

RESOLUTION NO. 11-1050

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AN AFTER-THE-FACT AGREEMENT WITH SURFSIDE URBAN GARDENERS; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO DO ALL THINGS NECESSARY TO IMPLEMENT THE TERMS OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside, Florida a municipal corporation of the State of Florida (hereinafter referred to as "Town") agrees to enter into agreement with Surfside Urban Gardeners, a non-profit entity to manage the Surfside Community Garden (hereinafter referred to as "Garden"); and

WHEREAS, the Town has selected Surfside Urban Gardeners as qualified to manage the Garden located on Town owned property at Lot 10, Block 16, of the SECOND AMENDED PLAT OF NORMANDY BEACH (also known as the lot at Dickens Avenue and 89th Street), Surfside Florida; and

WHEREAS, Surfside Urban Gardeners 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. That the above and foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Authorization To Enter Into An Agreement. The Town Commission hereby authorizes the Town Manager and Town Attorney to enter into the Agreement by and between Surfside Urban Gardeners and the Town of Surfside attached as Exhibit "A".

Section 3. Implementation. The Town Manager and Town Attorney are hereby authorized to take any and all action necessary to implement this Resolution and Agreement in accordance with the terms, conditions and purposes of this Resolution and Agreement.

Section 4. Effective Date. This Resolution will become effective upon adoption.

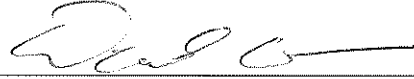
PASSED AND ADOPTED this 11 day of October 2011.

Motion by Commissioner Mayor Dietch, second by Commissioner Dee-Mayer Graupert.

FINAL VOTE ON ADOPTION

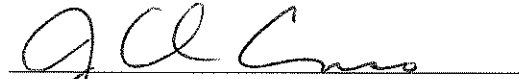
Commissioner Michael Karukin
Commissioner Edward Kopelman
Commissioner Marta Olchyk
Vice Mayor Joseph Graubart
Mayor Daniel Dietch

yes
yes
yes
yes
yes




Daniel Dietch, Mayor

ATTEST:


John DiCenso, Interim Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**


Lynn M. Dannheisser, Town Attorney

Surfside Urban Gardeners, Inc.

By-Laws

Name: Surfside Urban Gardeners, Inc.

Address: c/o 8842 Emerson Avenue, Surfside, FL 33154

Purpose/Mission: The Surfside Urban Gardeners, Inc. is a community organization created to oversee the Surfside Community Garden. The primary activity is management of the garden plots, yet it will also be a vehicle for teaching Surfside residents about gardening, healthy eating, nutrition and cooking with vegetables and fruits from the garden. There will be dedicated space for children to learn and enjoy the gardening experience.

Membership Categories & Dues (Paid Annually):

Individual \$15

Family \$20

Senior Citizen \$10

Eligibility Requirements:

Current Surfside Resident [Provide Proof of Residency]

Meetings: Monthly General Meetings
Annual Board of Directors Meeting

Officers: President – Duties include but not limited to: conducting all meetings, signing organization's documents, representing the organization at commission meetings

Vice President (1 or 2) – Duties include but not limited to: conducting meetings when President unable to attend, overseeing Committees

Secretary – Duties include but not limited to: keep records of meetings and all correspondences

Treasurer - Duties include but not limited to: accounting and keeping organization's financial records

All officers to serve a term of One Year

Elected Annually by Majority of Members in attendance at General Meeting which has been advertised as election

Committees: Membership
Education
Garden Oversight

Hold Harmless: The Surfside Urban Gardeners agree to hold harmless the Town of Surfside from and against any damages, loss, liability, claim, demand, suit, cost and expense directly or indirectly resulting from, arising out of or in connection with the use of the Surfside Community Garden, located at Dickens Avenue and 89th Street, by the Surfside Urban Gardeners, its successors, assigns, employees, agents and invites.

By-Laws Changes: These By-Laws will be reviewed every year at the time of the election of new officers. In addition, the By-Laws can be reviewed at any time if deemed necessary. Changes can be suggested and made permanent by a vote of the majority at a general meeting so long as all the members have been notified at least one week prior that such a vote will take place at said meeting.

