

**RESOLUTION NO. 2025-3365**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A LIMITED REVOCABLE LICENSE AGREEMENT WITH WAVEY ACAI BOWLS, LLC., FOR 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 ("Town") wishes to provide its residents and visitors with access to a local farmers' market; and

**WHEREAS**, the Town maintains a public right-of-way of a parcel of real property located at the southwest corner of 96<sup>th</sup> Street and Collins Avenue hardpack, Surfside, Florida ("Property"); and

**WHEREAS**, Wavey Acai Bowls, LLC ("Licensee") has proposed to operate a farmers' market (the "Market") at or on the Town's Property; and

**WHEREAS**, the Town and Licensee desire to enter into a Limited Revocable License Agreement, in substantially the form attached hereto as Exhibit "A," (the "Agreement") for Licensee to operate the Market; 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.** The Town Commission approves the Agreement with Licensee in substantially the form attached hereto as Exhibit "A."

**Section 3. Authorization.** The Town Manager is hereby authorized to execute the Agreement attached hereto as Exhibit "A," subject to approval by the Town Attorney as to form, content, and legal sufficiency. The Town Manager is authorized to enter into extensions of the Agreement without further approval of the Town Commission.

**Section 4. Implementation.** The Town Manager is authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

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

**PASSED AND ADOPTED** this 14th day of January, 2025.

Motion By: Vice Mayor Paul  
Second By: Commissioner Velasquez


**FINAL VOTE ON ADOPTION:**

Commissioner Ruben A. Coto	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Commissioner Gerardo Vildostegui	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>


**ATTEST**

  
\_\_\_\_\_  
Sandra N. McCready, MMC  
Town Clerk



  
\_\_\_\_\_  
Charles W. Burkett, Mayor

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

  
\_\_\_\_\_  
Thais Hernandez, Acting Town Attorney

**LIMITED REVOCABLE LICENSE AGREEMENT BETWEEN  
THE TOWN OF SURFSIDE  
AND  
THE WAVEY GROUP, LLC**

**THIS LIMITED REVOCABLE LICENSE AGREEMENT** (this "Agreement") is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date"), by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation, (hereinafter the "Town"), and **THE WAVEY GROUP, LLC**, a Florida Limited Liability Company ("Licensee"). The Town and Licensee may be referred to in this Agreement individually as "Party" and collectively as the "Parties."

- A. The Town is the owner of the land and/or public right-of-way located at the 96<sup>th</sup> Street beach entrance on Collins Avenue and the hard pack path that runs south from that location ("Property").
- B. Licensee proposes to coordinate, operate, and manage a weekly event to be known as the "Surfside Farmers Market" (the "Market") on Saturdays and Sundays from 9:30 a.m. to 3:30 p.m. at the Town's Property during Market season, October through May.
- C. Licensee requests use of the Property to conduct the Market.
- D. The limited use of the Property, in accordance with the terms of this Agreement, for the conduct of the Market is a benefit to Town residents, businesses, and visitors.
- E. The Town's intent is to grant Licensee a limited, revocable license of the Property.

**NOW, THEREFORE**, in consideration of the mutual covenants of the Parties, as set forth in this Agreement, and other valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, it is agreed by and between the Parties as follows:

**1. Definitions.** The following words and phrases shall have the meaning set forth herein:

1.1 "Agreement" shall mean this Limited Revocable License Agreement.

1.2 "Licensee" shall mean The Wavey Group, LLC.

1.3 "Market" shall mean the weekly event to be known as the "Surfside Farmers Market" organized, operated, and managed by Licensee pursuant to this Agreement, which is made up of a variety of vendors who display their merchandise/products for purchase by the public.

1.4 "Market Day" shall mean each day the Market is open to the public.

1.5 "Property" shall mean the beach entrance at 96<sup>th</sup> Street and Collins Avenue and the section of the Hard Pack just south of the beach entrance.

1.6 "Town" shall mean the Town of Surfside, Florida.

