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.

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<u>RECITALS</u>
WHEREAS, the City is the owner of land designated as APN and 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. <u>GRANT OF LICENSE</u> . 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. <u>COMPENSATION</u> . 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. <u>TERM</u> . This Agreement shall expire on December, 2025, unless earlier terminated pursuant to Section 4, hereof.

- 4. <u>TERMINATION WITHOUT CAUSE</u>: 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. <u>AS-IS CONDITION AND ASSUMPTION OF RISK</u>. 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. <u>RELEASE AND WAIVER</u>. 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. <u>INDEMNIFICATION</u>. 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. <u>INSURANCE</u>. 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. <u>MAINTENANCE</u>. 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.

- 10. <u>RESTORATION OF EASEMENT AREA</u>. Upon termination of this Agreement, Licensee shall fully restore the Property to its original or better pre-existing condition.
- 11. <u>SURVIVAL</u>. The provisions of Sections 5, 6, 7, and 10 above shall survive the expiration of earlier termination of this Agreement.
- 12. <u>NO INTEREST IN REAL PROPERTY</u>. This Agreement does not grant Licensee, its successors, assigns or transferees any interest, legal or equitable, in the Property, and this Agreement shall become null and void and without legal effect if it is recorded in the official records of the County of Riverside.
- 13. <u>SEVERABILITY</u>. If any term, provision, covenant or condition of this License should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect, and shall in no way be affected, impaired or invalidated thereby.
- 14. <u>INTERPRETATION</u>. The laws of the State of California shall govern the validity, construction and effect of this Agreement.
- 15. <u>AMENDMENTS</u>. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the City and Licensee. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.
- 16. <u>ENTIRE AGREEMENT</u>. This License, including Exhibits "A", "B", and "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other Agreements or understandings, whether oral or written, or entered into between City or Licensee prior to the execution of this License. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding.
- 17. <u>NOTICES</u>. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the party to be notified may have designed to the sender by like notice):

TO CITY: City of Palm Desert

Attention: City Manager 73510 Fred Waring Dr.

Palm Desert, California 92260

With a copy to:

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.

	<u>CITY:</u>
	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	

	OWNER:
Date:2023	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

	ting this certificate verifies on tot the truthfulness, accuracy o	nly the identity of the individual who signed the document, to or validity of that document.		
State of California)) SS.			
County of				
On, 20, 1	before me,	, a Notary Public,		
personally appeared		, who proved to me on		
On, 20, before me,				
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 officia	l seal.			
Signature				

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	fulness, accuracy or validity of that document.
State of California)	SS.
County of)	55.
personally appeared the basis of satisfactory evidence to be the instrument and acknowledged to me that	, a Notary Public, , who proved to me on the person(s) whose name(s) is/are subscribed to the within the/she/they executed the same in his/her/their authorized gnature(s) on the instrument the person(s), or the entity upon tuted the instrument.
I certify under PENALTY OF PERJURY paragraph is true and correct.	under the laws of the State of California that the foregoing
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.