

**SECOND AMENDMENT TO SECOND REVISED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT**

Surf Lagoon, Surf Center, and Residential Units Project

This Second Amendment to Second Revised and Restated Disposition and Development Agreement (this "Second Amendment") is entered into as of January 11, 2024 (the "Execution Date"), by and among the CITY OF PALM DESERT, a chartered municipal corporation (the "City"), and DESERT WAVE VENTURES, LLC, a Delaware limited liability company (the "Developer"). The City and Developer are the sole parties (each, a "Party" and, collectively, the "Parties") to this Second Amendment. The "Effective Date" shall be January 11, 2024.

RECITALS

This Second Amendment is based upon the following recitals, facts and understandings of the Parties:

A. The City and Developer entered into that certain Disposition and Development Agreement, dated December 30, 2019 (the "Original DDA"). The City and Developer subsequently entered into that certain Revised and Restated Disposition and Development Agreement, dated April 22, 2022 (the "First Revised DDA"). The Parties subsequently entered into that certain Second Revised and Restated Disposition and Development Agreement, dated November 17, 2022 (the "Second Revised DDA"), which completely superseded both the Original DDA and the First Revised DDA. The Parties subsequently entered into that certain First Amendment to the Second Revised and Restated Disposition and Development Agreement, dated May 25, 2023 (the "First Amendment"). The Parties now intend to further amend the Second Revised DDA (and First Amendment) with this Second Amendment.

B. The City has previously conveyed 3.03 acres of real property (APNs 620-400-008 & 620-420-024) (the "City Property") to Developer by a grant deed ("City Grant Deed") pursuant to that certain Purchase Option Agreement dated August 15, 2018, and the Successor Agency to the Redevelopment Agency of the City of Palm Desert ("SARDA") previously conveyed 14.65 acres of real property (APN 620-420-023) (the "SARDA Property") to Developer by a grant deed ("SARDA Grant Deed") pursuant to that certain Purchase Option Agreement dated August 15, 2018, as amended by the First Amendment to Real Estate Option and Purchase and Sale Agreement dated May 22, 2021. The City Grant Deed and the SARDA Grant Deed are referred to herein, collectively, as the "Deed of Sale." Collectively, the City Property and the SARDA Property make up the project site ("Project Site"). As consideration, in part, for the City entering into the Second Revised DDA and to secure the Developer's performance of its obligations thereunder, the Developer executed a Performance Deed of Trust and Security Agreement, dated December 22, 2022, and recorded on December 21, 2022, as Document No. 2022-0510281 in the official records of Riverside County. Concurrently with, or prior to, the execution of this Agreement, Developer entered into a Reimbursement Agreement, dated December 16, 2019, by and between City and

Developer, for the purpose of reimbursing the City for the costs and expenses it incurs for the review process of the Project.

E. The Parties now desire to amend the Parties terms of cooperation, the security for post-closing obligations, and the Schedule of Performance. All capitalized terms not defined within this Agreement shall have the meanings ascribed to such terms in the Second Revised DDA.

AGREEMENTS

For valuable consideration, receipt of which is hereby acknowledged, and the mutual obligations of and benefits to the Parties set forth herein, the City and Developer agree as follows:

1. Section 5.1 of the First Amendment is hereby amended to read as follows:

“5.1 Cooperation Between the Parties.

(a) All approvals required by the City and Developer under this Agreement shall not be unreasonably withheld or denied (except where such actions are specifically said to be in the sole and absolute discretion of a Party) and, where specifically referenced in this Agreement or in the Schedule of Performance, shall be given within the times set forth in this Agreement or in the Schedule of Performance.

(b) City and Developer shall, to the extent reasonably necessary, cooperate with each other to enable each Party to perform its obligations under this Agreement; provided, however, that in the event that any Party is asked to provide cooperation, assurance, assistance, documentation, or investigation and such Party determines that complying with such request will be unlawful, unreasonably burdensome, unreasonably expensive, or unreasonably time consuming, such Party may refuse to cooperate, without liability to that Party, by providing notice to the Party requesting the cooperation. Notwithstanding this provision, this Section 5.1(b) does not limit City’s discretionary actions and City reserves the right to exercise discretionary actions, each in its sole authority and in its sole and absolute discretion

2. Section 5.3(a)(i) of the First Amendment is hereby amended to read as follows:

“(i) If the Developer fails to satisfy the Post-Closing Obligations by the dates detailed in the Schedule of Performance (subject to delay for events of force majeure)(the "Post-Closing Obligations Deadlines"), then City may issue a notice of default and if within thirty (30) days following written notice from City or, in the case of any Post-Closing Obligation which cannot reasonably be performed within thirty (30) days, Developer’s failure to commence such performance within said thirty (30) day period after receipt of written notice and thereafter diligently pursue such performance to completion, shall constitute a default by Developer. Upon a default by Developer under this Section 5.3(a)(i), the City may exercise its Power of Termination by delivering written notice to Developer. Upon receipt from City of written notice of City’s exercise of its Power of Termination, Developer agrees to, and shall, within five (5) calendar days, execute and

deliver to City a quit claim deed relinquishing any and all of Developer's right, title, and interest in and to the Project Site."

3. Attachment No. 7, Schedule of Performance to the First Amendment is amended to read in the form attached hereto as Exhibit A, and incorporated herein by this reference.

4. Counterparts. This Second Amendment may be executed in counterparts which taken together shall constitute one agreement.

5. Incorporation by Reference of Recitals. The Recitals are hereby incorporated into this Agreement by reference as if set forth herein in full.