## **2. Grant of License and Use**

2.1 **License.** The Town grants to Licensee a limited, revocable license for the use of the Property as contemplated by this Agreement. This license is personal to Licensee and may not be assigned or transferred to any party without the Town's express, written consent.

2.2 **Use.** The Town authorizes Licensee to use the Property solely for the purposes set forth in this Agreement. This authorization is not a lease or an easement and is not intended and shall not be construed to transfer any real property interest in the Property.

2.2.1 Licensee may use the Property solely to conduct a Market, in accordance with the Terms of Use attached hereto as Exhibit "A."

3. **Non-Exclusivity.** The Town designates Licensee as a non-exclusive Licensee of a Market at the Property during the Term of this Agreement. The Town specifically reserves the right to contract with any other entity providing similar services.

4. **Rules and Regulations.** The Town may promulgate and enforce reasonable rules and regulations governing the use of the Property by Licensee.

5. **Term.** The term (the "Term") of this Agreement shall commence upon the execution hereof and shall remain in effect through December 28, 2025, except as may be sooner terminated in accordance with the terms of this Agreement. The Term may be extended upon mutual written agreement of the Parties for up to three, one-year terms. The Town Manager may extend the Term without further approval of the Town Commission. Upon each renewal of the Term, if any, the Parties shall determine a schedule for Market Days for that year's Term.

## **6. Termination**

6.1 This Agreement may be terminated by the Town with or without cause by providing at least five (5) days' written notice to Licensee of such termination.

6.2 The Town reserves the right to terminate this Agreement for any reason at any time, including, but not limited to, Licensee misconduct, insufficient number of participants, or unavailability of Property.

6.3 Licensee acknowledges and agrees that the Town shall have no liability to Licensee for incidental or consequential damages, loss of business, or otherwise, for terminating this Agreement in accordance with the terms set forth above.

6.4 Upon termination of this Agreement by either Party, Licensee shall, at its sole cost and expense, immediately restore the Property to the same or better condition than it was delivered to the Licensee.

7. **License Fee.** The Parties agree that there is no license fee.

8. **Condition of Property**

8.1. The Town makes the Property available to Licensee in an "as is" condition. The Town makes no representations or warranties concerning the condition of the Property or its suitability for use by Licensee or its customers or invitees and assumes no duty to warn either Licensee or its customers or invitees concerning conditions that exist now or may arise in the future.

8.2. In making the Property available for use by Licensee, the Town assumes no liability for loss or damage to Licensee's property. Licensee agrees that the Town is not responsible for providing security at the Property, and Licensee hereby waives any claim against Town in the event Licensee's property is lost or damaged.

9. **Operations & Maintenance**

9.1. Licensee shall be solely responsible for: (i) maintaining the Property to the Town's standards applicable for use by Licensee as permitted under this Agreement; and (ii) obtaining any applicable permits required by the Town, the County, the State, and/or any Federal agencies.

9.2. Licensee shall exercise due care in its use of the Property and shall be responsible for maintaining the Property in good condition and repair. Licensee shall not act, or fail to act, in any way that results in excessive wear or damage to the Property. Licensee expressly agrees to repair, replace, or otherwise restore any part or item of real or personal property that is damaged, lost or destroyed as a result of Licensee's use of the Property. Should Licensee fail to repair, replace, or otherwise restore such real or personal property, Licensee expressly agrees to pay and be responsible for the Town's costs in making such repairs, replacements, or restorations.

9.3. Licensee shall be responsible for all operations and maintenance of the Property during Market Days.

9.4. The Town shall in no way be responsible for operating or managing the Market.

10. **Reporting Requirements.** Licensee shall provide monthly reports to the Town concerning the Market. At a minimum, the report shall include the names of all participating Vendors, number of visitors to the Market and the gross revenue received by Licensee from the Market.

## **11. Liability and Indemnification.**

11.1. Licensee hereby assumes all financial, administrative and legal responsibility in connection with, related to, or arising out of the use of the Property on Market Days.

