

## **AGREEMENT FOR THE EXCHANGE OF REAL PROPERTY**

THIS AGREEMENT FOR THE EXCHANGE OF REAL PROPERTY (this “**Agreement**” or “**Exchange Agreement**”), is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2023 (“**Effective Date**”) by and between **DESERT WAVE VENTURES LLC**, a Delaware limited liability company (“**DWV**”), and the **CITY OF PALM DESERT** (“**City**”), a California municipal corporation. DWV and City are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

### **RECITALS**

A. DWV is the owner of (i) that certain real property commonly known as Assessor’s Parcel Numbers (APN’s) 620-400-008, 620-420-024 and 620-420-023, consisting of approximately 17.68 acres, located in the City of Palm Desert, California, and more particularly described as Lot 8 of Tract Map No. 28540, filed in Book 264 Pages 4 through 15, inclusive of maps, Records of Riverside County, California (the “**DWV Land**”); (ii) all rights, privileges and easements currently owned by DWV which are appurtenant to the DWV Land, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the DWV Land, as well as all air rights, water, water rights and water stock relating to the DWV Land and any other easements, rights-of-way or appurtenances used in connection with the beneficial use and enjoyment of the DWV Land (collectively, the “**DWV Appurtenances**”); and (iii) all of the interest of DWV in any intangible personal property, to the extent related to or used in connection with the ownership, use and operation of the DWV Land or the DWV Appurtenances, including all approvals, dedications, subdivision maps and entitlements issued, approved or granted by any governmental agency in connection with the DWV Land or the DWV Appurtenances, and any and all development rights related to or used in connection with the DWV Land or the DWV Appurtenances (collectively the “**DWV Intangible Property**”).

B. The DWV Land, the DWV Appurtenances and the DWV Intangible Property are collectively hereinafter referred to as the “**DWV Property**”.

C. City is the owner of (i) that certain real property commonly known as APN’s 620-420-009 and 620-420-011, generally located adjacent to the DWV Property, located in the City of Palm Desert, California, including the real property more particularly described as Lots 13 and 15 of Tract Map No. 28540, filed in Book 264 Pages 4 through 15, inclusive of maps, Records of Riverside County, California (“**City Land**”); (ii) all rights, privileges and easements currently owned by the City which are appurtenant to the City Land, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the City Land, as well as all air rights, water, water rights and water stock relating to the City Land and any other easements, rights-of-way or appurtenances used in connection with the beneficial use and enjoyment of the City Land, (collectively, the “**City Appurtenances**”); and (iii) all of the interest of the City in any intangible personal property, to the extent related to or used in connection with the ownership, use and operation of the City Land or the City Appurtenances, including all approvals, dedications, subdivision maps and entitlements issued, approved or granted by any governmental agency in connection with the City Land or the City Appurtenances, and any and

all development rights related to or used in connection with the City Land or the City Appurtenances (collectively the "City Intangible Property").

D. The City Land, the City Appurtenances and the City Intangible Property are collectively hereinafter referred to as the "City Property".

E. DWV desires to exchange approximately 2,139 square feet of the DWV Property, as more particularly described in Exhibit "A" attached hereto ("DWV Exchange Property") with the City for (i) approximately 4,604 square feet of the City Property, as more particularly described in Exhibit "B" attached hereto, and (ii) approximately 549 square feet of the City Property, as more particularly described in Exhibit "C" attached hereto (collectively, the "City Exchange Property").

NOW, THEREFORE, based upon the foregoing facts, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Exchange.** Upon the satisfaction or waiver of all of the conditions precedent to the Close of Escrow set forth in Section 5 below, (a) DWV shall acquire the City Exchange Property from City and (b) City shall acquire the DWV Exchange Property from DWV (the "Exchange").

2. **Escrow and Title.**

2.1. **Escrow Holder.** The Exchange shall be consummated through an escrow (the "Escrow") at \_\_\_\_\_, located at \_\_\_\_\_, escrow officer, \_\_\_\_\_ (the "Escrow Holder").

2.2. **Title Company.** Any title policies issued for the benefit of the City with respect to the DWV Exchange Property and to DWV with respect to the City Exchange Property, respectively and as applicable, in connection with the Exchange shall be issued by \_\_\_\_\_, located at \_\_\_\_\_, title officer, \_\_\_\_\_ (the "Title Company").

2.3. **Escrow Instructions.** Escrow shall be opened within three (3) business days following the execution of this Agreement by delivery to Escrow and acceptance of this Agreement by Escrow Holder in writing. Escrow Holder shall open an Escrow for the consummation of the Exchange pursuant to the terms of this Agreement and this Agreement shall constitute the joint escrow instructions of the Parties to Escrow Holder. Upon Escrow Holder's receipt of the fully executed Agreement, Escrow Holder is authorized to act in accordance with the terms of this Agreement. Buyer and Seller shall execute Escrow Holder's general escrow instructions upon request; provided, however, that if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control.

2.4. **Definition of Close of Escrow.** For purposes of this Agreement, the term "Close of Escrow" shall mean the time when Escrow Holder shall have recorded the deeds as set forth in Section 6.4.5 below.

3. **DWV's Approval of Condition of Title / Due Diligence.**

3.1. **DWV's Review of Condition of Title.** Within five (5) business days following the Opening of Escrow, the Escrow Holder shall deliver a current preliminary title report (the "**City Exchange Property Title Report**"), covering the City Exchange Property. The preliminary title report shall show the status of title to the City Exchange Property as of the date of the preliminary title report and be accompanied by access by hyperlink to all documents referred to on Schedule B of the preliminary title report. DWV shall have fifteen (15) days from the receipt of the City Exchange Property Title Report to give City and Escrow Holder written notice of its approval of the City Exchange Property Title Report or the disapproval of any title exception that is unacceptable to DWV. Those exceptions which DWV has approved on the City Exchange Property Title Report are hereinafter referred to as the "**City Exchange Property Permitted Exceptions.**" The City Exchange Property Permitted Exceptions shall exclude any delinquent taxes or any taxes due and payable prior to the Close of Escrow and/or any and all other monetary liens or encumbrances on the City Exchange Property.