Surfside Urban Gardeners Garden Guidelines & Rules

- Everyone who is responsible for a plot must sign a Pledge (see attached).
- Garden plots must be kept relatively neat, with growth limited to the size of the plot and weeds kept to a minimum.
- Each gardener will keep the area immediately surrounding his/her plot free of weeds and litter.
- No pets shall be brought into the Surfside Community Garden.
- Children shall be supervised at all times.
- Something shall be planted in the plot within one month of assignment of responsibility.
- If a plot is not kept up, Surfside Urban Gardeners will send an official notice of warning. If this notice is ignored after two weeks, the plot will be tilled up and reassigned to the next gardener on the Waiting List.
- Gardeners agree not to plant any crops that will interfere with neighboring plots. No fruit trees in the plots.
- No one will pick anything from any plot other than her/his own without permission from the person responsible for the plot.
- No fertilizers, pesticides, insecticides or weed repellent may be used that will in any way affect other plots. There will be no chemicals in the Community Garden. This will be an organic garden.
- A fee of \$25 will be paid to Surfside Urban Gardeners by each person responsible for a plot annually.
- Every gardener must understand that neither the Surfside Urban Gardeners or the Town of Surfside is responsible for his or her actions, or the actions of their guests. Therefore, every gardener agrees to hold harmless the Surfside Urban Gardeners and/or the Town of Surfside for any liability, damage, loss or claim that occurs in connection with the use of the garden by him or herself or guests.

Surfside Urban Gardeners Pledge

- I agree to be responsible for the plot I am assigned in the Surfside Community Garden.
- I agree to keep my plots relatively neat, with growth limited to the size of the plot and weeds kept to a minimum.
- I agree to begin planting in my plot within one month of assignment of responsibility.
- I agree that if my plot is not kept up, Surfside Urban Gardeners will send an official notice of warning by e-mail and USPS mail. If this notice is ignored after two weeks, my plot will be tilled up and reassigned to the next gardener on the Waiting List.
- I agree not to plant any crops that will interfere with neighboring plots.
- I agree not to pick anything from any plot other than my own.
- I agree not to use any fertilizers, pesticides, insecticides or weed repellent that will in any way affect other plots.
- I agree to keep the area immediately surrounding my plot free of weeds and litter.
- I agree not to bring any pets into the Surfside Community Garden.
- I agree that any children I bring into the Surfside Community Garden shall be supervised at all times.
- I agree to be responsible for the actions of any guest I bring into the Surfside Community Garden.
- I agree to pay the fee of \$25 to be paid to Surfside Urban Gardeners annually.
- I understand that neither the Surfside Urban Gardeners or the Town of Surfside is responsible for my actions, or the actions of my children or guests. Therefore, I agree to hold harmless the Surfside Urban Gardeners and/or the Town of Surfside for any liability, damage, loss or claim that occurs in connection with the use of the garden by me, my children or my guests.

Signed by _____ on _____, 2011
(Signature)

Print Name _____

REVOCABLE LICENSE AGREEMENT

This **Revocable License Agreement** (“Agreement” or “RLA”) is made this Twentieth day of September, 2011 between the Town of Surfside (the “Town ”) a municipal corporation of the State of Florida and The Surfside Urban Gardeners, a Florida not for profit compliant corporation incorporated under the laws of the State of Florida (the “Licensee”).

RECITALS

WHEREAS, the Town and Licensee (“the Parties”) desire and intend to enter into a Revocable License Agreement for the use of town -owned property located at Lot 10, Block 16, of the SECOND AMENDED PLAT OF NORMANDY BEACH (also known as Dickens Avenue at 89th Street), Surfside , Florida as a community garden; and

WHEREAS, this revocable license agreement is for this purpose only and not assignable; and

WHEREAS, this Agreement is revocable-at-will by the Town, acting by through the Town Manager and without the consent of the Licensee; and

WHEREAS, this Agreement does not transfer an interest in real property including any leasehold interest in real property owned by the Town ; and

WHEREAS, this Agreement does not confer a right to use any real property for any general purposes; and

WHEREAS, this Agreement does not convey or transfer any right to exclude the Town from any real property; and

WHEREAS, this Agreement permits only certain, enumerated, specific, listed permitted use of a community garden , and does not permit any further uses; and

WHEREAS, the Parties jointly and voluntarily stipulate as to the accuracy of these recitals; and

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereby agree as follows:

1. **Recitals.** The Recitals contained above are hereby incorporate into this Agreement by reference.

