

RESOLUTION NO. 2022- 2847

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A FIRST AMENDMENT TO THE REVOCABLE, NON-EXCLUSIVE LICENSE AGREEMENT (AGREEMENT) WITH CURATIVE INC. TO EXTEND THE TERM OF THE AGREEMENT; APPROVING THE EXTENSION OF THE TEMPORARY USE PERMIT ISSUED TO CURATIVE INC. BEYOND THE INITIAL NINETY (90) DAY TERM TO ALLOW THE CONTINUED UTILIZATION OF A COVID-19 TESTING KIOSK PURSUANT TO SECTION 90-36.1 OF THE TOWN CODE OF ORDINANCES; AUTHORIZING THE TOWN MANAGER TO EXECUTE A FIRST AMENDMENT TO THE AGREEMENT AND EXTENSION OF THE TEMPORARY USE PERMIT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 12, 2020, the Town of Surfside (the “Town”) declared a state of emergency due to the public health crisis presented by the novel coronavirus (“COVID-19”); and

WHEREAS, on or about November 1, 2021, the Town and Curative Inc. (“Curative”) entered into a Revocable, Non-Exclusive License Agreement (the “Agreement”) to allow Curative to conduct COVID-19 testing (the “Services”) utilizing a COVID-19 testing kiosk; and

WHEREAS, in order to provide the Services in accordance with the Agreement, Curative applied for and received a temporary use permit in accordance with Section 90-36.1 of the Town Code of Ordinances (“Code”), which temporary use permit is valid for an initial term of up to ninety (90) days unless extended by the Town Commission; and

WHEREAS, in order to continue providing the Services, Curative desires to extend the term of the Agreement beyond February 18, 2022, and apply for an extension of its temporary use permit for its COVID-19 testing kiosk; and

WHEREAS, the Town Commission desires to approve a First Amendment to the Agreement, in substantially the form attached hereto as Exhibit “A,” in order to extend the term of the Agreement through May 18, 2022, with three additional renewal options of ninety (90) days upon mutual agreement of the parties (the “First Amendment”); and

WHEREAS, in accordance with Section 90-36.1(b) of the Town Code, the Town Commission further desires to approve an extension of Curative’s Temporary Use Permit beyond the initial ninety (90) term through May 18, 2022, and authorize the Town Manager to extend the permit term by up to three additional ninety (90) day periods upon approval by the Town Building Official; and

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

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

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval of First Amendment. The Town Commission hereby approves the First Amendment to the Agreement in substantially the form attached hereto as Exhibit “A,” subject to final approval as to form, content, and legal sufficiency by the Town Manager and Town Attorney. The Town Manager is hereby authorized to execute the First Amendment, subject to approval by the Town Manager as to content and legal sufficiency by the Town Attorney. The Town Manager is further authorized to extend the Term of the Agreement for up to three additional renewal options of ninety (90) days, and upon mutual agreement of the parties

Section 3. Approval of Temporary Use Permit. Pursuant to Section 90-36.1 of the Town Code, the Town Commission hereby approves the extension of Curative’s Temporary Use

Permit beyond the initial ninety (90) day term through May 18, 2022, to allow Curative to continue providing its Services utilizing a COVID-19 testing kiosk. The Town Manager and/or Building Official are authorized to issue an extension of the Temporary Use Permit as indicated in this Resolution, and the Town Manager is further authorized to extend the term of the Temporary Use Permit beyond May 18, 2022, for three additional ninety (90) day periods, upon approval by the Town Building Official.

Section 4. **Implementation.** The Town Manager and/or designee is authorized to take any and all necessary action to implement the First Amendment, the Temporary Use Permit, and the purposes of this Resolution.

Section 5. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED on this 11th day of January, 2022.