3.2. **City Exchange Property Title Insurance Policy.** At the option of DWV, and upon DWV's request, at the Close of Escrow and as a condition thereto, the Title Company shall issue to DWV a policy of title insurance (the "**City Exchange Property Title Policy**") as to the City Exchange Property, containing the terms and provisions set forth in this Section 3.2. The City Exchange Property Title Policy shall be an ALTA Standard Coverage Owner's Policy of Title Insurance issued by the Title Company in an amount determined by DWV, showing fee simple title to the City Exchange Property vested in DWV, subject only to non-delinquent taxes and assessments, the City Exchange Property Permitted Exceptions, and such other matters as to which DWV may consent in writing. The premium for the City Exchange Property Title Policy and any costs in connection with the search and examination of title and/or for the issuance of the City Exchange Property Title Report shall be paid by DWV. The City Exchange Property Title Policy shall be issued without reliance on any indemnity of City or any third party to induce Title Company to issue the City Exchange Property Title Policy, without the prior written consent of DWV. If DWV so elects and the Title Company agrees, the City Exchange Property Title Policy may include such endorsements as DWV may reasonably request; provided however that all such endorsements shall be issued at DWV's sole cost and expense. In addition, if DWV so elects and the Title Company agrees to issue an ALTA Extended Coverage Owner's Policy (2006 Form), the City Exchange Property Title Policy as defined above shall be an ALTA Extended Coverage Policy rather than a ALTA Standard Coverage Policy, with all other elements remaining the same; provided however that such ALTA Extended coverage shall be issued at DWV's sole cost and expense.

4. **City's Approval of Condition of Title.**

4.1. **City's Review of Condition of Title.** Within five (5) business days following the Opening of Escrow, the Escrow Holder shall deliver a current preliminary title report (the "**DWV Exchange Property Title Report**"), covering the DWV Exchange Property. The preliminary title report shall show the status of title to the DWV Exchange Property as of the date of the preliminary title report and be accompanied by access by hyperlink to all documents referred to on Schedule B of the preliminary title report. City shall have fifteen (15) days from the receipt of the DWV Exchange Property Title Report to give DWV and Escrow Holder

written notice of its approval of the DWV Exchange Property Title Report or the disapproval of any title exception that is unacceptable to DWV. Those exceptions which City has approved on the DWV Exchange Property Title Report are hereinafter referred to as the “**DWV Exchange Property Permitted Exceptions.**” The DWV Exchange Property Permitted Exceptions shall exclude any delinquent taxes or any taxes due and payable prior to the Close of Escrow and/or any and all other monetary liens or encumbrances on the DWV Exchange Property.

4.2. **DWV Title Insurance Policy.** At the option of the City, and upon the City’s request, at the Close of Escrow and as a condition thereto, the Title Company shall issue to City a policy of title insurance (the “**DWV Exchange Property Title Policy**”) as to all or part of the DWV Exchange Property, containing the terms and provisions set forth in this Section 4.2. The DWV Exchange Property Title Policy shall be an ALTA Standard Coverage Owner’s Policy of Title Insurance issued by the Title Company in an amount determined by the City, showing fee simple title to the DWV Exchange Property, vested in City, subject only to non-delinquent taxes and assessments, the DWV Exchange Property Permitted Exceptions, and such other matters as to which City may consent in writing. The premium for the DWV Exchange Property Title Policy and any costs in connection with the search and examination of title and/or for the issuance of the DWV Exchange Property Title Report (including any endorsements that may be requested by the City as provided herein) shall be paid by DWV. The DWV Exchange Property Title Policy shall be issued without reliance on any indemnity of DWV or any third party to induce Title Company to issue the DWV Exchange Property Title Policy, without the prior written consent of City. If City so elects and the Title Company agrees, the DWV Exchange Property Title Policy may include such endorsements, respectively and as applicable, as City may reasonably request. In addition, if City so elects and the Title Company agrees to issue one or more ALTA Extended Coverage Owner’s Policy (2006 Form), the “**DWV Exchange Property Title Policy**” as defined above shall be an ALTA Extended Coverage Policy rather than an ALTA Standard Coverage policies, with all other elements remaining the same; provided however that any additional cost (above the cost of the DWV Exchange Property Title Policy and endorsements otherwise provided for herein) for the issuance of such extended ALTA Extended coverage shall be paid by the City.

5. **Conditions Precedent to Close of Escrow.**

5.1. **DWV’s Conditions.** Each of the following shall constitute a condition precedent to the obligations of DWV to close the Escrow and may be waived only by a written waiver executed by DWV and delivered to City and to Escrow Holder:

5.1.1. **Documents.** The applicable documents described in Section 6.3.2 below shall have been deposited in Escrow by City.

5.1.2. **Title Policy.** If requested by DWV, the Title Company shall be irrevocably committed to issue the City Exchange Property Title Policy upon the Close of Escrow.

5.1.3. **Acceptance of Property.** DWV shall be satisfied, after reviewing Title, that the City Exchange Property is suitable for its intended uses and acceptable to DWV.

5.1.4. No Material Change. As of the Close of Escrow, there shall be no material change in the City Exchange Property that would materially impair DWV's use or development of the City Exchange Property.

5.1.5. Representations and Warranties. All of City's representations and warranties as set forth herein shall be true as of the Close of Escrow.

5.1.6. No Default. City shall not be in material default hereunder. If DWV does not give Escrow Holder written notice of City's default, for purposes of this Section 5.1.6 only, City shall be deemed not to be in default hereunder, and Escrow Holder shall proceed with the Close of Escrow as though City were not in default. DWV's failure to give such notice to Escrow Holder shall not excuse performance by City of any obligation hereunder.

5.2. City's Conditions. Each of the following shall constitute a condition precedent to the obligations of City to close the Escrow and may be waived only by a written waiver executed by City and delivered to DWV and to Escrow Holder:

5.2.1. Documents. The applicable documents described in Section 6.3.1 below shall have been deposited in Escrow by DWV.

5.2.2. Title Policy. If requested by City, the Title Company shall be irrevocably committed to issue the DWV Exchange Property Title Policy upon the Close of Escrow.

5.2.3. Acceptance of Property. The City shall be satisfied, after reviewing Title, that the DWV Exchange Property is suitable for its intended uses and acceptable to the City.

5.2.4. No Material Change. As of the Close of Escrow, there shall be no material change in the DWV Exchange Property that would materially impair City's use or development of the DWV Exchange Property.

5.2.5. Representations and Warranties. All of DWV's representations and warranties as set forth herein shall be true as of the Close of Escrow.