11.2. Licensee shall indemnify, hold harmless, and defend the Town, its Elected Officials, officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Licensee's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts, whether oral or written, between Licensee and third parties made pursuant to this Agreement. Licensee shall reimburse the Town for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Licensee's performance or non-performance of this Agreement. Nothing in this Agreement shall be deemed or treated as a waiver by the Town of any immunity to which it is entitled by law, including but not limited to the Town's sovereign immunity as set forth in Section 768.28, Florida Statutes.

11.3. The provisions of this section shall survive termination of this Agreement.

12. **Insurance.** Licensee shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of Licensee's insurance and shall not contribute to Licensee's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section and may be increased by the Town as it deems necessary or prudent.

12.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of the Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

12.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of Licensee

shall be allowed to provide services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

12.3. Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

12.4. **Certificate of Insurance.** Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing the Market. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. Licensee shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Term of this Agreement, or renewals thereof, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

12.5. **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from work performed by or on behalf of Licensee in performance of this Agreement. Licensee's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Licensee's insurance. Licensee's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

- 12.5.1. Subcontractors and Vendors participating in or working on the Market shall be required to list the Town as additional insured.
- 12.6. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. Licensee shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.
- 12.7. The provisions of this section shall survive termination of this Agreement.

13. **Public Records.** Licensee understands that the public shall have access, at all reasonable times, to all documents and information pertinent to this Agreement, 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. For purposes of this section, the term:

(a) "Contractor" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s.119.011(2); and (b) "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law. In addition to other contract requirements provided by law, Licensee shall comply with public records laws, specifically to: (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of Licensee upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. Licensee's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

**Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**



**Custodian of Records:** Sandra N. McCreedy, MMC  
**Mailing address:** 9293 Harding Avenue  
Surfside, FL 33154  
**Telephone number:** 305-861-4863  
**Email:** [smccreedy@townofsurfsidefl.gov](mailto:smccreedy@townofsurfsidefl.gov)

14. **Audit and Inspection Rights.**

- 14.1. The Town may, at reasonable times, and for a period of up to three years following the termination of this Agreement, audit or cause to be audited those books and records of Licensee that are related to Licensee's performance under this Agreement. Licensee agrees to maintain all such books and records at its principal place of business for a period of three years following expiration of this Agreement.
- 14.2. The Town may, at reasonable times during the term hereof, inspect the Market and perform such inspections as the Town deems reasonably necessary to determine whether the Market conforms to the terms of this Agreement. Licensee shall make available to the Town all reasonable facilities and assistance to facilitate the performance of inspections by the Town's representative(s).
- 14.3. **Survival.** The provisions of this section shall survive termination of this Agreement.
15. **Notice.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Town: Mark Blumstein  
Acting Town Manager, Town of Surfside  
9293 Harding Avenue  
Surfside, Florida 33154

With a copy to: Thais Hernandez  
Acting Town Attorney, Town of Surfside  
9293 Harding Avenue  
Surfside, Florida 33154

For Licensee: The Wavey Group, LLC  
Attn: Javier Valmana, Registered Agent  
8851 Abbott Avenue  
Surfside, Florida 33154

16. **Confidentiality**. In the performance of this Agreement, Licensee may be exposed to the confidential information of the Town and other entities. Licensee shall not disclose to any party, other than the Town Manager, Town Attorney, Finance Director and those other Town representatives authorized in writing by the Town Manager, any such confidential information acquired during the performance by Licensee pursuant to this Agreement. Regardless of the term of this Agreement, Licensee shall be bound by this obligation until such time as said confidential information shall become part of the public domain. Information regarding all aspects of the Town's business and all information relating thereto shall be presumed to be confidential, except as may be provided by law, and as same shall have been published or otherwise made freely available to the general public without restriction.