Motion By: Vice Mayor Paul

Second By: Commissioner Velasquez

FINAL VOTE ON ADOPTION:


Commissioner Charles Kesl Yes

Commissioner Eliana R. Salzhauer Yes

Commissioner Nelly Velasquez Yes

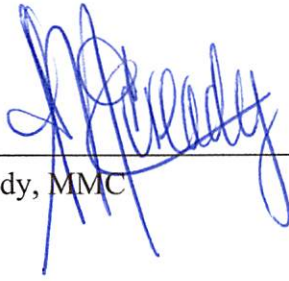
Vice Mayor Tina Paul Yes

Mayor Charles W. Burkett Yes



Charles W. Burkett, Mayor

Attest:



Sandra McCready, MMC
Town Clerk

Approved as to Form and Legal Sufficiency:



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

**FIRST AMENDMENT TO THE REVOCABLE, NON-EXCLUSIVE
LICENSE AGREEMENT BETWEEN
THE TOWN OF SURFSIDE AND CURATIVE INC.**

This **FIRST AMENDMENT TO THE REVOCABLE, NON-EXCLUSIVE LICENSE AGREEMENT** (this “Amendment”) is entered into effective as of this __ day of _____, 2022 (the “Effective Date”), between the **TOWN OF SURFSIDE**, a Florida municipal corporation (the “Town”), and **CURATIVE INC.**, a Delaware company authorized to do business in Florida (“Curative”). The Town and Curative shall be referred to hereafter individually as a “Party” and collectively as the “Parties” to this Agreement.

WHEREAS, on or about November 1, 2021, the Town and Curative entered into a Revocable, Non-Exclusive License Agreement to allow Curative to operate a COVID-19 testing kiosk (the “Agreement”); and

WHEREAS, the Parties wish to enter into a First Amendment to the Agreement to extend the Term of the Agreement.

NOW THEREFORE, for and in consideration of the mutual promises set forth herein, the Town and Curative agree as follows:

1. **Recitals Adopted.** The above recitals are true and correct and are incorporated herein by this reference. All initially capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Amendment.
2. **Term; Effective Date.** Section 2.1 of the Agreement is hereby amended and replaced as follows:

The term of this Agreement shall be for ninety (90) days from February 18, 2022, through May 18, 2022 unless earlier terminated in accordance with Paragraph 6. This Agreement may be renewed by mutual agreement of both parties for up to three additional ninety (90) day terms.

3. **Conflict; Amendment Prevails.** In the event of any conflict or ambiguity between the terms and provisions of this Amendment and the terms and provisions of the Agreement, the terms and provisions of this Amendment shall control.
4. **Agreement Ratified.** Except as otherwise specifically set forth or modified herein, the all terms in the Agreement are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

**[REMAINDER OF PAGE LEFT BLANK.
SIGNATURE PAGE FOLLOWS.]**

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed the day and year as first stated above.

TOWN OF SURFSIDE

CURATIVE INC.

By: _____
Andrew Hyatt
Town Manager

By: _____
Ryan Souders
General Counsel

Attest:

Approved as to form and legal sufficiency:

By: _____
Sandra McCreedy, MMC
Town Clerk

By: _____
Curative Legal Department

Approved as to form and legal sufficiency:

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

Addresses for Notice:

Andrew Hyatt
Town of Surfside
Attn: Town Manager
9293 Harding Avenue
Surfside, FL 33154
305-861-4863 (telephone)
305-993-5097 (facsimile)
ahyatt@townofsurfsidefl.gov (email)

Addresses for Notice:

Curative Inc.
Attn: Legal Department
430 S. Cataract Avenue
San Dimas, CA 91773-2902
_____ (telephone)
agatha@curative.com (email)

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Lillian Arango, Esq.
Town of Surfside Attorney
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134
larango@wsh-law.com (email)

With a copy to:

Curative Inc.
Attn: Tami Wilson-Ciranna, Chief Financial Officer
430 S. Cataract Avenue
San Dimas, CA 91773-2902
_____ (telephone)
_____ (email)

Curative Inc.
Attn: Frederick Turner, Chief Executive Officer
1600 Adams Drive, Suite 105
Menlo Park, CA 94025
_____ (telephone)
_____ (email)

Curative Inc.
c/o C T Corporation System, Registered Agent
1200 South Pine Island Road
Plantation, FL 33324