5.2.6. No Default. DWV shall not be in material default hereunder. If City does not give Escrow Holder written notice of DWV's default, for purposes of this Section 5.2.6 only, DWV shall be deemed not to be in default hereunder, and Escrow Holder shall proceed with the Close of Escrow as though DWV were not in default. City's failure to give such notice to Escrow Holder shall not excuse performance by DWV of any obligation hereunder.

6. Close or Cancellation of Escrow.

6.1. Closing Date.

6.1.1. Provided that this Agreement is not earlier terminated pursuant to the terms and provisions hereof and provided that all of the conditions precedent to the Close of Escrow have been satisfied or waived, the Parties agree that the Escrow shall close and Escrow Holder is instructed to close the Escrow on or before \_\_\_\_\_, 2023 (the "**Closing Date**"),

unless extended as described in Section 6.1.2; provided however, that in no event shall the Closing Date be later than \_\_\_\_\_, 2023 (“**Outside Closing Date**”). Escrow Holder by closing the Escrow shall be deemed to have irrevocably committed to cause the Title Company to issue any requested DWV Exchange Property Title Policy and City Exchange Property Title Policy.

6.1.2. In the event that either Party believes it is necessary to extend the Closing Date, that Party shall have the right to unilaterally extend the Closing Date by thirty (30) days by providing written notice to the other Party before the Closing Date. Each Party shall only be entitled to one unilateral extension. The Parties may subsequently extend the Closing Date only by written agreement of both Parties, except that in no event shall the Closing Date be later than the Outside Closing Date without the written agreement of both Parties.

6.1.3. In the event that the Close of Escrow fails to occur by the Outside Closing Date, and neither Party is in default of its obligations hereunder, then the Party for whose benefit the non-satisfied condition exists may cancel the Escrow by written notice to the other Party and to Escrow Holder. In the event that, due to an “**Event of Default**” by a “**Defaulting Party**” (as the quoted terms are defined in Section 9.1 below), the Close of Escrow fails to occur by the Outside Closing Date, then without waiving any rights or remedies which the non-Defaulting Party may have against the Defaulting Party under Section 9 of this Agreement, the non-Defaulting Party may cancel the Escrow upon written notice to the Defaulting Party and to Escrow Holder. In the event that the non-Defaulting Party elects not to terminate this Agreement, then the non-Defaulting Party may pursue the remedies for such Event of Default as provided in Section 9 below.

## 6.2. Escrow Cancellation.

6.2.1. If, for any reason, the Escrow is cancelled pursuant to Section 6.1.3 above, Escrow Holder shall return to the Parties delivering same all instruments which are then held by Escrow Holder in connection with the Escrow.

6.2.2. If the Escrow is cancelled pursuant to Section 6.1.3 above and neither Party is in default of its obligations hereunder, this Agreement shall be deemed to be terminated (with the exception of those provisions which expressly state that they are to survive such termination), and DWV shall pay the Escrow fee and cancellation charges, if any. In such event, neither Party shall be obligated to the other to close the Escrow hereunder.

6.2.3. If the Escrow is cancelled pursuant to Section 6.1.3 above and DWV is the Defaulting Party, DWV shall pay the Escrow fee and cancellation charges, if any.

6.2.4. If the Escrow is cancelled pursuant to Section 6.1.3 above and City is the Defaulting Party, City shall pay the Escrow fee and cancellation charges, if any.

6.3. **Items to be Delivered into Escrow.**

6.3.1. DWV. On or before one (1) business day prior to the Closing Date, DWV shall execute and deposit in Escrow the following:

(a) Immediately available funds in the amount of DWV's share of costs and prorations described in Sections 7.1 and 7.2 below;

(b) A fully executed grant deed conveying fee simple title to the DWV Exchange Property to the City (the "**DWV Grant Deed**"), in the form of Exhibit "D" attached hereto, in recordable form;

(c) A nonforeign transferor declaration (the "**Nonforeign Transferor Declaration**") in the form of Exhibit "E" attached hereto;

(d) A California state tax withholding certificate in accordance with the requirements of California Revenue and Taxation Code Sections 18805(d) and 26131 (California Form 593-W for Non-Individual Sellers and California Form 593-C for Individual Sellers), executed by DWV (the "**California Tax Certificate**"); and

(e) Such other documents as may be reasonably required by Title Company or Escrow Holder in order to issue one or more of the DWV Exchange Property Title Policy, if requested by the City, or otherwise required to transfer the DWV Exchange Property to City in accordance with the terms of this Agreement.

6.3.2. City. On or before one (1) business day prior to the Closing Date, City shall execute and deposit in Escrow the following:

(a) Immediately available funds in the amount of City's share of costs and prorations described in Sections 7.1 and 7.3 below;

(b) A fully executed quitclaim deed conveying fee simple title to the City Exchange Property to DWV (the "**City Quitclaim Deed**"), , in the form of Exhibit "F" attached hereto, in recordable form;

(c) A nonforeign transferor declaration (the "**Nonforeign Transferor Declaration**") in the form of Exhibit "G" attached hereto;

(d) A California state tax withholding certificate in accordance with the requirements of California Revenue and Taxation Code Sections 18805(d) and 26131 (California Form 593-W for Non-Individual Sellers and California Form 593-C for Individual Sellers), executed by City (the "**California Tax Certificate**"); and

(e) Such other documents as may be reasonably required by Title Company or Escrow Holder in order to issue the City Exchange Property Title Policy, if requested, or otherwise required to transfer the City Exchange Property to DWV in accordance with the terms of this Agreement.

6.4. **Escrow Holder's Instructions.** At such time as the conditions precedent to the Close of Escrow have been satisfied or waived, Escrow Holder shall:

6.4.1. Collate the counterparts of the Exchange Agreement into two fully executed counterparts;

6.4.2. Date, as of the Close of Escrow, all instruments calling for a date;

6.4.3. Record the DWV Grant Deed and the City Quitclaim Deed in the Official Records of Riverside County, California ("**Official Records**");

6.4.4. Give City and DWV telephonic and email notice that the Close of Escrow has occurred; and

6.4.5. Deliver to City the DWV Exchange Property Title Policy, and to DWV the City Exchange Property Title Policy, if so requested.

