

RESOLUTION NO. 2022- 2890

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A SECOND AMENDMENT TO THE LIMITED REVOCABLE LICENSE AGREEMENT WITH WAVEY ACAI BOWLS, LLC FOR THE OPERATION OF THE TOWN OF SURFSIDE'S FARMERS' MARKET; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the "Town") is the owner of a parcel of real property located at the northwest corner of 95th Street and Collins Avenue, Surfside, Florida, designated as Folio Number 14-2235-007-0190 ("Property"); and

WHEREAS, on September 11, 2019, the Town entered into a Limited Revocable License Agreement (the "Agreement") with Wavey Acai Bowls, LLC (the "Licensee") for the coordination, operation, and management of a weekly event known as the "Surfside Farmers Market" (the "Services"); and

WHEREAS, due to the local state of emergency arising from the COVID-19 pandemic, the Agreement was temporarily suspended; and

WHEREAS, on January 4, 2021, the Town and Licensee entered into a First Amendment to the Agreement in order to (1) reinstate the Agreement and extend the term of the Agreement for a one (1) year period effective January 1, 2021, through December 31, 2021, with three (3) additional one year options to renew and (2) to include safety protocols for the provision of the Services at the Property for the duration of the COVID-19 state of emergency; and

WHEREAS, the Town Commission wishes to authorize the Town Manager to execute a Second Amendment to the Agreement, in substantially the form attached hereto as Exhibit "A" (the "Second Amendment"), in order to (1) retroactively extend the term of the Agreement for a

one year period effective January 1, 2022, through December 31, 2022, with five automatic one year renewal terms and (2) to delete reference to COVID-19 safety protocols that are no longer valid; and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.** The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. **Approval.** That the Town Commission approves the Second Amendment to the Agreement with the Licensee in substantially the form attached hereto as Exhibit “A.”

Section 3. **Authorization.** That the Town Manager is hereby authorized to execute the Second Amendment to the Agreement attached hereto as Exhibit “A,” subject to final approval by the Town Attorney as to form, content, and legal sufficiency.

Section 4. **Implementation.** The Town Manager and/or designee are authorized to take any and all action necessary to implement the purposes of this Resolution and the Second Amendment to the Agreement.

Section 5. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED on this 14th day of June, 2022.

Motion By: Vice Mayor Rose

Second By: Commissioner Meischeid

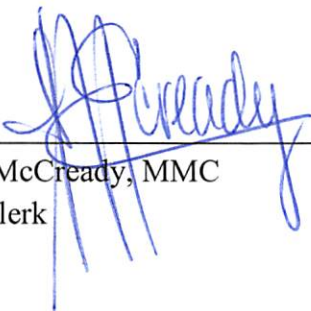
FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Vice Mayor Jeff Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>



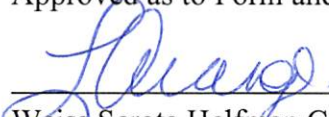
Shlomo Danzinger, Mayor

Attest:



Sandra McCready, MMC
Town Clerk

Approved as to Form and Legal Sufficiency:



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

SECOND AMENDMENT TO LICENSE AGREEMENT BETWEEN
TOWN OF SURFSIDE
AND
WAVEY ACAI BOWLS, LLC

THIS SECOND AMENDMENT TO THE LICENSE AGREEMENT ("Second Amendment") is entered into as of this ____ of _____, 2022, by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation (hereinafter the "Town"), and **WAVEY ACAI BOWLS, LLC**, a Florida corporation (hereinafter the "Licensee").

WHEREAS, the Town owns a parcel of real property located at the northwest corner of 95th Street and Collins Avenue, Surfside, Florida, designated as Folio Number 14-2235-007-0190 ("Property"); and

WHEREAS, the Town entered into a License Agreement with Licensee for the coordination, operation, and management of a weekly event known as the "Surfside Farmers Market" (the "Services") at the Property on September 11, 2019 (the "Agreement"); and

WHEREAS, on January 4, 2021, the Town and Licensee entered into a First Amendment to the Agreement (1) to reinstate the Agreement and extend the term of the Agreement for a one (1) year period effective January 1, 2021, through December 31, 2021, with three (3) additional one year options to renew and (2) to include safety protocols for the provision of the Services at the Property for the duration of the COVID-19 state of emergency; and

WHEREAS, the Town and Licensee wish to enter into a Second Amendment to the Agreement in order to retroactively extend the term of the Agreement for a one (1) year period effective January 1, 2022, through December 31, 2022, with five (5) automatic one (1) year renewal terms, and delete reference to COVID-19 rules and regulations that are no longer in effect, as set forth herein; and

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the parties do hereby 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 Agreement.
2. **Rules and Regulations.** Section 4 of the Agreement is hereby amended as follows:

The Town may promulgate and enforce reasonable rules and regulations governing the use of the Property by the Licensee. ~~For the duration of the state of emergency due to the COVID-19 health pandemic issued by the Town pursuant to Resolution No. 2020-2676, the Licensee shall ensure that all safety protocols and emergency orders and measures issued by the State of Florida, Miami Dade County, and/or the Town are strictly adhered to at the Property. Additionally,~~

~~Licensee shall ensure all individuals, activities, and events at the Property comply with the Miami Dade County "Moving to a New Normal Handbook."~~

3. **Extension of Term.** Section 5 of the Agreement is hereby amended to retroactively extend the term of the Agreement for one (1) year effective January 1, 2022, through December 31, 2022. The term of the Agreement shall automatically renew for up to five (5) one (1) year renewal terms on the same terms and conditions as set forth in the Agreement and this Second Amendment, Notwithstanding the foregoing, the Town Manager may cancel the automatic renewal of any term of this Agreement upon five (5) days written notice to the Licensee.
4. **Conflict; Amendment Prevails.** In the event of any conflict or ambiguity between the terms and provisions of this Second Amendment and the terms and provisions of the Agreement, the terms and provisions of this Second Amendment shall control.
5. **Agreement Ratified.** Except as otherwise specifically set forth or modified herein, all terms and conditions 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 INTENTIONALLY BLANK;
SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first set forth above.

TOWN:

TOWN OF SURFSIDE, a Florida municipal corporation

By: _____
Andrew Hyatt, Town Manager

Date Executed: _____

Attest:

Sandra McCready, MMC
Town Clerk

Approved as to Legal Form and
Legal Sufficiency:

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

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first set forth above.

LICENSEE:

Witnesses:

WAVEY ACAI BOWLS, LLC, a Florida corporation

By: _____

Print Name: _____

Name: _____

Title: _____

Date Executed: _____

Print Name: _____