

THIRD AMENDMENT TO SECOND REVISED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

Surf Lagoon, Surf Center, and Residential Units Project

This Third Amendment to Second Revised and Restated Disposition and Development Agreement (this "Third Amendment") is entered into as of August 22, 2024, by and between 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 Agreement.

RECITALS

This Agreement 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Restated Disposition and Development Agreement, dated November 17, 2022 (the "Second Revised DDA"), which completely superseded both the Original DDA and the First Revised DDA.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") and that certain Second Amendment to the Second Revised and Restated Disposition and Development Agreement, dated January 11, 2024 (the "Second Amendment"). The Second Revised DDA, as amended by the First Amendment and the Second Amendment is referred to herein as the "DDA." The Parties now intend to further amend the DDA with this Third 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").

C. Pursuant to the DDA, Developer will construct improvements on the Project Site in two phases as set forth in the "Scope of Development" (Attachment No. 1 to the DDA). In the first phase, Developer will construct an approximately 5.5-acre Surf Lagoon;

an approximately 6,200 square foot Surf Center, inclusive of a food and beverage component, on-site parking, and 57 residential lots with all utilities stubbed to the site; the second phase will include 57 private residential units (the "Residential Units") and associated amenities. (Together all improvements at the Project Site are referred to as the "Project".)

D. The Parties now desire to amend the DDA provisions relating to the security for the construction of the Project. All capitalized terms not defined within this Agreement shall have the meanings ascribed to such terms in the 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. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Developer have entered into this Third Amendment. The City and the Developer each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. Security Amendment. Section 4.10 of the DDA is hereby amended to read as follows:

4.10 Security.

(a) Required Security. At the time Developer executes the Third Amendment, Developer shall furnish to City the following bonds, letters of credit, instruments of credit (assignment of deposit account) or other security acceptable to City in its sole and absolute discretion and satisfying the requirements of the applicable provisions of this Section 4.10 below (hereinafter "Security Instrument"):

(i) A Security Instrument securing Developer's faithful performance of all of the Works of Improvement ("Faithful Performance Security Instrument"), in the amount of \$3,000,000 equal to 100% of the estimated Project Site restoration costs.

This Agreement shall not be effective for any purpose until such Security Instruments are supplied to and approved by City in accordance herewith.

(b) Form of Security Instrument. The Security Instrument shall be in the amount required under Section 4.10 (a) shall meet the following minimum requirements and otherwise shall be in a form provided by City or otherwise approved by the City Attorney:

(i) Bond. For a Security Instrument provided in the form of a bond, any such bond must be issued and executed by an insurance company or bank authorized to transact surety business in the State of California. Any insurance company

acting as surety shall have a minimum rating of A-IX, as rated by the current edition of Best's Key Rating Guide published by A.M. Best's Company, Oldwick, New Jersey, 08858. Any bank acting as surety shall have a minimum rating of AA, as rated by Moody's or Standard & Poor's.

(ii) Letters of Credit. For a Security Instrument which is a letter of credit, any letter of credit shall be an original separate unconditional, irrevocable, negotiable and transferable commercial letter of credit issued by a financial institution with offices in the State of California acceptable to City. Any such letter of credit shall specifically permit City to draw on same by unilateral certification of the City Engineer of the City that Developer is in default under its performance obligations hereunder or in the event Developer fails to deliver a replacement letter of credit not less than thirty (30) days prior to the date of expiration of any such letter of credit.

(iii) Instrument of Credit. For Security Instruments which are Instruments of Credit, any Instrument of Credit shall be an assignment of deposit account assigning as security to City all of Developer's interest in funds on deposit in one or more bank accounts with financial institutions acceptable to City.

(c) General Requirements for all Security Instruments.

(i) Payments under any Security Instrument shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the County of Riverside, State of California (and the Security Instrument shall so provide).

(ii) The Security Instrument shall have a minimum term of one (1) year after the deadline for Developer's completing the Project (other than Instruments of Credit, which shall have no defined term or expiration date).

(iii) The Security Instrument shall provide that changes may be made in the Project pursuant to the terms of this Agreement without notice to any issuer or surety and without affecting the obligations under such Security Instrument.

(iv) If the Developer seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by the Developer to the City Engineer; and (3) upon its written acceptance by the City Engineer, be deemed a part of this Agreement. Upon the City Engineer's acceptance of a replacement security, the former security may be released by the City.

(d) Developer's Liability. While no action of Developer shall be required in order for City to realize on its security under any Security Instrument, Developer agrees to cooperate with City to facilitate City's realization under any Security Instrument, and to take no action to prevent City from such realization of any Security Instrument. Notwithstanding the giving of any Security Instrument or the subsequent expiration of any Security Instrument or any failure by any surety or financial institution to perform its obligations with respect thereto, Developer shall be personally liable for performance

under this Agreement and for payment of the cost of the labor and materials for the Project to be constructed or installed hereby and shall, within ten (10) days after written demand therefor, deliver to City such substitute security as City shall require satisfying the requirements in this Section 4.10.

(e) Letters of Credit.

(i) In the event a letter of credit is given pursuant to Section 4.10(b)(ii), City shall be entitled to draw on any such letter of credit if a replacement letter of credit (expiring in not less than one (1) year, unless City agrees to a lesser term in City's sole and absolute discretion) is not delivered not less than thirty (30) days prior to the expiration of the original letter of credit, such substitute letter of credit being in the same amount and having the terms and conditions as the initial letter of credit delivered hereunder, issued by a financial institution acceptable to City as of the date of delivery of the replacement letter of credit.

(ii) In the event of draw by the City on a letter of credit, the City may elect, in its sole and absolute discretion, to apply any such funds drawn to the obligations secured by such letter of credit or to hold such funds in an account under the control of the City, with no interest accruing thereon for the benefit of the Developer. If the City elects to hold the funds in an account pursuant to the foregoing, City may thereafter at any time elect instead to apply such funds as provided in the foregoing. Developer agrees and hereby grants City a security interest in such account to the extent required for City to realize on its interests therein, and agrees to execute and deliver to City any other documents requested by City in order to evidence the creation and perfection of City's security interest in such account.

(f) Release of Security Instrument. The City shall release the Security Instrument as follows:

(i) City shall release the Faithful Performance Security Instrument and Labor and Materials Security Instrument when all of the following have occurred:

A. Developer has made written request for release and provided evidence of satisfaction of all other requirements in this Agreement;

B. The City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

3. Payment for Street Repair. A new Subsection 5.3(c) to the DDA is added to read as follows:

(c) On or before January 15, 2025, Developer shall make a cash payment to City in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) for the purpose of paying for repairs to Desert Willow Drive and Market

Place Drive arising in part from the construction activities associated with the Project. Such repairs will be made by the City upon completion of the Project.

4. Counterparts. This Third 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 PAGE)

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DISPOSITION AND DEVELOPMENT AGREEMENT

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

CITY:

CITY OF PALM DESERT, a charter city
and municipal corporation

Date: August 22, 2024

By: _____

L. TODD HILEMAN
CITY MANAGER

APPROVED AS TO FORM:

By: _____

ISRA SHAH
CITY ATTORNEY

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Signatory Page

DEVELOPER:

Date: _____

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: _____
JUSTIN WHITE
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 _____