[Signatures on Following Pages]

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DISPOSITION AND DEVELOPMENT AGREEMENT

DSRT Surf Lagoon, Surf Center, and Residential Units Project
Signatory Page

CITY:

CITY OF PALM DESERT, a charter city
and municipal corporation

Date: _____, 2023

By:

KARINA QUINTANILLA, Mayor

APPROVED AS TO FORM:

By:

ISRA SHAH
City Attorney

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DEVELOPER:

Date: _____2023

DESERT WAVE VENTURES, LLC, a
Delaware limited liability company

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

By:
Don Rady
Its: Manager

APPROVED AS TO FORM:

By: _____
Justin White, Counsel

EXHIBIT A

ATTACHMENT NO. 7

SCHEDULE OF PERFORMANCE

In the event of any conflict between the contents of the Schedule of Performance and the Agreement, the provisions of the Agreement shall prevail.

ACTION	TARGET DATE
1. <u>Execution of Agreement and City Cost Reimbursement Agreement by Developer.</u> Developer shall execute and deliver Agreement and City Cost Reimbursement Agreement to City.	Completed.
2. <u>Execution of Agreement and City Cost Reimbursement Agreement by City.</u> City shall hold public hearings to consider and approve or disapprove Agreement and City Cost Reimbursement Agreement. If approved, City shall execute Agreement.	Completed.
3. <u>Submission of all Implementing Actions.</u> Developer shall submit all agreements pertaining to the Implementing Actions to City for final review and approval. (§1.3(b))	Completed.
4. <u>Submission of 100% Design Development Drawings and Preliminary Cost Estimate.</u> Developer shall prepare and submit to the City 100% Design Development Drawings and documents for the Surf Lagoon, and Surf Center; and preliminary costs associated.	Completed.
5. <u>Submission of 100% Rough Grading Plans.</u> The Developer shall submit to the City 100% Rough Grading Plans, Rough Grading Permit Application and associated fees.	Completed.
6. <u>Approval – 100% Rough Grading Plans.</u> The City shall approve or disapprove the 100% Rough Grading Plans for the entire site.	Completed.
7. <u>Submission of 100% Construction Drawings.</u> Developer shall prepare and submit to the City 100%	Completed.

ACTION	TARGET DATE
Construction Drawings and documents for the Surf Lagoon, and Surf Center.	
8. <u>Submit Building Permit Application.</u> Developer shall submit to City Building Permit Application for the Surf Lagoon, and Surf Center with 100% construction documents. (§4.3(a)(ii))	Completed.
9. <u>City acceptance of complete Construction Documents and Building Permits.</u> (§4.3)	April 1, 2024.
10. <u>Submission -- Equity Investors.</u> Developer shall submit to City identity of Equity Investors and written binding agreements with the Equity Investors. (§5.2(b) and (c))	Completed.
11. <u>Submission of Final Detailed Cost Estimates (Non-GMP)- Surf Lagoon and Center.</u> Developer shall prepare and submit to the City final detailed cost estimates for the design and construction of the Surf Lagoon and Center. (§4.4(b))	Completed.
12. <u>Review -- Final Cost Estimates - Surf Lagoon and Center.</u> The City shall review final detailed cost estimates for the Surf Lagoon and Center. (§4.4(b))	Completed.
13. <u>Submittal of Final Project Budget and Final Project Plan of Finance.</u> (§4.4(e))	Completed.
14. <u>Submission of Loan Documents.</u> Developer shall submit to City binding Loan Documents from Private Construction Lender for construction financing. (§5.2(d) and (p))	Not applicable.
15. Execution and Delivery of Declaration of Restrictions. (§6)	Completed.
16. <u>Submission of Construction Contracts.</u> Developer shall submit to the City construction contracts and executed guaranteed maximum price construction contracts or fixed price construction contracts, as applicable, with respect to the Developer's Improvements, based on signed bids from	February 1, 2024 [pending resolution on this amendment].

ACTION	TARGET DATE
Developer's contractors (§4.4(f) for the construction of the Surf Lagoon and Center. (§5.2(f))	
17. <u>City Review of Items 13-16 above.</u>	Within 45 days of submission of each item.
18. <u>Submission of Certificates of Insurance, Payment Bonds and Performance Bonds.</u> (§4.7.1)	Within 45 days after completion of City Review of Items 13-16.
19. <u>City Review of Certificates, Insurance, Payment Bonds and Performance Bonds</u>	At City's discretion.
24. Work with City to identify temporary parking to accommodate at least seventy (70) spaces that will be unavailable for the Desert Willow golf courses during Project construction.	Completed (via prorated payment for Lot A).
25. <u>Commencement of Construction Mobilization of Surf Lagoon and Center.</u> The Developer shall commence construction of the Surf Lagoon and Surf Center improvements.	Within 45 days after completion of City Review of Items 13-16.
26. Substantial completion of rough grading.	Within 6 months after commencement of construction.
27. Substantial completion of internal loop street.	Within 16 months after commencement of construction.
28. Substantial completion of permanent power infrastructure.	Within 24 months after commencement of construction.
29. Installation of wave machine equipment.	Within 27 months after commencement of construction.
30. Lagoon filled with water.	Within 33 months after commencement of construction.
31. <u>Completion of Construction of Phase One of Project.</u> The Developer shall complete construction of Phase One of the Developer's Improvements; receipt of temporary certificate of occupancy.	Within 36 months following commencement of construction.

ACTION	TARGET DATE
32. <u>Termination of Agreement.</u> This Agreement shall automatically terminate if any of the events listed occur. (§8.1)	Upon completion and issuance of certificate of occupancy and/or certificate of completion of all improvements for the Surf Lagoon, Surf Center, and Parking.