6.5. **Post-Closing Matters.** After the Close of Escrow, Escrow Holder shall deliver the following:

6.5.1. To City: A copy, as recorded, of the DWV Grant Deed for the DWV Property, the original Nonforeign Transferor Declaration executed by DWV, the original California Tax Certificate executed by DWV, and plain copies of the Nonforeign Transferor Declaration and the California Tax Certificate executed by City.

6.5.2. To DWV: A copy, as recorded, of the Grant Deed for the City Exchange Property, the original Nonforeign Transferor Declaration executed by City, the original California Tax Certificate executed by City, and plain copies of the Nonforeign Transferor Declaration and the California Tax Certificate executed by DWV.

6.6. IRS Form 1099-S. For purposes of complying with Section 6045 of the Code, as amended by Section 1521 of the Code, Escrow Holder shall be deemed the "person responsible for closing the transaction," and shall be responsible for obtaining the information necessary to file and shall file within the time specified with the Internal Revenue Service Form 1099-S, "Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions."

7. **Costs and Prorations.**

7.1. **Prorations.** Escrow Holder shall prorate all non-delinquent real property taxes and assessments as to the City Exchange Property between City and DWV as of the Close of Escrow based upon a 365-day year and based upon the latest available tax bill. Escrow Holder shall prorate all non-delinquent real property taxes and assessments as to the DWV Exchange Property, between DWV and City as of the Close of Escrow based upon a 365-day year and based upon the latest available tax bill for such property. The Parties agree that if such prorations are inaccurate because the latest available tax bill does not represent the taxes actually assessed, then the Parties will, as soon as tax bills actually covering the period during which the



Close of Escrow takes place are available, make such further adjustments outside of the Escrow as may be appropriate so that each Party shall have borne all taxes allocable to the period during which it was the owner of its respective property.

7.2. **Costs to be Paid by DWV.** DWV shall pay the following costs:

7.2.1. The premium for the City Exchange Property Title Policy, if such policy is requested by DWV;

7.2.2. The premium for the DWV Exchange Property Title Policy, if such policy is requested by the City (subject to the limitations set forth in Section 4.2 hereof)

7.2.3. Documentary transfer taxes, if any, due with respect to the transfer of the DWV Exchange Property and the City Exchange Property;

7.2.4. The Escrow fee.

7.3. **Costs to be Paid by City.** City shall pay the following costs:

7.3.1. If requested by the City, the additional cost relating to an ALTA Extended coverage title policy (subject to the limitations set forth in Section 4.2 hereof).

## 8. **Representations and Warranties; Covenants.**

8.1. **DWV's Representations and Warranties.** As a material inducement to City to enter into this Agreement, DWV makes the following covenants, representations and warranties to City set forth in this Section 8.1 as of the date hereof and as of the Close of Escrow.

8.1.1. **Property Owner.** DWV is the owner of the DWV Exchange Property and has the right, power and authority to transfer the same to City pursuant to this Agreement.

8.1.2. **DWV's Authority to Execute Agreement.** DWV is duly organized and existing under the laws of the state of its organization and has been duly registered and qualified to transact intrastate business in the State of California. Neither the execution and delivery of this Agreement nor the performance or consummation of the transactions contemplated by this Agreement will result in any breach of or constitute a default under or conflict with any agreement, covenant, law, regulation, ordinance or obligation binding upon DWV. No approvals, authorizations or consents of any public body or of any person are necessary in connection herewith. DWV has the legal right, power and authority to enter into this Agreement and all documents, instruments or agreements referenced herein to be executed by DWV, and to consummate the transaction contemplated hereby. All individuals executing this Agreement and all other documents, instruments or agreements required hereunder, on behalf of DWV, have the legal right, power and actual authority to bind DWV to the terms and conditions hereof and thereof.

8.1.3. **Compliance with Law.** DWV has no knowledge and has received no notice (i) that the DWV Exchange Property is in violation of any applicable statutes, ordinances, and regulations, including those relating to environmental and health and safety requirements

including those governing the storage, discharge, use and cleaning of toxic or hazardous substances and materials; (ii) of any presently pending or threatened action or proceeding under any environmental or health and safety statutes, ordinances, or regulations; or (iii) of the existence of any present or pending order or directive of any city, county, state, or federal authority, or any agency thereof, requiring that any work or repair, maintenance, improvement, or pollution or contamination abatement be performed on the DWV Exchange Property.

8.1.4. No Litigation. There are no actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, pending or, to the best of DWV's knowledge, threatened against DWV or the DWV Exchange Property or relating to or arising out of the ownership, management, condition, or operation of the DWV Exchange Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

8.1.5. No Mechanic's Liens. No work has been done upon, or materials delivered to, the DWV Property by or at the request of DWV, or with DWV's knowledge, which is not fully paid for, nor, to the best of DWV's knowledge, does any person, firm or corporation now have, nor, to the best of DWV's knowledge, will it have upon the giving of any notice or passage of time or otherwise, any mechanic's or materialman's lien rights with respect to the DWV Exchange Property or any part or parcel thereof.

8.1.6. No Adverse Agreements. There are no adverse possessors, tenancies or occupancy agreements affecting possession of the DWV Exchange Property, or any portion thereof, except as disclosed in this Agreement, nor has any option to purchase the DWV Exchange Property, or any portion thereof, been granted by DWV to any party. No party (other than the City pursuant to this Agreement) has the right to acquire the DWV Exchange Property.

8.1.7. No Bankruptcy Proceedings. DWV is not the subject of a bankruptcy, insolvency or similar proceeding.

8.1.8. Environmental Status. In accordance with California Health and Safety Code Section 25359.7, DWV warrants and represents to City that it is not aware that any release of Hazardous Materials has come to be located upon or under the DWV Exchange Property. Neither DWV nor, to the actual knowledge of DWV, without duty of inquiry, any third parties during the period of time the DWV Exchange Property has been owned by DWV have generated, handled, manufactured, stored, used, transported or discharged any Hazardous Materials on, in or under the DWV Exchange Property, the groundwater or any adjacent property. DWV is not aware of any underground storage tanks located on or under the DWV Exchange Property. As used herein, the term "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations promulgated thereto: (1) any "hazardous substance" within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. §9601, et seq. or the California Hazardous Substance Account Act, Cal. Health and Safety Code §25300 et seq. or the Porter-Cologne Water Quality Act, Cal. Water Code §13000 et seq. or the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; (2) any "hazardous waste" within the meaning of

the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; or (3) any other substance, chemical, waste, toxicant, pollutant or contaminant regulated by any federal, state or local law, statute, rule, regulation or ordinance for the protection of health or the environment, including, without limitation, any petroleum products or fractions thereof.

