice to the Town. The Town reserves the right from time to time to change the insurance coverage and limits of liability required to be maintained by Contractor hereunder. Contractor shall also require and ensure that each of its subcontractors providing services hereunder (if any) procures and maintains, until the completion of the services, insurance of the types and to the limits specified herein. ANY EXCEPTIONS TO THE INSURANCE REQUIREMENTS IN THIS SECTION MUST BE APPROVED IN WRITING BY THE TOWN.

10.10 CONTRACTOR'S MAINTENANCE: Except as otherwise provided in this Agreement, Contractor, at its own cost and expense agrees:

To maintain throughout the agreement term in good sanitary order, condition, and appearance, all portions of the leased premises, including, without limitation, the equipment furnished by Town, and any personal property of the Contractor situated in or upon the subject premises.

To notify the Town promptly of any damage to the subject premises resulting from or attributed to the acts or omissions of the Contractor, its invitees or its authorized representatives, and thereafter promptly to repair all such damage. Any damage resulting from the negligent acts or omissions of the Contractor or its employees shall be repaired at Contractor's sole cost and expense.

11. OBLIGATIONS OF TOWN.

11.1 UTILITIES: The Town shall pay the reasonable costs for the actual utilities, including water, gas, heat, light and power supplied to the subject premises. The suspension or interruption in utility service to the leased premises for reasons beyond the ability or control of the Town shall not constitute a default by Town or entitle Contractor to any reduction or abatement of the monthly payment due to the Town.

11.2 EQUIPMENT: The Town shall be responsible for repair of the concession area equipment, whether under warranty or otherwise, due to failure under normal operating conditions and not as a result of abuse or damage by Contractor.



- 11.3 **OPERATION OF THE POOL AND CENTER:** Town shall be responsible for the opening, closing, and normal day-to-day operation of the pool and the community center during ordinary and customary days and hours of operation for similar community facilities, on a non-interrupted basis, so as to provide Contractor a reasonable expectation of business opportunity hereunder.
- 11.4 **COOPERATION; PEACEFUL POSSESSION:** Town shall give its fullest cooperation to Contractor in order to meet the mutual objectives of this Agreement.
- 11.5 **NO WARRANTIES:** Notwithstanding the foregoing, Licensee hereby waives any and all causes of actions, claims or demands based on any warranty, express or implied, including but not limited to any implied warranty of suitability for a particular purpose, any and all warranties of habitability and any and all warranties of habitability, and any other implied warranties not expressly set forth in this agreement. Licensee acknowledges and agrees that licensee prior to taking possession shall have fully exercised the right to inspect the premises for any defects as to the suitability of such property for the purpose to which licensee intends to put the premises. The provisions of this section 11.5 shall survive the expiration or sooner termination of this license.

12. **TERMINATION.**

- a. **Termination for Default.** If, through any cause within the reasonable control the Contractor shall fail to fulfill in a timely manner or otherwise violate any of the covenants, agreements or stipulations material to this agreement, the Town shall have the right to terminate the services then remaining to be performed. Prior to the exercise of its option to terminate for cause, the Town shall notify the Contractor in writing of its violation of the particular terms of the agreement and grant Contractor ten (10) days after receipt of said notice to cure such default. If the default remains uncured after ten (10) days the Town may terminate this agreement, unless the matter giving rise to the default is by its nature incapable of being cured within said ten days, so long as Contractor has taken all prudent steps to commence a cure within said ten days.

In the event of termination, all finished and unfinished documents, data and other work product prepared by Contractor (and sub-Contractor[s]) shall be delivered to the Town and the Contractor shall compensate the Town in accordance with Section 3 of this Agreement. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the Town for damages sustained by it by virtue of a breach of the agreement by Contractor.



After receipt of a Termination Notice and except as otherwise directed by the Town, the Contractor shall:

- Stop work on the date and to the extent specified;
- Terminate and settle all orders and subcontracts relating to the performance of the terminated work;
- Transfer all work in process, completed work and other materials related to the terminated work to the Town; and
- Continue and complete all parts of that work that have not been terminated.

- b. Termination for Insolvency. The Town also reserves the right to terminate the remaining services to be performed in the event the Contractor is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.

13. OWNERSHIP OF DOCUMENTS AND EQUIPMENT. All documents prepared by the Contractor pursuant to this agreement and related services to this agreement are intended and represented for the ownership of the Town only. Any other use by Contractor or other parties shall be approved in writing by the Town. Contractor shall deliver to the Town for approval and acceptance, and before being eligible for final payment or any amounts due, all documents and materials prepared by, and for, the Town under this Agreement.

All oral and written information not in the public domain or not previously known, and all information and data obtained, developed or supplied by the Town, or at its expense, will be kept confidential by the Contractor and will not be disclosed to any other party, directly or indirectly, without the Town's prior written consent, unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed or purchased under this Agreement for, or at the Town's expense, shall be and remain the Town's property and may be reproduced and reused at the discretion of the Town.

The Town and Contractor shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law). All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including, but not limited to, any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

14. ASSIGNMENTS, TRANSFERS, SUBCONTRACTING. The Contractor shall not subcontract, assign or transfer any work under this agreement without the prior written consent of the Town. Should the Contractor subcontract any services under this agreement, it shall be done with continued liability for the Contractor. The Contractor shall remain responsible for services, responsibilities and liabilities of any person or entity acting under Contractor.



15. **AUTHORITY TO PRACTICE.** Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the Town prior to commencement of work under this Agreement.