17. **Independent Contractor**; No Joint Venture. In all matters related to this Agreement, the Licensee is to be considered an independent contractor and not a Town employee. None of the provisions of this Agreement are intended to create nor shall they be deemed or construed to create any relationship between the Town and Licensee other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the Parties hereto, nor any of their respective employees shall be construed to be the employer, partner, agent, shareholder, officer or representative of the other. This Agreement does not create a joint venture, partnership, or other business or private/public enterprise between the Parties. Licensee shall be responsible for any and all of its expenses in performing its duties under this Agreement. The Town shall not be responsible for any expense incurred by Licensee. Licensee shall furnish its own transportation, office, and other supplies as necessary in carrying out its duties under this Agreement.

18. **Most Favored Nation**. If during the term of this Agreement, Licensee enters into an agreement with another municipality or county ("Other Governmental Entity"), the terms of which agreement include direct or indirect compensation to the Other Governmental Entity, then upon written request of the Town, Licensee shall negotiate and enter into a new agreement with the Town which shall include the more favorable compensation terms extended to the Other Governmental Entity. Licensee shall notify the Town within 30 days if it enters into an agreement with an Other Governmental Entity that has more favorable terms than this Agreement and the Town shall have the right to receive the more favorable terms immediately.

19. **Applicable Law; Venue**; Waiver of Jury Trial. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

20. **Attorneys' Fees**. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at trial and any and all appellate levels, including post-judgment proceedings.

21. **Assignment**.

21.1. This Agreement shall not be assignable by Licensee unless such assignment is first approved in writing by the Town Manager. The Town is relying upon the apparent qualifications and expertise of the Licensee, and Licensee's familiarity with the Town's Property, circumstances and desires.

21.2. Licensee shall not assign, sublet, transfer, or otherwise dispose of this Agreement, or any portion thereof, or permit the Property to be occupied by other organizations, entities or persons, without the advance written approval of the Town. It is specifically understood and agreed that the Town's decision to either permit or deny any such assignment, subletting or transfer shall be within its sole and absolute discretion, and that any such decision by the Town shall be presumed to be reasonable. Licensee shall provide a minimum of thirty (30) days' notice prior to the proposed effective date of a proposed assignment. In the event any assignment is approved by the Town Manager, the assignee shall agree to be bound by all of the terms and conditions of this Agreement.

22. **Licenses**. Licensee shall, without expense to the Town, be responsible for obtaining any necessary licenses, permits, and approvals in connection with the performance of the the Market pursuant to this Agreement.

**23. Licensed or Registered Personnel**. All services to be rendered by Licensee under this Agreement, which are required by law to be performed by or under the direction of a duly licensed or registered professional, shall be rendered in compliance with such requirements.

**24. Compliance with Laws.** Licensee shall not commit nor permit any violations of applicable federal, state, county and municipal laws, ordinances, resolutions and governmental rules, regulations and orders, as may be in effect now or at any time during the term of this Agreement, all as may be amended, which are applicable to Town, Licensee, the Property or the operations conducted at the Property. A violation of any such laws, ordinances, resolutions, rules, regulations or orders, as amended, shall constitute a material breach of this Agreement, and in such event, Town shall be entitled to exercise any and all rights and remedies hereunder and at law and in equity.

**25. Miscellaneous.**

25.1. **Binding Agreement.** The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

25.2. **Severability.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the Parties.

25.3. **Non-Discrimination.** Both parties agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, in the use of the Property. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of the other party, effective the date of the court order.

25.4. **Authority.** Each party represents and warrants that the representative signing this Agreement on its behalf has all right and authority to bind and commit that Party to the terms and conditions of this Agreement and that the execution, delivery and performance of this Agreement has been duly authorized by Town and Licensee action.

25.5. **Regulatory Powers.** The Town cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and

obligations as it may relate to regulations of general applicability which may govern the Property or any operations at the Property. Nothing herein shall be deemed to create an affirmative duty of Town to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

25.6. **Sovereign Immunity.** Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Town's sovereign immunity protection 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.

25.7. **Deadlines.** Whenever a deadline designated in this Agreement falls on a Saturday, Sunday, or Legal Holiday as defined in Section 683.01, Florida Statutes, as it may be amended from time to time, the deadline shall be extended to the next business day.