8.1.9. AS-IS. DWV acknowledges that DWV has inspected the City Exchange Property and made its own independent investigation of the City Exchange Property. DWV further acknowledges that it is acquiring the City Exchange Property “AS-IS,” in reliance solely on its own inspection of the City Exchange Property and on City’s representations and warranties as set forth herein.

8.2. **City’s Representations and Warranties**. As a material inducement to DWV to enter into this Agreement, City makes the following covenants, representations and warranties to DWV set forth in this Section 8.2 as of the date hereof and as of the Close of Escrow.

8.2.1. Property Owner. City is the owner of the City Exchange Property and has the right, power and authority to transfer the same to DWV pursuant to this Agreement.

8.2.2. City’s Authority to Execute Agreement. City is a duly organized, validly existing public agency organized and existing under the laws of the State of California. Neither the execution and delivery of this Agreement nor the performance or consummation of the transactions contemplated by this Agreement will result in any breach of or constitute a default under or conflict with any agreement, covenant, law, regulation, ordinance or obligation binding upon City. No approvals, authorizations or consents of any public body or of any person are necessary in connection herewith. City has the legal right, power and authority to enter into this Agreement and all documents, instruments or agreements referenced herein to be executed by City, and to consummate the transaction contemplated hereby. All individuals executing this Agreement and all other documents, instruments or agreements required hereunder, on behalf of City, have the legal right, power and actual authority to bind City to the terms and conditions hereof and thereof.

8.2.3. Compliance with Law. City has no knowledge and has received no notice (i) that the City Exchange Property is in violation of any applicable statutes, ordinances, and regulations, including those relating to environmental and health and safety requirements including those governing the storage, discharge, use and cleaning of toxic or hazardous substances and materials; (ii) of any presently pending or threatened action or proceeding under any environmental or health and safety statutes, ordinances, or regulations; or (iii) of the existence of any present or pending order or directive of any city, county, state, or federal authority, or any agency thereof, requiring that any work or repair, maintenance, improvement, or pollution or contamination abatement be performed on the City Exchange Property.

8.2.4. No Litigation. There are no actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, pending or, to the best of City’s knowledge, threatened against City or the City Exchange Property or relating to or arising out of the ownership, management, condition, or operation of the City Exchange Property, in any court or

before or by any federal, state, county or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

8.2.5. No Mechanic's Liens. No work has been done upon, or materials delivered to, the City Exchange Property by or at the request of City, or with City's knowledge, which is not fully paid for, nor, to the best of City's knowledge, does any person, firm or corporation now have, nor, to the best of City's knowledge, will it have upon the giving of any notice or passage of time or otherwise, any mechanic's or materialman's lien rights with respect to the City Exchange Property or any part or parcel thereof.

8.2.6. No Adverse Agreements. There are no adverse possessors, tenancies or occupancy agreements affecting possession of the City Exchange Property, or any portion thereof, except as disclosed in this Agreement, nor has any option to purchase the City Exchange Property, or any portion thereof, been granted by City to any party. No party (other than DWV pursuant to this Agreement) has the right to acquire the City Exchange Property.

8.2.7. No Bankruptcy Proceedings. City is not the subject of a bankruptcy, insolvency or similar proceeding.

8.2.8. Environmental Status. In accordance with California Health and Safety Code Section 25359.7, City warrants and represents to DWV that it is not aware that any release of Hazardous Materials has come to be located upon or under the City Exchange Property. Neither City nor, to the actual knowledge of City, without duty of inquiry, any third parties during the period of time the City Exchange Property has been owned by City have generated, handled, manufactured, stored, used, transported or discharged any Hazardous Materials on, in or under the City Exchange Property, the groundwater or any adjacent property. City is not aware of any underground storage tanks located on or under the City Exchange Property. As used herein, the term "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations promulgated thereto: (1) any "hazardous substance" within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. §9601, et seq. or the California Hazardous Substance Account Act, Cal. Health and Safety Code §25300 et seq. or the Porter-Cologne Water Quality Act, Cal. Water Code §13000 et seq. or the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; (2) any "hazardous waste" within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; or (3) any other substance, chemical, waste, toxicant, pollutant or contaminate regulated by any federal, state or local law, statute, rule, regulation or ordinance for the protection of health or the environment, including, without limitation, any petroleum products or fractions thereof.

8.2.9. AS-IS. City acknowledges that City has inspected the DWV Exchange Property and made its own independent investigation of the DWV Exchange Property. City further acknowledges that it is acquiring the DWV Exchange Property "AS-IS," in reliance solely on its own inspection of the DWV Exchange Property and on DWV's representations and warranties as set forth herein.

8.3. **DWV 's Covenants.**

8.3.1. **Operation of DWV Exchange Property.** DWV shall not hypothecate, transfer, encumber or affirmatively take any other action with respect to the DWV Exchange Property which would render DWV unable to convey the DWV Exchange Property to City at the Close of Escrow or impair City's intended use of the DWV Exchange Property as contemplated herein.

8.4. **City's Covenants.**

8.4.1. **Operation of City Exchange Property.** City shall not hypothecate, transfer, encumber or affirmatively take any other action with respect to the City Exchange Property which would render City unable to convey the City Exchange Property to DWV at the Close of Escrow or impair DWV's intended use of the City Exchange Property as contemplated herein.

9. **Default.**

9.1. **Events of Default.** The failure of a Party (the "**Defaulting Party**") to perform any material act to be performed by such Party, to refrain from performing any material prohibited act, or to fulfill any condition to be fulfilled by such Party under this Agreement, or under any agreement referred to herein or attached hereto as an exhibit, within ten (10) days after written notice of such failure from the Non-Defaulting Party shall be an "**Event of Default**" by the Defaulting Party with respect to the Defaulting Party's obligations hereunder; provided, however, that if more than ten (10) days are reasonably required in order to cure such Event of Default, then the Defaulting Party shall be entitled to a maximum of thirty (30) days to effect such cure, provided the Defaulting Party commences cure within such ten (10) day period and diligently proceeds to complete such cure within such thirty (30) day period.