16. **COORDINATION OF SERVICES.** The Town's representative/liaison during the performance of this Agreement shall be Roger M. Carlton, Town Manager whose phone number is (305) 861-4863. Contractor shall not respond to requests for services under this Agreement unless the request is received directly from, Roger M. Carlton, Town Manager or his designated personnel.

17. **TIME FOR PERFORMANCE:** Except as otherwise expressly provided for in this agreement, should the performance of any required by this agreement to be performed by either party be prevented or delayed by reason by any act of God, strike, lockout, labor trouble, inability to secure materials, or any other cause except financial inability not the fault of the party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay will be excused; provided, however, that nothing contained in this section shall exclude the prompt payment by either party as required by this agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

18. **ARBITRATION.** It is the intention of the parties that whenever possible, if a dispute or controversy arises hereunder then such dispute or controversy shall be settled by arbitration in accordance with the procedures, rules and regulations of the American Arbitration Association. The decision rendered by the Arbitrator shall be final and binding upon the parties and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Arbitration shall be held in Miami-Dade County, Florida. The non-prevailing party shall pay all costs of arbitration and attorneys' fees incurred by the parties or, if neither party prevails on the whole, each party shall be responsible for a portion of the costs of arbitration and their respective attorneys' fees as may be determined by the court on confirmation.

19. **CONFIDENTIAL INFORMATION.** The Contractor shall not, either during the term of this Agreement or any time for a period of Ten (10) years subsequent to that date upon which the Contractor shall leave the employment of the Town for any reason whatsoever, disclose to any person or entity, other than in the discharge of the duties of the Contractor under this Agreement, any information which the Town designates in writing as "confidential." As a violation by the Contractor of the provisions of this Section could cause irreparable injury to the Town and there is no adequate remedy at law for such violation, the Town shall have the right, in addition to any other remedies available to it at law or in equity, to enjoin the Contractor in a court of equity for violating such provisions.

20. **NOTICES.** All notices and communications hereunder shall be in writing and shall be deemed given when sent postage prepaid by registered or certified mail, return receipt



requested and, if intended for Town to Town Manager, Roger M. Carlton, with a copy to Lynn M. Dannheisser, Town Attorney, Town of Surfside, Florida, 33154, and, if intended for Contractor, shall be addressed to:
Surf Café, c/o David Jacobson 424 92nd Street, Surfside, FL 33154.

21. **GOVERNING LAW.** The validity of this Agreement and the interpretation and performance of all of its terms shall be construed and enforced in accordance with the laws of the State of Florida, without regard to principles of conflict of laws thereof. The location of any action or proceeding commenced under or pursuant to this Agreement shall be in Miami-Dade County, in the State of Florida.

22. **AUDIT.** The Contractor shall make available to the Town or its representative all required financial records associated with the Agreement for a period of three (3) years.

23. **NON-DISCRIMINATION.** The Contractor agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1984 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11248 as amended by Executive Orders 11375 and 12086. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/family status, or status with regard to public assistance. The Contractor will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Town setting forth the provisions of this non-discrimination clause. The Contractor agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 708), which prohibits discrimination against the handicapped in any Federally assisted program.

24. **CONFLICT OF INTEREST.** The Contractor agrees to adhere to and be governed by the Miami-Dade County Conflict of Interest Ordinance Section 2-11.1, as amended; and by Town of Surfside Ordinance No.07-1474, which are incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirectly that should conflict in any manner or degree with the performance of the services.

25. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof, and it shall supersede all previous and contemporaneous oral and written negotiations, commitments, agreements and understanding relating hereto. This Agreement may be executed in multiple identical



counterparts, each of which shall be deemed an original for all purposes. The terms and conditions of this Agreement shall prevail over any contrary or inconsistent terms in any other documents, including any attachments hereto.

26. AMENDMENT. Any modification of this Agreement shall be effective only if in writing and signed by the parties to this Agreement. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

27. MISCELLANEOUS.

Contractor and its employees shall promptly observe and comply with applicable provisions of all published federal, state and local laws, rules and regulations which govern or apply to the services rendered by Contractor hereunder, or to the wages paid by Contractor to its employees.

Contractor shall obtain and keep in force during the term of this Agreement all necessary licenses, registrations, certificates, permits and other authorizations, as well as insurance coverage, as required by law in order for Contractor to render the Service required hereunder.

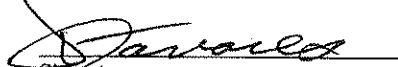
Except as expressly provided for in this Agreement, Contractor is not authorized to act as the Town's Agent hereunder and shall have no authority, expressed or implied, to act for or bind the Town hereunder, either in Contractor's relations with sub-Contractors, or in any other manner whatsoever.

In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable litigation costs and attorneys' fees and other related expenses including those incurred in any appeal. If neither party prevails on the whole, each party shall be responsible for a portion of the costs of arbitration and their respective attorneys' fees as be determined by the court on confirmation.



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

WITNESSES:


Signature

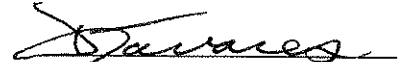
DUNCAN TAVARES
Print Name

COMPANY SURF CAFE

BY: David E. Jacobson - OWNER
Name & Title


Signature

WITNESSES:

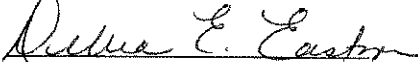

Signature

DUNCAN TAVARES
Print Name

TOWN OF SURFSIDE, FLORIDA

BY: 
Roger M. Carlton, Town Manager

ATTEST:


Debra E. Eastman, MMC
Town Clerk

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


Lynn M. Dannheisser, Town Attorney