2. **Definitions.**

A. "Area" shall mean the area included in this Agreement as available for the Permitted Uses (but excluding all other areas) as depicted in Exhibit "A" attached hereto and made a part hereof.

B. "Town Manager" is the Town Manager for the Town of Surfside or his designee.

C. "Director" shall mean the Director of Tourism, Economic Development & Community Services for the Town of Surfside.

D. "Effective Date" shall mean September 20, 2011 or the date that this Agreement is executed by the Town Manager. In the event the Effective Date does not fall on the first day of the month, the Effective Date shall be adjusted to be the first day of the following month.

E. "Permitted Uses" shall mean the establishment, operation, maintenance and care of a "Community Garden" by Surfside Residents at the Area. For purposes of this Agreement "Community Garden" shall mean the planting, maintenance including (planting beds, seeding, watering, trimming) and care of vegetables, fruits, plants and flowers by Surfside Residents. The Licensee will maintain the actual plant beds to an acceptable level to be determined on an ongoing basis by the Town Manager or his designee. No illegal, invasive, prohibited, or nuisance species as defined by the Miami-Dade County ("County") Landscape Manual and applicable State of Florida And County Laws, Codes, Ordinances, Rules and Regulations shall be permitted. Notwithstanding the foregoing, the Town will, subject to the availability of funds and personnel, provide the planting beds, fencing for the Area, and a watering system. Licensee will provide general landscaping, maintenance, planting, and watering of the Area.

F. "Use Fee" shall mean a nominal fee charged to the Licensee as a Florida nonprofit corporation serving a public purpose pursuant to this Agreement.

3. Purpose.

The Town is the owner of the Area and desires to assist the Licensee in accomplishing its purpose and in furtherance thereof wishes to authorize the Licensee to occupy and use the Area or Property for the Permitted Use, under the conditions hereinafter set forth. The use of the Area or Property is strictly limited to the Permitted Use and is not to be used for any other purpose whatsoever. Any use of the Area or Property not authorized under Permitted Use must receive the prior written consent of the Town Manager or his designee, which consent may be withheld, denied or conditioned for any or no reason, including, but not limited to additional financial consideration.

4. Interest Conferred By This Agreement.

This Agreement confers no exclusive possession of the Area or Property. The Licensee cannot exclude the Town or the public from the Property.

This Agreement solely authorizes Licensee to the temporary use of the Area for the limited purposes set forth herein and for no other purpose. The parties hereby agree that the provisions of this Agreement do not constitute a lease. The rights of Licensee hereunder are not those of a tenant, but are a mere personal privilege to do certain acts of a temporary character on the Area and to use the Area, subject to the terms of this Agreement. The Town retains dominion, possession and control of the Area. Therefore, no lease interest in the Area or Property is conferred upon Licensee under the provisions hereof. Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Area by virtue of this Agreement or its use of the Area hereunder and acknowledges the Town may terminate the interest conferred hereunder at any time for any reason. Additionally, Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Area by virtue of any expenditure of funds by the Licensee for improvements, construction, repairs, partitions, or alterations to the Area which may be authorized by the Town .

5. Common Areas.

Licensee shall have the non-exclusive right (in common with other occupants of the Property) to use the Common Areas of the Property identified as “Common Area” in Exhibit “B” attached hereto and made a part hereof, for the right of any needed egress and ingress to the Area for the purposes intended as “Permitted Uses” but for no other purpose whatsoever, subject to such rules and regulations as Town may establish from time to time.

6. Occupancy and Use Period.

This Agreement shall commence on the October 1, 2011 and shall continue for the period of one (1) year and thereafter on a year –to- year basis, in conjunction with the Town’s Fiscal Year Calendar, until the first to occur of the following:

- i. Cancellation for convenience pursuant to the applicable paragraphs herein; or
- ii. Change of the President of the Licensee without prior written approval of the Manager or Director; or
- iii. The Licensee is dissolved, abandons the Area, or otherwise ceases to use the Area as provided in this Agreement; or
- iv. Termination by the Town Manager for cause including, without limitation, Licensee’s failure to comply with any provisions of this Agreement or excessive consumption of water by Licensee in the sole discretion and opinion of the Town Manager

7. Continuous Duty to Operate.

Except where the Area is rendered unusable by reason of fire, Acts of God, storms or other casualty, Licensee shall at all times constituting “Access Hours” during this Agreement, the “Access Hours” will be from Sunup or 8:00 a.m. (whichever occurs first) until Sunset or 8:00 p.m. (whichever occurs first) operate the premises in good safe condition.