9.2. **Remedies.** Upon the occurrence of any Event of Default by a Defaulting Party, the non-Defaulting Party shall have such rights or remedies available to it under this Agreement or at law or in equity.

10. **Casualty Loss; Condemnation.**

10.1. **Notice Re Condemnation or Casualty; Election.** In the event that, prior to the Close of Escrow, all or any portion of the DWV Exchange Property or City Exchange Property is taken or proposed to be taken as a result of the exercise or proposed exercise of the power of eminent domain (a "**Condemnation Action**"), or all or any portion of the DWV Exchange Property or City Exchange Property is damaged by earthquake, flood or fire (a "**Casualty**"), then the Party that is the current property owner shall, within ten (10) days thereafter, give written notice of such Condemnation Action or Casualty to the other Party ("**Noticed Party**"). Such Noticed Party shall have thirty (30) days following receipt of such notice to elect in writing to accept or not to accept the DWV Exchange Property or City Exchange Property, as the case may be, subject to such Casualty or Condemnation Action. Failure of a Noticed Party to notify the other Party of its election within such thirty (30) day period shall be deemed an election not to accept the DWV Exchange Property or City Exchange Property, as the case may be, subject to such Casualty or Condemnation Action.

10.2. **Termination of Agreement.** In the event that a Noticed Party elects not to accept the DWV Exchange Property or City Exchange Property, as the case may be, subject to such Casualty or Condemnation Action as provided in Section 10.1 above, Noticed Party shall cancel the Escrow by written notice to Escrow Holder and the Party that is the current property owner and this Agreement shall be deemed to be terminated (with the exception of those provisions which expressly state that they are to survive such termination), and DWV and City shall each bear one-half (1/2) of the Escrow fee and cancellation charges. In such event, neither Party shall be obligated to the other to close the Escrow hereunder.

10.3. **Proceeds of Condemnation or Casualty Insurance.** In the event that a Noticed Party elects to accept the DWV Exchange Property or City Exchange Property, as the case may be, subject to a Casualty or Condemnation Action pursuant to Section 10.1 above, then the Party owning the property shall assign to the Noticed Party all rights, causes of action, claims, benefits, payments and awards arising from such Condemnation Action or Casualty (including, without limitation, any amount due from or paid by any insurance company or any other party as a result of the damage).

11. **Possession.** Possession of the DWV Exchange Property shall be delivered to City upon the Close of Escrow, subject only to the DWV Exchange Property Permitted Exceptions. Possession of the City Exchange Property shall be delivered to DWV upon the Close of Escrow, subject only to the City Exchange Property Permitted Exceptions.

12. **Brokerage Commissions.** Each Party warrants and represents to the other that no broker, finder or other intermediary hired or employed by it is entitled to a commission, finder's fee or other compensation based upon the transaction contemplated hereby and each Party shall indemnify and hold harmless the other Party from and against any and all claims, liabilities, losses, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and litigation expenses) caused by or arising out of the claim of any broker, finder or other intermediary alleging to have been employed or hired by such Party to a commission, finder's fee or other compensation based upon the transaction contemplated hereby. The obligations of DWV and City pursuant to this Section 12 shall survive beyond the Close of Escrow or if the Escrow is cancelled, beyond any termination of this Agreement.

13. **Miscellaneous.**

13.1. **Notices.** All notices or other communications between DWV and City required or permitted hereunder shall be in writing and personally delivered or sent by certified mail, return receipt requested and postage prepaid, sent by reputable overnight courier (such as Federal Express, UPS or DHL), or transmitted by electronic facsimile transmission (with electronic confirmation of receipt), to the following addresses:

If to DWV : Desert Wave Ventures LLC  
1555 Camino Del Mar, Suite 315C  
Del Mar, CA 92014  
Attn: John Luff

If to City: City of Palm Desert  
73-510 Fred Waring Drive  
Palm Desert, CA 92260  
Attn: City Manager

with a copy to: Best, Best & Krieger, LLP  
74-760 Highway 111, Suite 200  
Indian Wells, CA 92210  
Attn: Robert Hargreaves

Opus  
514 Via Del Valle, Suite 203  
Solana Beach, CA 92075  
Attn: Justin White

Project Management Advisors, Inc  
420 Stevens Ave, Suite 170  
Solana Beach, CA 92075  
Attn: Matt Land

A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m. or otherwise on the day following personal delivery, or when received, if transmitted by electronic facsimile transmission (with electronic confirmation of receipt), or two (2) business days following the date the notice is postmarked, if mailed, or on the day following delivery to the applicable overnight courier, if sent by overnight courier. Either Party may change the address to which notices are to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

13.2. **Time of the Essence.** Time is of the essence for this Agreement and each and every term and provision hereof.

13.3. **Interpretation; Governing Law.** This Agreement shall be construed as if prepared by both Parties. This Agreement shall be construed, interpreted and governed by the laws of the State of California and the laws of the United States of America prevailing in California.

13.4. **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void, or against

public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

13.5. **Performance of Acts on Business Days.** Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

13.6. **Attorneys' Fees.** In the event of any legal action or other proceeding between the Parties regarding this Agreement, any of the documents attached hereto as exhibits, the DWV Exchange Property or the City Exchange Property (an "Action"), the prevailing Party shall be entitled to the payment by the losing Party of its reasonable attorneys' fees, court costs and litigation expenses, as determined by the court.

13.7. **Post-Judgment Attorneys' Fees.** The prevailing Party in any Action shall be entitled, in addition to and separately from the amounts recoverable under Section 13.6 above, to the payment by the losing Party of the prevailing Party's reasonable attorneys' fees, court costs and litigation expenses incurred in connection with (a) any appellate review of the judgment rendered in such Action or of any other ruling in such Action, and (b) any proceeding to enforce a judgment in such Action. It is the intent of the Parties that the provisions of this Section 13.7 be distinct and severable from the other rights of the parties under this Agreement, shall survive the entry of judgment in any Action and shall not be merged into such judgment.

13.8. **Further Assurances; Survival.** Each Party will, whenever and as often as it shall be requested to do so by the other Party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such further conveyances, assignments, approvals, consents and any and all other documents and do any and all other acts as may be necessary to carry out the intent and purpose of this Agreement.