25.8. **Calendar Days.** Unless otherwise stated, all references to "days" shall mean calendar days, not business days.

25.9. **Time.** Time is of the essence as to each term of this Agreement.

25.10. **Force Majeure.** Neither party will be liable to the other or be deemed in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or governmental authorities' approval delays which are not caused by any act or omission of Licensee.

25.11. **Severability.** The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held to be invalid or unenforceable in whole or in part by a court of competent jurisdiction, such provision shall be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability of the remaining provisions of this Agreement.

25.12. **Headings.** The headings for each section in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning of any provision.

25.13. **Integration;** Entire Agreement; Amendments. This writing contains the entire Agreement of the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein. This Agreement may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written amendments to this agreement and executed by duly authorized representatives of the parties.

25.14. **Waiver.** There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver of such right. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

25.15. **Intent to be Legally Bound.** By signing this Agreement, the Parties confirm and state that they have carefully read the Agreement, that they know the contents thereof, that they fully expect to carry out each and every provision, and that they intend to be legally bound by the rights and obligations set forth herein.

25.16. **No Third-Party Beneficiaries.** Neither Party intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

25.17. **Counterparts.** This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

25.18. **No Authority to Bind Municipality.** Licensee shall have no authority to contract for or legally bind the Town with respect to any matter, including but not limited to the subject matter of this Agreement.

25.19. **Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of the term of this Agreement shall survive termination of this Agreement and shall remain in full force and effect unless and until the terms or conditions are completed.

25.20. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

**[INTENTIONALLY OMITTED]**

**E-VERIFY AFFIDAVIT**

In accordance with Section 448.095, Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

**The contracting entity must provide of its proof of enrollment in E-Verify.** For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

**Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

\_\_\_\_\_  
Witness #1 Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Witness #2 Print Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Entity Name: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of Florida  
County of \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name of person) as \_\_\_\_\_ (type of authority) for \_\_\_\_\_ (name of party on behalf of whom instrument is executed).

\_\_\_\_\_  
Notary Public (Print, Stamp, or Type as Commissioned)

\_\_\_\_\_  
Personally known to me; or  
\_\_\_\_\_  
Produced identification (Type of Identification: \_\_\_\_\_)  
\_\_\_\_\_  
Did take an oath; or  
\_\_\_\_\_  
Did not take an oath





**EXHIBIT "A"**  
**LICENSEE RULES**

**EXHIBIT "A"**  
**TERMS OF**  
**USE**

Licensee shall use the Property pursuant to the Agreement between it and the Town of Surfside as further set forth herein.

- 1. Use:** Licensee shall use the Property to conduct the "Town of Surfside Farmers' Market." Licensee shall serve as the primary point of contact to the Town Manager for the Market. Licensee is responsible for communicating with and managing all Market vendors, suppliers, community partners, and sponsors. The Market is intended to provide the community with access to fresh goods provided by vendors selling locally grown or produced vegetables, fruits, flowers, herbs, baked goods, honey, kosher options, juices, plants, and artisanal goods.
- 2. Market Location:** The Beach entrance at 96<sup>th</sup> Street and Collins Avenue and a portion of the hard pack path just south of 96<sup>th</sup> Street.
- 3. Market Days and Times:** Use of the Property shall be restricted to the designated business hours of the Market. The Market may be open on Saturdays and Sundays beginning in October and concluding in May from 9:30 a.m. to 3:30 p.m. The Town may suspend Licensee's use of the Property where the Town finds that the Property is needed for alternative purposes.
- 4. Market Days Set Up Times:** Set up for the Market begins at 7 a.m. each Market day. Breakdown shall be completed no more than one hour and a half after each Market Day.
- 5. Site-Plan.** Licensee's use of the Property shall be according to a site plan approved by the Town Manager. The Property may not be used by Licensee until a Site Plan is approved by the Town Manager. A Site Plan shall be submitted to the Town Manager for approval at least ten business days before the first Market Day.
  - 5.1.**The Site Plan shall include proposed parking and is subject to approval by all Town Departments, including but not limited to: Police, Fire, Public Works, Building, Code Compliance, and Town Manager.
  - 5.2.**The Property will be organized in a safe manner to protect attendees. All electrical cords and similar materials must be covered so as not to pose a hazard to the public.
  - 5.3.**All related Fire Marshall and Building Official's related requirements must have been complied with prior to the start of the Market.
  - 5.4.**Licensee shall accommodate and provide, upon request by the Town, one canopy site on each Market Day (at no cost to the Town) for the purpose of selling Town-related merchandise or to promote Town events and programs.
  - 5.5.**The Site Plan must provide for the use of electricity at the Property, including but not limited to the use of generators or other energy generating equipment. Licensee acknowledges that electric service at the Property is limited and not sufficient to provide electricity to all vendors.