8. Use Fee.

Monthly Use Fee.

Commencing on the Commencement Date of this Agreement (October 1, 2011), Licensee shall pay to Town the following Monthly Use Fee of (\$1.00 per month) payable in total (\$12.00) at the beginning of each Fiscal Year's Agreement.

A. Manner of Payment.

Commencing on the Commencement Date of this Agreement (October 1, 2011), Licensee shall pay to the Town the Annual Use Fee in the total amount of twelve (\$12.00) dollars for the license to use the Area. Licensee may also be responsible for payment of water and other utility bills as specified in Paragraph 9. hereinbelow.

Payments shall be made payable to "Town of Surfside" and shall be received at 9293. Harding Avenue, Finance Department, Surfside Florida 33154, by the first day of each Fiscal Year's Agreement (October 1st), or such other address as may be designated from time to time from the Town Manager or his designee.

9. Services and Utilities.

A. Licensee's responsibilities.

The Town Manager reserves the right to impose on the Licensee, at its sole cost and expense, any utilities except those specifically set forth in Paragraph 0 below to be provided by Town which may include, but is not limited to, electricity, water, storm water fees, gas, telephone, garbage and sewage disposal used by Licensee during its occupancy of the Area or Property, as well as all costs for installation of any lines and equipment necessary. Licensee, at shall not install any utilities required for its use without prior permission from the Town Manger. Separate utility meters may be required thereby and shall be billed directly by the applicable utility company to the Licensee for such services.

Licensee, at its sole cost and expense, may need to hire a pest control company, as determined by the Town Manager, to insure that the Area or Property will at all times be in a clean and sanitary condition and free from vermin.

Licensee agrees to provide any and all security it deems necessary to protect its operations and equipment. Licensee shall insure that all appropriate equipment and lights have been turned off and appropriate doors, if any, locked at the close of operations within the Area or Property each day.

B. Town's responsibilities.

Town, at its sole cost, shall provide for the following utilities or services, subject to budgetary and personnel availability:

Installation and maintenance of basic fencing, landscaping (including planting bed structures), and watering system as well as the installation of planting beds:

Routine, general property maintenance services for the Area;

Water service for the Community Garden providing Licensee shall utilize prudent water conservation methods and procedures (see above 9. Services and Utilities). Licensee will use its best efforts to adhere to those current water preservation methods and water conservation measures including following all water conservation laws, rules, codes, and resolutions. Licensee shall consult with the Town from time to time on the issue of best practices for water conservation. Licensee shall use environmentally sensitive plantings and materials whenever available and practicable.

The Town reserves the right to interrupt, curtail or suspend the provision of any utility service provided by it, including but not limited to, electricity, water and sewer systems and equipment serving the Area or Property, to which Licensee may be entitled hereunder, when deemed necessary in the sole discretion of the Town Manager or Director by reason of accident or emergency, or for repairs, alterations or improvements in the judgment of Town desirable or necessary to be made or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the Town. The work of such repairs, alterations or improvements shall be prosecuted with reasonable diligence. The Town shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Licensee or for any limitation of supply resulting from governmental orders or directives. Licensee shall not claim any damages by reason of the Town's or other individual's interruption,

curtailment or suspension of a utility service, nor shall the Revocable License or any of Licensee's obligations hereunder be affected or reduced thereby.

10. Condition of the Property and Maintenance; Compliance with Laws

Licensee accepts the Area or Property "as is", in its present condition and state of repair and without any representation by or on behalf of Town , and agrees that Town shall, under no circumstances, be liable for any latent, patent or other defects in the Area or Property. Licensee, at its sole cost, shall maintain the Community Garden Area in good order and in an attractive, clean, safe and sanitary condition and shall suffer no waste or injury thereto. Licensee shall maintain all planting beds on an on-going basis and until termination of this agreement.