13.9. **Entire Agreement; Amendments.** This Agreement, together with the other written agreements referred to herein, is intended by the Parties to be the final expression of their agreement with respect to the subject matter hereof and is intended as the complete and exclusive statement of the terms of the agreement between the Parties. As such, this Agreement supersedes any prior understandings between the Parties, whether oral or written. Any amendments to this Agreement shall be in writing and shall be signed by all Parties hereto.

13.10. **No Waiver.** A waiver by either Party hereto of a breach of any of the covenants or agreements hereof to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

13.11. **Assignment.** Neither Party hereto shall assign its rights under this Agreement without the prior written consent of the other Party, which consent may be given or withheld in such Party's sole discretion.



13.12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors and permitted assigns.

13.13. **Headings; Cross-References; Exhibits.** The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All cross-references in this Agreement, unless specifically directed to another agreement or document, shall refer to provisions in this Agreement and shall not be deemed to be references to any other agreements or documents. Each of the exhibits attached to this Agreement is hereby incorporated into this Agreement by this reference.

13.14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

13.15. **Effective Date.** This Agreement shall become effective on the date (the “**Effective Date**”) this Agreement is executed by the last of the persons required to bind the parties hereto as set forth opposite their respective signatures below.

13.16 **Special Condition.** Notwithstanding any other term or provision to the contrary set forth in this Agreement, in no event shall this Agreement be interpreted to require a transfer of real property by either party unless the DWV Exchange Property (described in Exhibit “A” attached hereto) and the City Exchange Property (described in Exhibits “B” and “C” attached hereto) are deemed suitable for transfer by both Parties, and are actually transferred to the other Party under the terms of this Agreement at the Close of Escrow.

13.17 **Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement as if fully and completely rewritten.

*[Signatures Included on Following Page]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date set forth opposite their respective signatures below.

Dated: 5/25/23

**DESERT WAVE VENTURES LLC**, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**CITY:**  
CITY OF PALM DESERT,  
a California municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to Form:

CITY ATTORNEY

By: \_\_\_\_\_

Name: Robert Hargreaves of Best Best &  
Krieger LLP

\_\_\_\_\_

**Attest**

**CITY CLERK**

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk



# ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

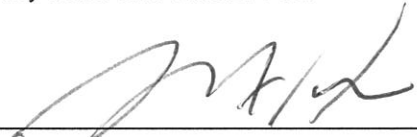
State of California  
County of San Diego )

On 8/25/2023 before me, Marc Kircos, Notary  
(insert name and title of the officer)

personally appeared Don Rudy,  
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  (Seal)



**ACCEPTANCE BY ESCROW HOLDER**

Escrow Holder hereby acknowledges receipt of this fully executed Agreement on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and accepts the escrow instructions set forth herein.

**ESCROW HOLDER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT "A"

Legal Description of DWV Exchange Property

**LEGAL DESCRIPTION**

**PARCEL "A"**

THAT PORTION OF LOT 8 OF TRACT NO. 28450 FILED IN BOOK 264 PAGES 4 THROUGH 15 INCLUSIVE OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, LOCATED IN SECTION 4, TOWNSHIP 5 SOUTH, RANGE 6 EAST, S.B.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWEST CORNER OF SAID LOT 8, ALSO BEING THE SOUTHEAST CORNER OF LOT 2 OF SAID TRACT MAP NO. 28450;

THENCE SOUTH  $89^{\circ}44'57''$  EAST 92.90 FEET ALONG THE NORTHERLY LINE OF SAID LOT 8;

THENCE LEAVING SAID NORTHERLY LINE SOUTH  $06^{\circ}06'47''$  EAST 3.41 FEET TO A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 125.00 FEET; A RADIAL LINE FROM SAID CURVE BEARS SOUTH  $06^{\circ}06'47''$  EAST;

THENCE SOUTHWEST ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 88.88 FEET THROUGH A CENTRAL ANGLE OF  $40^{\circ}44'28''$ ,

THENCE SOUTH  $43^{\circ}08'44''$  WEST 23.82 FEET TO THE EASTERLY LINE OF LOT 15 OF SAID TRACT MAP 28450;

THENCE NORTH  $00^{\circ}52'40''$  EAST 59.99 FEET ALONG SAID EASTERLY LINE OF LOT 15 TO THE **POINT OF BEGINNING**

**CONTAINING 2,139 SQUARE FEET, MORE OR LESS.**

**EXHIBIT "B"**

**Legal Description of City Exchange Property – Portion of Lot 15**

**LEGAL DESCRIPTION**

**PARCEL "B"**

THAT PORTION OF LOT 15 OF TRACT NO. 28450 FILED IN BOOK 264 PAGES 4 THROUGH 15 INCLUSIVE OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, LOCATED IN SECTION 4, TOWNSHIP 5 SOUTH, RANGE 6 EAST, S.B.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHWEST CORNER OF SAID LOT 8, ALSO BEING THE SOUTHEAST CORNER OF LOT 2 OF SAID TRACT MAP NO. 28450;

THENCE SOUTH 00°52'40" WEST 59.99 FEET ALONG THE EASTERLY LINE OF LOT 15 OF SAID TRACT MAP 28450 TO THE **TRUE POINT OF BEGINNING**;

THENCE SOUTH 00°50'56" WEST 32.65 FEET;

THENCE SOUTH 54°14'15" WEST 231.65 FEET;

THENCE SOUTH 79°34'39" WEST 43.17 FEET TO A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 160.00 FEET, A LINE RADIAL FROM SAID CURVE BEARS SOUTH 49°39'12" EAST;

THENCE NORTHEAST ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 51.07 FEET THROUGH A CENTRAL ANGLE OF 18°17'23";

THENCE NORTH 58°38'11" EAST 159.58 FEET;

THENCE NORTH 43°08'44" EAST 81.88 FEET TO THE **TRUE POINT OF BEGINNING**.