**6. Vendors.** Licensee shall submit a list of Vendors to the Town Manager for approval at least ten business days before the first Market Day. The Market may not be conducted until the Vendor list has been approved by the Town Manager. Licensee shall have no more than the approved number of Vendors participating in the Farmers Market at any given time. Licensee shall not reduce or increase the amount of vendors without the express, written consent of the Town Manager and/or his/her designee.

6.1 Vendors are required to have proper permits appropriate to the products being sold. Vendors should contact Florida Department of Business and Professional Regulation and/or Miami-Dade County Public Health department for proper licensing and requirements. Scales must be certified. Licensee must obtain copies of all vendors' licenses and permits prior to vendors participating in the Market and must make the copies available to the Town upon request.

**7. Vendor Activity.**

7.1 Licensee shall ensure that all Vendors acknowledge that the use/or placement of tables, chairs, products, boxes or signs outside of it assigned vendor space is strictly prohibited. Vendors agree to sell product within their assigned space only. All vendor activity must be conducted within the booth space provided. This includes giving out free samples and recruiting customers. Any Vendor activity related to the Market outside the assigned vendor space is prohibited.

7.2 Licensee shall ensure that every Vendor anchor its 10 x 10' canopy on all four (4) comers with a minimum of twenty (20) pound anchors on each comer regardless of weather conditions. Vendors will be asked to remove its tent for failure to comply with these requirements.

7.3 Any canopies measuring over 10 x 10' will require a building permit each week used.

7.4The term "organic" shall not be used without certification under USDA NOP rules. Giving any false information regarding the products being sold is strictly prohibited.

7.5Vendors must clearly display their prices.

7.6Vendors must set up for every Market Day and must arrive no later than one-half hour before Market opening time in order to be prepared for business at the Market's opening time.

7.7Vendors must provide clean and safe tables, tents, baskets or stands to display products. There will be no sales from the surfaces of pick-up trucks or other vehicles. Vendors must display at the Farmer's Market all licenses and permits required. Licensee will ensure that all vendors maintain their area in a neat and tidy condition, and must leave the Event Site within one hour of Farmer's Market closing, leaving behind no equipment, trash or debris.

**8. Permitted Products.** All products offered for sale at the Property shall be of high quality and with prices clearly visible to the public. Any and all prepared foods must be properly labeled in accordance with applicable government regulations. Licensee agrees not to sell or distribute or allow any Vendors to sell or distribute

any products that the Town believes are non-conforming.