Licensee agrees use to the Community Garden Area and all its activities under this Agreement in full compliance with all applicable Town, County, and State Statutes, code requirements, ordinances, rules, resolutions relating in any manner for Licensee's use thereof. Licensee shall not permitted any illegal plant, flower, fruit, or vegetable nor allow any unlawful activity, or an activity that would constitute a nuisance, loitering, public intoxication, consumption of alcoholic beverages, or lewd and lascivious conduct , or a violation of the noise ordinance, under applicable State, County and Town laws, ordinances, codes, rules and resolutions

11. Alterations, Additions or Replacements.

Except in the event of an emergency, Licensee shall not make any repair without first receiving the written approval of the Town Manager or his/her designee, which approval may be conditioned or withheld for any or no reason whatsoever, including a condition to pay additional fees if such alteration will affect the cost of services being provided by the Town. If the Town Manager or his/her designee approves such request, no repair or alteration shall be commenced until plans and specifications therefore shall have been submitted to and approved by the Town Manager or his/her designee.

The Licensee shall be solely responsible for applying and acquiring all necessary permits, if any, including but not limited to, building permits as may be applicable. The Licensee shall be responsible for any and all costs associated with any alterations including, but not limited to,

design, construction, and installation and permitting costs. All alterations to the Area or Property, whether or not by or at the expense of the Licensee, hereto, immediately upon their completion become the property of the Town and shall remain and be surrendered with the Area or Property. In the event of an emergency, Licensee may reasonably proceed to perform such repair work and shall immediately notify Town of such work.

All alterations must be in compliance with all statutes, laws, ordinances and regulations of the State of Florida, Miami-Dade County, Town of Surfside and any other agency that may have jurisdiction over the Area or Property as they presently exist and as they may be amended hereafter.

12. Violations, Liens and Security Interests.

The Licensee shall not suffer or permit any statutory, laborers, material person, or construction liens to be filed against the title to the Property, nor against any Alteration by reason of work, labor, services, or materials supplied to the Licensee or anyone having a right to possession of the Property. Nothing in this Agreement shall be construed as constituting the consent or request of the Town, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material man for the performance of any labor or the furnishing of any materials for any specific Alteration, or repair of or to the Property nor as giving the Licensee the right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics liens against the Property.

13. Town Access to Area.

Town and its authorized representative(s) shall have at all times access to the Area. Town will maintain a complete set of keys (if any are made) to the Area. Licensee, at its sole cost and expense, may duplicate or change key locks to the Area but not until first receiving written approval from the Director for such work. In the event Licensee changes key locks as approved by the Director, Licensee, at its sole cost and expense, must also provide to Town a copy or copies of said keys, if more than one copy is required.

The Town shall have access to and entry into the Area at any time to (a) inspect the Area and Property, (b) to perform any obligations of Licensee hereunder which Licensee has failed to

perform after written notice thereof to Licensee, Licensee not having cured such matter within ten (10) days of such notice, (c) to assure Licensee's compliance with the terms and provisions of this Agreement and all applicable laws, ordinances, rules and regulations, (d) to show the Property, inclusive of the Area or Property, to prospective purchasers or tenants, and (e) for other purposes as may be deemed necessary by the Town Manager in the furtherance of the Town 's corporate purpose;. The Town shall not be liable for any loss, cost or damage to the Licensee by reason of the exercise by the Town of the right of entry described herein for the purposes listed above. The making of periodic inspection or the failure to do so shall not operate to impose upon Town any liability of any kind whatsoever nor relieve the Licensee of any responsibility, obligations or liability assumed under this Agreement.

14. Indemnification and Hold Harmless.

Licensee, its, officers, members, employees, volunteers and agents shall and do hereby indemnify, defend and hold harmless the Town and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this Agreement which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of Licensee or its officers, members, employees, volunteers and agents (collectively referred to as "Licensee"), regardless of whether it is, or is alleged to be, caused in whole or part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnitees, or any of them or (ii) the failure of the Licensee to comply with any of the paragraphs herein or the failure of the Licensee to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Agreement. Licensee expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by officers, members, employees, volunteers or agents of the Licensee, as provided above, for which the Licensee's liability to such employee or

former employee would otherwise be limited to payments under state Workers' Compensation or similar laws. Any volunteers are volunteers for the Licensee, and not for the Town.

