

**SUCCESSOR AGENCY TO THE PALM DESERT
REDEVELOPMENT AGENCY
STAFF REPORT**

MEETING DATE: November 17, 2022

PREPARED BY: Deborah Glickman, Management Analyst

REQUEST: ADOPT A RESOLUTION APPROVING AN EXTENSION TO THE REAL ESTATE OPTION AND PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN THE SUCCESSOR AGENCY TO THE PALM DESERT REDEVELOPMENT AGENCY (SARDA) AND DESERT WAVE VENTURES, LLC FOR DESERT WILLOW PAD "B" (14.65 ACRES, APN 620-420-023).

RECOMMENDATION:

1. Adopt a Resolution approving a Second Amendment to the Real Estate Option and Purchase and Sale Agreement and Joint Escrow Instructions (PSA) between the Successor Agency to the Palm Desert Redevelopment Agency (SARDA) and Desert Wave Ventures for Desert Willow Lot Pad "B" (14.65 acres, APN 620-420-023), providing for a final extension through December 31, 2022.
2. Retroactively authorize staff to submit a Resolution and additional materials relating to the PSA to the Riverside County Countywide Oversight Board for approval of the extension at its November 17, 2022, meeting.

BACKGROUND/ANALYSIS:

On September 22, 2022, the SARDA Board authorized staff to negotiate an extension to the SARDA PSA with Desert Wave Ventures, LLC (Developer) which governs the disposition of one of three parcels that make up the DSRT SURF project. The parcel owned by SARDA, "Lot Pad B," is controlled by a PSA and a First Amendment, and as a result of authorized extensions by the Executive Director, expired on November 8, 2022. All administrative options for extensions were exhausted and any extensions of the closing date must now be authorized by both the SARDA Board and the Countywide Oversight Board (OB). The Second Amendment extends the PSA to December 31, 2022.

The SARDA Resolution for the Second Amendment was agendized for the November 17, 2022, OB meeting and if approved, such approval will be contingent on the approval of the Second Amendment by the SARDA Board at this meeting. If the Amendment is approved by the OB at its morning meeting, and subsequently by the SARDA Board today, then the approved SARDA Resolution will be forwarded to the OB for finalization of its approval.

Normally, the SARDA Board would approve the SARDA Resolution prior to review and consideration by the OB, but since the meetings of both Boards are occurring on the same day, staff is seeking approvals in the opposite order.

Currently, APN 620-420-023 is not regarded as surplus property since the parcel was under contract prior to December of 2020 and, therefore, qualifies for an exemption under the Surplus Land Act (State of California Government Code Title 5, Div. 2, Part 1, Art. 8, sections 54220-54234). If the property sale is not completed by December 31, 2022, the land will no longer be exempt and will have to be sold through the Surplus Land Act process. This process utilizes a Notice of Availability (NOA) to select the purchaser based on the affordability of project and takes between sixty (60) and one hundred and fifty (150) days to complete once an NOA is sent out.

Therefore, staff is recommending the SARDA Board adopt the attached resolution and authorize staff to forward it to the OB for the finalization of approval.

FINANCIAL IMPACT:

Adoption of the resolution does not propose a change in the purchase price or terms of deposits (\$2,050,000 which is Fair Market Value established by a professional appraisal).

Upon close of the sale, proceeds will be remitted to the taxing entities, including the City.

REVIEWED BY:

Department Director:	<i>Eric Ceja</i>
City Attorney:	<i>Carlos Campos for Robert Hargreaves</i>
Finance Director:	<i>Veronica Chavez</i>
Assistant City Manager:	<i>Chris Escobedo</i>
City Manager:	<i>Todd Hileman</i>

ATTACHMENTS:

1. Resolution Authorizing Second Amendment to PSA
2. Second Amendment to PSA

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY TO THE PALM DESERT REDEVELOPMENT AGENCY AUTHORIZING SECOND AMENDMENT TO THE PURCHASE OPTION AND SALE AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY TO THE PALM DESERT REDEVELOPMENT AGENCY AND DESERT WAVE VENTURES, LLC FOR LOT PAD “B” WITHIN THE DESERT WILLOW RECREATION AREA (14.65 ACRES, APN 620-420-023) PURSUANT TO THE LONG RANGE PROPERTY MANAGEMENT PLAN AND TAKING RELATED ACTIONS

RECITALS:

A. Pursuant to AB X1 26 (enacted in June 2011) and the California Supreme Court’s decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal. 4th 231 (2011), the former Palm Desert Redevelopment Agency (the “**Former Agency**”) was dissolved as of February 1, 2012, the Successor Agency to the Palm Desert Redevelopment Agency (the “**Successor Agency**”), as the successor entity to the Former Agency, was constituted, and a board of the Successor Agency (the “**Board**”) was established.

B. AB X1 26 added Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 of the California Health and Safety Code (“**HSC**”) (such Parts 1.8 and 1.85, including amendments and supplements enacted after AB X1 26, being referred to herein as the “**Dissolution Act**”).

C. Pursuant to the Dissolution Act, the Successor Agency is tasked with winding down the affairs of the Former Agency.

D. Pursuant to HSC Section 34175(b), all real properties of the Former Agency are to be transferred pursuant to a Long-Range Property Management Plan which addresses the disposition of the real properties owned by the Successor Agency.