9. **Storage.** Licensee may not utilize any Town property to store property or equipment for use at the Farmers Market without the prior, written consent of the Town Manager and/or his/her designee.
10. At the end of each Market Day, Licensee shall vacate the Property in clean condition and deliver it to the Town in its pre-Event condition, free from all personal property, equipment or inventory. Upon Licensee's failure to do so, Town may remove any personal property, equipment and inventory from the Property and have them delivered to Licensee, placed in storage at Licensee's expense or discarded, at Town's sole discretion. All perishable items will be disposed of as Town deems appropriate, without compensation to Licensee or its vendors. The Licensee agrees that it shall pay and be responsible for the Town's actual costs to restore the Property to its pre-Market Day condition at the conclusion of any Market Day where Licensee fails to deliver the Property as required by this Agreement.
11. Licensee shall not place or attach any personal property, fixtures, or structures to the Property without the prior written consent of the Town.
12. Licensee's use of the Property shall, at a minimum: a) not adversely affect the Property; b) not adversely affect the property of any third parties; c) not inhibit pedestrian movement within the Property; d) not create conditions which are a threat to public safety and security; and e) not constitute a nuisance with respect to neighboring uses.
13. A Market Day may be terminated by the Town, through the Town Manager or his or her designee, the Chief of Police, Fire Chief, Building Official, Public Works Director, and/or a Code Compliance Officer for the protection of the public welfare and safety. Licensee expressly acknowledges and agrees that in the event that the Market is shut down, the Town shall not be liable for any damages.
14. The Licensee shall keep the sidewalks next to the event site and within the event site open and clear for pedestrian traffic.
15. **Trash Removal and Recycling:** Licensee is responsible for all trash removal and will provide recycling receptacles. As needed during each Market Day and at the end of each Market Day, the Licensee shall empty all waste receptacles and recycling bins, including Town bins, within the Property. Licensee and its vendors shall not use waste receptacles or recycling bins of neighboring properties.
  - 15.1. Licensee may use any waste receptacles available at the Property. Garbage or bags shall not be left on top or around the bins. No food or food waste from vendors is allowed in the bins. Vendors will be responsible for removing all other garbage from the event site. Licensee shall be charged \$100 per Market Day for any additional garbage removed from the site by Town Staff.
  - 15.2. At the conclusion of each Market Day, Licensee agrees to remove all additional trash from the Property, including garbage from Town cans at the Property.

- 16. Staffing:** Licensee agrees that no staffing or assistance from the Town will be required to conduct the Market.
- 17. Supervision.** Licensee shall provide adequate supervision of the Property at all times it conducts or sanctions activities thereon.
- 18. Police.** Licensee shall coordinate with the Town to address the need, if any, for additional police presence on a Market Day at the Property. Notwithstanding, the Licensee shall be responsible for the safety of the public and its invitees at the Property.
- 19. Parking/Traffic.** Licensee shall submit a parking and traffic plan to the Town for approval prior to conducting the Market. There will be no public or vendor parking at the Property unless previously approved by Town.
- 20. Signage and Marketing.** Licensee may provide temporary, directional signage on each Market Day at a location shown on the Site Plan and approved in writing by the Town Manager pursuant to Section 5 hereinabove. The Town may assist Licensee in promoting the Market through the Town's existing communication channels.
- 21. Noise.** Licensee shall comply with the Town's Noise Ordinance.
- 22. Prohibited Items:**
- 22.1. Styrofoam and plastic straws are prohibited to be used or distributed at the Market. Licensee acknowledges receipt of the Town's Ordinance No. 2018-1676 related to plastic straws.
  - 22.2. No alcohol is permitted in the Property without proper licensing, permits, insurance, and advance written Town approval.
- 23. Weather:** Licensee shall comply with the Parks and Recreation Operational Policy when weather conditions require clearing the Property and/or by any such request issued by a Town representative. In the event inclement or severe weather is impending or is forecasted to affect the Market area within 48 hours prior to a scheduled Market Day, Licensee shall confer with the Town Manager or his designee on or before 10:00 a.m. the Friday preceding a Market Day to determine whether the Market will be shut down. The Town, in its sole discretion reserves the right to prohibit Licensee's use of the Property due to inclement or severe weather.
- 24. Government Approvals/Permits:** Licensee is solely responsible for obtaining any and all governmental approvals and permits that may be needed to operate the Market.
- 25. Town Approval.** The Town has the sole authority to issue a final approval for use of the Property. Any approvals will be in writing. The Town Manager may suspend this license due to conflicting activities, failure of the Licensee to comply with the terms and conditions of this Agreement, for health or safety issues, or for the best interests of the Town.