Licensee further acknowledges that, as lawful consideration for being granted the right to utilize and occupy the Area, Licensee, on behalf of himself, his officers, members, employees, volunteers and agents does hereby release from any legal liability the Town, its officers, agents and employees, from any and all claims for injury, death or property damage resulting from Licensee's use of the Area. This section shall survive the termination or cancellation of this Agreement.

15. No Liability.

The Area to be Licensed is to allowed to be used in "AS IS" Condition. In no event shall the Town be liable or responsible for injury, loss or damage to the Area, improvements, fixtures and/or equipment belonging to or rented by Licensee, officers, members, employees, volunteers and agents occurring in or about the Area that may be stolen, destroyed, or in any way damaged, including, without limitation, fire, flood, steam, electricity, gas, water, rain, vandalism or theft which may leak or flow from or into any part of the Area, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the Area, or from hurricane or any act of God or any act of negligence of any user of the facilities or occupants of the Area or any person whomsoever whether such damage or injury results from conditions arising upon the Area or upon other portions of the Area or from other sources. Licensee, its officers, members, employees, volunteers or agents shall execute a waiver of liability form and deliver to the Town prior to beginning work in the garden.

16. Cancellation by Request of Either of the Parties Without Cause.

Either party may cancel this Agreement, for convenience, at any time by giving thirty (30) days written notice to the non-canceling party prior to the effective date of the cancellation.

17. Termination By Town Manager For Cause.

If, at the sole and complete discretion of the Town Manager, Licensee in any manner violates the restrictions and conditions of this Agreement, then, and in the event, after ten (10)

days written notice given to Licensee by the Town Manager within which to cease such violation or correct such deficiencies, and upon failure of Licensee to do so after such written notice within said ten (10) day period, this Agreement shall be automatically canceled without the need for further action by the Town. The Town Manger, at his sole and complete discretion, may issue a preliminary written “warning” notice affording the Licensee a specified time not to exceed five (5) days prior to issuing the actual notice of violation. The Parties shall have no recourse against the other for a Cancellation under the Cancellation Section or a Termination under this Section.

18. Notices.

All notices or other communications which may be given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered by personal service or by certified mail addressed to Town and Licensee at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by certified mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier:

TOWN OF SURFSIDE

Town of Surfside
Office of the Manager
9293 Harding Ave.
Surfside, FL 33154

LICENSEE

Melissa Moonves
President – Surfside Urban Gardeners
8842 Emerson Ave.
Surfside, FL 33154

WITH A COPY TO
Director
Town of Surfside
Department of Tourism, Economic
Development & Community Services
9293 Harding Ave.
Surfside, FL 33154

19. Advertising.

Licensee shall not permit any signs or advertising matter to be placed either in the interior or upon the exterior of the Area without having first obtained the approval of the Director or his designee, which approval may be withheld for any or no reason, at his sole discretion. Licensee

shall, at its sole cost and expense, install, provide, maintain such sign, decoration, advertising matter or other things as may be permitted hereunder in good condition and repair at all times. Licensee must further obtain approval from all governmental authorities having jurisdiction, and must comply with all applicable requirements set forth in the Town of Code and Zoning Ordinance. Upon the cancellation of this Agreement, Licensee shall, at its sole cost and expense, remove any sign, decoration, advertising matter or other thing permitted hereunder from the Area or Property. If any part of the Area or Property is in any way damaged by the removal of such items, said damage shall be repaired by Licensee at its sole cost and expense. Licensee hereby understands and agrees that the Town may, at its sole discretion, erect or place upon the Area or Property an appropriate sign indicating Town's having issued this Agreement.

20. Hazardous Materials Prohibited.

The Licensee shall, never itself allow, store or permit ("Hazardous Materials Laws"), any Hazardous Materials Laws on the Area as defined by all federal, state and local laws, statutes, ordinances and regulations, rules, rulings, policies, orders and administrative actions and orders relating to hazardous materials relating to, environmental protection or the use, storage, disposal or transportation of any, toxic substances or other hazardous, contaminated or polluting materials, substances or wastes, including, without limitation, any "Hazardous Substances", "Hazardous Wastes", "Hazardous Materials" or "Toxic Substances" (collectively "Hazardous Materials"), under any such laws, ordinances or regulations are all strictly forbidden on the Licensed area in compliance with, all applicable governmental requirements. The requirements of this Paragraph of the License shall survive the cancellation or revocation of this License.

