

CITY OF PALM DESERT STAFF REPORT

MEETING DATE: August 22, 2024

PREPARED BY: Eric Ceja, Director of Economic Development

SUBJECT: THIRD AMENDMENT TO THE SECOND REVISED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PALM DESERT AND DESERT WAVE VENTURES, LLC

RECOMMENDATION:

1. Approve the Third Amendment to the Second Revised and Restated Disposition and Development Agreement between the City of Palm Desert and Desert Wave Ventures, LLC.
2. Authorize the City Attorney to make any necessary nonmonetary changes to the agreement.
3. Authorize the City Manager to execute the agreement.

BACKGROUND/ANALYSIS:

Originally approved in 2019, the DSRT Surf project includes the construction of a 5.5-acre surf lagoon, up to 88 villa units, and associated amenities at the Desert Willow Golf Resort. In May 2024, the project broke ground with an anticipated construction schedule of 24 months. As the project timelines have evolved, it has become necessary to revise the conditions set forth in the original Disposition and Development Agreement (DDA). To date, the City has approved the following revisions:

- **Revised and Restated DDA (2022):** Acknowledged changes in the project scope.
- **First Amendment to the Second Revised and Restated DDA (2023):** Removed the requirement to construct a hotel, included an annual payment of \$500,000 with 3% annual increases for the life of the project to the City, and removed all City-provided financial assistance.
- **Second Amendment to the Second Revised and Restated DDA (2024):** Added provisions for the developer to remedy non-performance in construction activities at the site.

Desert Wave Ventures, LLC, has expressed a desire to replace the City's requirement to submit bonds for site remediation in the unlikely event that the development stalls. To remove the bond requirement the developers have agreed to supply the City with a \$3,000,000 security instrument, which may include a bond, letter of credit, or cash deposit, for the same purpose. The \$3,000,000 security instrument is valued at the same amount as the City's bond requirement and the \$3,000,000 remediation costs are based on an engineering assessment for site remediation. Whether it is a bond or another security instrument, the City is protected and will have sufficient funds available to remediate the site.

Additionally, due to ongoing construction activities and impacts to the surrounding road network, the City is requesting that the developer provide \$100,000 by January 15, 2025, for a future slurry seal and repair project for both Desert Willow Drive and Market Place Drive. The amount

requested is based on an engineering estimate to repair the streets to pre-construction conditions.

Legal Review:

This report has been reviewed by Robert Messinger with Burke, Williams and Sorensen (BWS), special counsel to the City for the DSRT Surf project.

FINANCIAL IMPACT:

With approval of this DDA, the City will receive a \$3,000,000 security instrument in lieu of a Faithful Performance Bond and \$100,000 for repair to Desert Willow Drive and Market Place Drive, from Desert Wave Ventures, LLC. There are no direct impacts to the City's General Fund as a result of this approval.

ATTACHMENT:

Third Amendment to the Second Revised and Restated Disposition and Development Agreement