

LICENSE AGREEMENT  
BETWEEN  
THE CITY OF PALM DESERT  
AND  
DESERT WAVE VENTURES, LLC,  
(FOR TEMPORARY STORAGE OF CONSTRUCTION EQUIPMENT AND MATERIALS)

This LICENSE AGREEMENT (“Agreement”) is made and entered into as of December \_\_\_, 2023, by and between the City of Palm Desert, a California charter city (“City”), and Desert Wave Ventures, LLC, a Delaware limited liability company (“Licensee”). City and Licensee are sometimes individually referred to as a “Party” and collectively as the “Parties.” All references to City include its elected officials, officers, directors, employees, agents, and volunteers. All references to Licensee include its personnel, employees, agents, and subcontractors.

RECITALS

WHEREAS, the City is the owner of land designated as APN \_\_\_ - \_\_\_ - \_\_\_ and APN \_\_\_ - \_\_\_ - \_\_\_ located in the City of Palm Desert, County of Riverside, State of California (“Property”), as described in Exhibit “A” attached hereto and incorporated herein by this reference, and depicted in Exhibit “B” attached hereto and incorporated herein by this reference; and

WHEREAS, Licensee wishes to seek approval from City to utilize the City’s Property for the temporary storage of construction equipment and materials; and

WHEREAS, City is amenable to permit Licensee to utilize the City’s Property for said purposes subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. GRANT OF LICENSE. City does hereby grant to Licensee, and Licensee does hereby accept from City, a nonexclusive license to use the City Property for the purpose of storing construction materials and equipment to be used for the development and construction of a surf lagoon, surf center, and residential units project, as described in that certain First Amendment to Second Revised and Restated Disposition and Development Agreement, dated May 25, 2023 (the “DDA”), by and between the City and Licensee.

2. COMPENSATION. In consideration of the City entering into this Agreement, within three (3) business days of the full execution of this Agreement, Licensee shall pay to City the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). In the event of any extension of this Agreement, within three (3) business days of the effective date of such extension, Licensee shall pay to City the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

3. TERM. This Agreement shall expire on December \_\_\_, 2025, unless earlier terminated pursuant to Section 4, hereof.

4. TERMINATION WITHOUT CAUSE: City in its sole and absolute discretion may terminate this Agreement at any time without cause by notifying the Licensee in writing at least thirty (30) days prior to the termination date.

5. AS-IS CONDITION AND ASSUMPTION OF RISK. Licensee accepts the condition of the Property in an as-is condition and acknowledges that: (i) City is under no obligation to provide any preparations or improvements to the Property prior to use by Licensee, (ii) Licensee's use of the Property is entirely at its own risk, and (iii) City is actively marketing the Property for sale and Licensee may be compelled to vacate the Property upon such sale.

6. RELEASE AND WAIVER. Licensee waives and releases City and its officers, employees and agents from any and all liability to Licensee, its officers, employees or agents for any loss, damage, liability, or liability for damages, whether for loss of or damage to property, or injury to or death of persons, which may arise out of use of the Property by Licensee, its officers, employees or agents, except such loss or damage as is caused by or arises out of the gross negligence or willful misconduct of City, its officers, employees or agents. The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from Licensee's introduction or generation of Hazardous Materials, as defined in **Exhibit C**, on the Property, or the creation of increased hazard to the public from existing and construction materials or equipment arising from the use of the Property by Licensee, its officers, employees, agents or contractors. However, Licensee shall not be responsible for any cleanup of Hazardous Materials not caused, generated or disturbed by Licensee, its officers, employees, agents or contractors.

7. INDEMNIFICATION. Licensee shall indemnify, protect, defend and hold harmless City, and its elected and appointed officials, officers, agents and employees (collectively, the "Indemnified Parties"), from and against any and all claims, actions, liabilities, damages, losses, judgments, costs and expenses (including reasonable attorneys' fees and costs), (collectively "Claims") which the Indemnified Parties, or any of them, may suffer or incur arising from Licensee's use of the City's Property, and shall further indemnify, protect, defend and hold harmless the Indemnified Parties, and each of them, from and against any Claims arising from any negligence of Licensee, its agents, contractors, servants, employees, or licensees. The foregoing indemnity shall not extend to any Claims to the extent arising from the grossly negligent, willful or intentional acts or omissions of the Indemnified Parties, or any of them, as to all of which Claims City shall indemnify, protect, defend and hold harmless Licensee.

8. INSURANCE. During the term of this Agreement, Licensee shall have and maintain the same insurance requirements with respect to this Agreement as Licensee maintains pursuant to the DDA.

9. MAINTENANCE. At all times during the term of this Agreement, Licensee shall maintain the Property in a safe, clean, and orderly condition. Licensee agrees to take all prudent action to protect the Property from any damage or injury caused by the exercise of this License. Licensee shall pay to City all costs incurred by City for the repair of such damage or injury.



City Attorney  
City of Palm Desert  
73510 Fred Waring Dr.  
Palm Desert, California 92260

TO LICENSEE:

Desert Wave Ventures, LLC  
Attn: Don Rady  
1555 Camino Del Mar, Suite 315C  
Del Mar, CA 92014

With a copy to:

Don Rady  
Value Real Estate  
1919 Grand Ave  
San Diego, CA 92109

With copy to:

Coast Law Group, LLP  
1140 S. Coast Hwy 101  
Encinitas, CA 92024  
Attention: Marco Gonzalez

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY:**

CITY OF PALM DESERT, a charter city  
and municipal corporation

Date: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
KATHLEEN KELLY, Mayor

**ATTEST:**

By: \_\_\_\_\_  
ANTHONY MEJIA, MMC  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
ROBERT HARGREAVES  
City Attorney

Date: \_\_\_\_\_ 2023

**OWNER:**

DESERT WAVE VENTURES, LLC, a  
Delaware limited liability company

By: FS VENTURES, LLC, a Delaware  
corporation, Its Manager

By: \_\_\_\_\_  
Don Rady  
Its: Managing Member

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Marco A. Gonzalez, Counsel

**CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT**

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State of California )  
 ) SS.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 20 \_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT**

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State of California )  
 ) SS.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



EXHIBIT "A"

Property

EXHIBIT B

Property Depiction

## EXHIBIT C

### Definition of Hazardous Materials

For the purpose of this Agreement, “**Hazardous Materials**” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, byproducts, or waste.

For the purposes of this Agreement, “**Environmental Laws**” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super-lien or environmental cleanup.