The Town represents that to the best of its knowledge there are no known environmental violations, whether under federal, state, or local laws, and no known Hazardous Materials presently existing on the Area.

21. Licenses, Authorizations and Permits.

Licensee shall obtain, or cause to be obtained, and maintain in full force and effect throughout the term of this Agreement, at its sole expense, any licenses, authorizations and permits that are legally necessary for Licensee to conduct its activities.

Licensee shall be responsible for paying the cost of said applications and obtaining said licenses, authorizations and permits.

Licensee must be an incorporated non-profit and must maintain in good standing this designation for the entire period of every Agreement or said Agreement shall be cancelled or terminated.

22. Compliance With All Laws Applicable.

Licensee accepts this Agreement and hereby acknowledges that Licensee's strict compliance with all applicable federal, state and local laws, ordinances and regulations is a condition of this Agreement, and Licensee shall comply therewith as the same presently exist and as they may be amended hereafter. This Agreement shall be construed and enforced according to the laws of the State of Florida.

23. Ownership of Improvements.

As of the Effective Date and throughout the Use Period, all improvements thereon and title to all improvements made in or to the Area, whether or not by or at the expense of Licensee, shall, unless otherwise provided by written agreement, immediately upon their completion become the property of the Town and shall remain and be surrendered with the Area.

24. Surrender of Area or Property.

In either event of cancellation pursuant to Paragraph 16 or Paragraph 17 hereinabove, or at the expiration of the time limited by the notice, Licensee shall peacefully surrender the Area or Property broom clean and in good condition and repair together with all alterations, fixtures, installation, additions and improvements which may have been made in or attached on or to the Area or Property. Upon surrender, Licensee shall promptly remove all its personal property, and Licensee shall repair any damage to the Area or Property caused thereby. Should Licensee fail to repair any damage caused to the Area or Property within ten (10) days after receipt of written notice from Town directing the required repairs, Town shall cause the Area or Property to be repaired at the sole cost and expense of Licensee. Licensee shall pay Town the full cost of such repairs within ten (10) days of receipt of an invoice indicating the cost of such required repairs.

At Town's option, Town may require Licensee to restore the Area or Property so that the Area or Property shall be as it was on the Effective Date.

25. Severability.

It is the express intent of the parties that this Agreement constitutes a license and not a lease. To further this intent, the parties agree as follows: (i) if any provision of this Agreement, or the application thereof to any circumstance, suggest that a lease, rather than a license, has been created, then such provision shall be interpreted in the light most favorable to the creation of a license and (ii) if any provision of this Agreement, or the application thereof to any circumstance, is determined by a court of competent jurisdiction to have created a lease rather than a license, then such provision shall be stricken and, to the fullest extent possible, the remaining provisions of this Agreement shall not be affected thereby and shall continue to operate and remain in full force and effect.

With regard to those provisions which do not affect the parties intent for this Agreement, should any provision, section, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the Town of Surfside , such provision, section, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

26. Invalidity.

In the event that any non-material provision of this Agreement shall be held to be invalid for any reason, such invalidity shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

27. No Assignment or Transfer; No Change in Presidency without the prior approval of Town.

Licensee cannot assign or transfer its privilege of occupancy and use granted unto it by this Agreement. Any assignment, sale or disposition of this Agreement or any interest therein by Licensee shall result in the automatic termination of this Agreement without notice by the Town Manager. Licensee agrees that if the current President of Licensee, who is executing this Agreement changes, due to end of term, resignation, or any other cause, the new President of the Licensee must be approved in writing by the Town Manager or this Agreement will be cancelled or terminated.

28. Public Records.

Licensee understands that the public shall have access, at all reasonable times, to Town contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law.

29. Conflict of Interest.

Licensee is aware of the conflict of interest laws of the Dade County, Florida (Dade County Code, Section 2-11.1 et. seq.) and of the State of Florida as set forth in the Florida Statutes, and agrees that it will fully comply in all respects with the terms of said laws and any future amendments thereto.