**CONTAINING** 4,604 SQUARE FEET, MORE OR LESS.

EXHIBIT "C"

Legal Description of City Exchange Property – Portion of Lot 13

**LEGAL DESCRIPTION**

**PARCEL "C"**

THAT PORTION OF LOT 13 OF TRACT NO. 28450 FILED IN BOOK 264 PAGES 4 THROUGH 15 INCLUSIVE OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, LOCATED IN SECTION 4, TOWNSHIP 5 SOUTH, RANGE 6 EAST, S.B.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHEAST CORNER OF LOT 13 AS SHOWN ON SAID TRACT MAP 28450, THENCE SOUTH 57°51'27" WEST 47.26 FEET ALONG THE NORTHERLY LINE OF SAID LOT 13 TO A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 95.00 FEET, ALSO BEING THE **TRUE POINT OF BEGINNING**;

THENCE LEAVING SAID NORTHERLY LINE SOUTHWEST ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 103.31 FEET THROUGH A CENTRAL ANGLE OF 62°18'34" TO THE WESTERLY LINE OF SAID LOT 13, A LINE RADIAL FROM SAID CURVE BEARS SOUTH 85°32'54" EAST;

THENCE NORTH 04°27'06" WEST 57.43 FEET ALONG SAID WESTERLY LINE TO THE NORTHWESTERLY CORNER OF SAID LOT 13;

THENCE NORTH 57°51'27" EAST 57.43 FEET ALONG THE NORTHERLY LINE OF SAID LOT 13 TO THE **TRUE POINT OF BEGINNING**.

**CONTAINING** 549 SQUARE FEET, MORE OR LESS.

**EXHIBIT "D"**

**DWV Grant Deed**

**WHEN RECORDED MAIL THIS DEED  
AND, UNLESS OTHERWISE SHOWN  
BELOW, MAIL TAX STATEMENT TO:**

**CITY OF PALM DESERT  
73-510 FRED WARING DRIVE  
PALM DESERT, CA 92260  
ATTN: CITY CLERK**

**SPACE ABOVE THIS LINE  
FOR RECORDER'S USE**

**Record for the Benefit of the City of Palm Desert Pursuant to Government Code Section 6103  
The undersigned Grantor declares that the Documentary Transfer Tax is \$ 0.  
Exempt from Documentary Transfer Taxes Pursuant to R & T Code Section 11922**

**APN:**

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

DESERT WAVE VENTURES LLC, A DELAWARE LIMITED LIABILITY COMPANY

Hereby GRANT(s) to:

CITY OF PALM DESERT, A CALIFORNIA MUNICIPAL CORPORATION

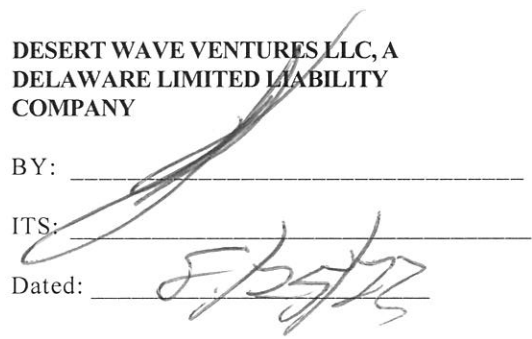
THAT CERTAIN REAL PROPERTY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND BY  
REFERENCE MADE A PART HEREOF.

**DESERT WAVE VENTURES LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

Dated: \_\_\_\_\_





A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF San Diego )

On 8/25, 2023, before me, Marc Kircos, a notary public, personally appeared Don Rudy, 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.





**CERTIFICATE OF ACCEPTANCE  
OF  
GRANT DEED  
(City of Palm Desert)**

This is to certify that the interest in real property conveyed by the foregoing Grant Deed from the DESERT WAVE VENTURES LLC, a Delaware limited liability company, to the CITY OF PALM DESERT, a California municipal corporation (“City”), is hereby accepted by the undersigned authorized officer on behalf of City, pursuant to authority conferred on such authorized officer by City, and City consents to recordation of such Grant Deed in the Official Records of the Recorder of the County of Riverside, California.

CITY OF PALM DESERT, a California municipal  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2023

**EXHIBIT "E"**  
**Nonforeign Transferor Declaration**

**TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the Property and not the disregarded entity. To inform

(**"Transferee"**), the transferee of that certain real property described in Schedule "1" attached hereto and incorporated herein by this reference, that withholding of tax is not required upon the disposition of the above-referenced real property by \_\_\_\_\_, a public agency (**"Transferor"**), the undersigned hereby certifies the following on behalf of the Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder); and

2. Transferor's taxpayer identification number is: \_\_\_\_\_; and

3. Transferor's address is: \_\_\_\_\_.

The Transferor understands that this Certification may be disclosed to the Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

The Transferor understands that the Transferee is relying on this Certification in determining whether withholding is required upon said transfer.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

Dated: \_\_\_\_\_, 20\_\_

“TRANSFEROR”

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Diego )

On 8/25/2023 before me, Marc Kircos, Notary  
(insert name and title of the officer)

personally appeared Don Rudy,  
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  (Seal)



**EXHIBIT "F"**  
**City Quitclaim Deed**

**WHEN RECORDED MAIL THIS DEED  
AND, UNLESS OTHERWISE SHOWN  
BELOW, MAIL TAX STATEMENT TO:**

---

**SPACE ABOVE THIS LINE FOR  
RECORDER'S USE**

The undersigned Grantor declares that the Documentary Transfer Tax is \$ 0.

**APN:**

**QUITCLAIM DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF PALM DESERT, A CALIFORNIA MUNICIPAL CORPORATION

Hereby RELEASES AND QUITCLAIMS to:

DESERT WAVE VENTURES LLC, a Delaware limited liability company

THAT CERTAIN REAL PROPERTY DESCRIBED IN EXHIBIT "A" AND EXHIBIT "B" ATTACHED  
HERETO AND BY REFERENCE MADE A PART HEREOF.

**CITY OF PALM DESERT, A  
CALIFORNIA MUNICIPAL  
CORPORATION**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

Dated: \_\_\_\_\_

[EXHIBITS A AND B TO CITY QUITCLAIM DEED]



EXHIBIT "G"

Nonforeign Transferor Declaration

TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the Property and not the disregarded entity. To inform

(**"Transferee"**), the transferee of that certain real property described in Schedule "1" attached hereto and incorporated herein by this reference, that withholding of tax is not required upon the disposition of the above-referenced real property by \_\_\_\_\_, a public agency (**"Transferor"**), the undersigned hereby certifies the following on behalf of the Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder); and
2. Transferor's taxpayer identification number is: \_\_\_\_\_; and
3. Transferor's address is: \_\_\_\_\_.

The Transferor understands that this Certification may be disclosed to the Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

The Transferor understands that the Transferee is relying on this Certification in determining whether withholding is required upon said transfer.



Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

Dated: \_\_\_\_\_, 20\_\_

“TRANSFEROR”

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