30. Nondiscrimination.

In the performance of this Agreement or any extension thereof, Licensee and/or its authorized agents shall not discriminate in connection with its occupancy and use of the Area and improvements thereon, or against any employee, volunteer, or applicant of Licensee for employment because of sex, age, race, color, religion, ancestry or national origin.

31. Amendments and Modifications.

No amendments or modifications to this Agreement shall be binding on either party unless in writing, approved as to form and correctness by the Town Attorney, and signed by both parties. The Town Manager is authorized to amend or modify this Agreement as needed.

32. Attorney(s)' Fees.

In the event it becomes necessary for either party to institute legal proceedings to enforce the provisions of this Agreement, each party shall bear its own attorneys' fees through all trial and appellate levels.

33. Litigation.

Any dispute herein shall be resolved in the courts of Miami-Dade County, Florida. The parties shall attempt to mediate any dispute without litigation. However, this is not intended to establish mediation as a condition precedent before pursuing specific performance, equitable or injunctive relief.

34. Waiver.

Any waiver by either party or any breach by either party of any one or more of the covenants, conditions or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement, nor shall any failure on the part of the Town to require or exact full and complete compliance by Licensee with any of the covenants, conditions or provisions of this Agreement be construed as in any manner changing the terms hereof to prevent the Town from enforcing in full the provisions hereto, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written agreement of the Town and Licensee.

35. Time of Essence.

It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement. If the final day of any period falls on a weekend or legal holiday, then the final day of said period or the date of performance shall be extended to the next business day thereafter.

36. No Interpretation against Draftsmen.

The parties agree that no provision of this Agreement shall be construed against any particular party and each party shall be deemed to have drafted this Agreement.

37. Third Party Beneficiary.

This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

38. No Partnership.

Nothing contained herein shall make, or be construed to make any party a principal, agent, partner or joint venturer of the other.

39. Headings.

Title and paragraph headings are for convenient reference and are not a part of this Agreement.

40. Authority.

Each of the parties hereto acknowledges it is duly authorized to enter into this Agreement and that the signatories below are duly authorized to execute this Agreement in their respective behalf.

41. Entire Agreement.

This instrument and its attachments constitute the sole and only agreement of the parties hereto and correctly sets forth the rights, duties and obligations of each to the other as of its date.

Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect.

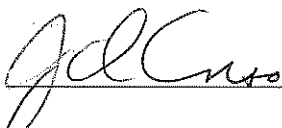
42. Special Provisions.

TO BE COMPLETED AS REQUIRED by the TOWN –if none please remove

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

ATTEST:

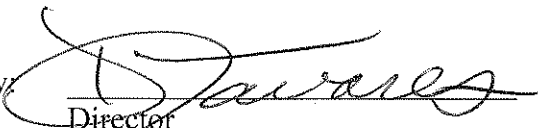
TOWN OF SURFSIDE, a Florida municipal corporation

By: 
INTERIM Town Clerk

By: _____
Roger Carlton
Town Manager

APPROVED AS TO CONTENT:

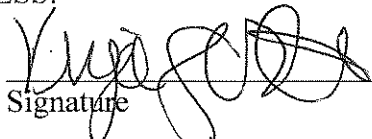
APPROVED AS TO LEGAL FORM & CORRECTNESS:

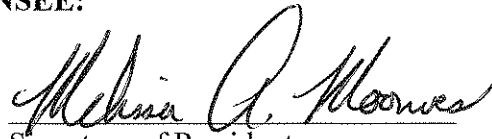
By: 
Director
Department of Tourism, Economic Development & Community Services

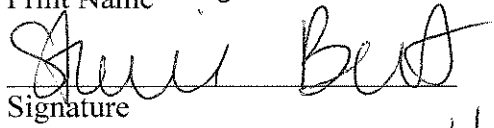
By: _____
Lynn Dannheisser
Town Attorney

WITNESS:

LICENSEE:

By: 
Signature
Virginia Agrumonte
Print Name

By: 
Signature of President
Melissa Moonves
Print Name of President

By: 
Signature
Stacie Barre H
Print Name

9/20/11
Date