E. On May 5, 2014, the Oversight Board adopted Resolution No. OB-073, approving a Long-Range Property Management Plan (the “**Original LRPMP**”) which addresses the disposition of the real properties owned by the Successor Agency.

F. On June 2, 2014, the State Department of Finance (the “**DOF**”) approved the Original LRPMP.

G. On September 21, 2015, the Oversight Board approved an amendment to Original LRPMP (the “**LRPMP Amendment**”).

H. On December 9, 2015, the DOF approved the LRPMP, as amended by the LRPMP Amendment (the “**LRPMP**”).

I. Pursuant to HSC Section 34191.3, the DOF-approved LRPMP shall govern, and supersede all other provisions of the Dissolution Act relating to the disposition and use of the real property assets of the Former Agency.

J. On August 15, 2018, the Successor Agency of City of Palm Desert and Desert Wave Ventures, LLC entered into a valid Purchase Option and Sale Agreement (the “**Agreement**”).

K. On June 26, 2018, the Oversight Board held a noticed public hearing and approved the transfer of the subject property (APN 620-420-023) and approved the Agreement.

L. On April 22, 2021, the First Amendment to the Purchase Option and Sale Agreement (“**First Amendment**”) was approved by the Successor Agency Board, for the purpose of extending the term of the Agreement.

M. On May 20, 2021, the Oversight Board approved the First Amendment.

N. The expiration of the Agreement, as amended by the First Amendment, was extended to November 8, 2022, through various additional actions of the Successor Agency Executive Director authorized by the Agreement.

O. The Successor Agency Executive Director has exhausted any further administrative ability authorized by the Agreement to extend the closing date beyond November 8, 2022, and therefore additional extensions require review and approval by the Oversight Board.

P. In its meeting of November 17, 2022, the Successor Agency Board will consider for approval the Second Amendment to Purchase Option and Sale Agreement (“**Second Amendment**”) which provides for a final extension of the closing date for the conveyance of the surplus Successor Agency property to occur no later than December 31, 2022.

Q. The effectiveness of a Successor Agency Board approval of the Second Amendment is subject to the approval of the Second Amendment by the Oversight Board.

NOW, THEREFORE, THE BOARD OF THE SUCCESSOR AGENCY TO THE PALM DESERT REDEVELOPMENT AGENCY DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The above recitals, and each of them, are true and correct.

Section 2. The Board hereby directs the execution of Second Amendment to the Agreement which shall only be entered into by the Successor Agency after approval of the Second Amendment by the Consolidated Countywide Oversight Board to the Successor Agency and the approval if required, or deemed approval, by the Department of Finance.

Section 3. The members of this Board and the staff of the Successor Agency are hereby authorized, jointly and severally, to do all things which they may deem necessary or proper to effectuate the purposes of this Resolution and the disposal of the subject property.

Section 4. The Second Amendment is subject to conforming and clarifying changes acceptable to the Executive Director and Successor Agency Counsel, and the Executive Director is authorized to take such actions to implement the Second Amendment.

APPROVED and ADOPTED this ____ day of _____, 2022.

AYES:

NOES:

ABSENT:

ABSTAIN:

JAN C. HARNIK, CHAIRPERSON

ATTEST:

ANTHONY J. MEJIA, SECRETARY
PALM DESERT SUCCESSOR AGENCY TO
THE PALM DESERT REDEVELOPMENT AGENCY

**SECOND AMENDMENT TO REAL ESTATE OPTION AND
PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**
between
THE SUCCESSOR AGENCY TO THE PALM DESERT REDEVELOPMENT AGENCY
and
DESERT WAVE VENTURES, LLC

This Second Amendment ("**Second Amendment**") to the Real Estate Option and Purchase and Sale Agreement and Joint Escrow Instructions ("**Original Agreement**") between the Successor Agency to the Palm Desert Redevelopment Agency ("**Seller**") and Desert Wave Ventures, LLC ("**Buyer**"), a Delaware limited liability company, as amended by that certain First Amendment to Real Estate Option and Purchase and Sale Agreement and Joint Escrow Instructions (the "**First Amendment**" and together with the Original Agreement, the "**First Amended Agreement**"), is entered into this [REDACTED] of [REDACTED] 2022 ("**New Effective Date**"). The above parties may be individually referred to as "**Party**" and collectively as the "**Parties**."

RECITALS

A. The Parties entered into that certain Original Agreement dated August 15, 2018 for Buyer's purchase of real option property owned by Seller, consisting of approximately 14.65 acres located in the City of Palm Desert, County of Riverside, identified as APN 620-420-023, and more fully described on Exhibit A and depicted on Exhibit A- 1 to the Original Agreement (the "Option Property"). Initially capitalized terms used, but not otherwise defined herein, shall have the meaning ascribed to such terms in the Original Agreement.

B. The Parties agree that the First Amended Agreement will expire on November 8, 2022. The Parties now mutually wish to amend the First Amended Agreement to extend the term of Buyer's option.

AGREEMENT

In consideration of the mutual obligations in this Second Amendment and pursuant to the terms of the First Amended Agreement, the Parties mutually agree as follows:

1. Incorporation of Recitals. The Recitals of fact set forth above are true and correct and are incorporated into this Second Amendment, in their entirety, by this reference.

2. Second Amendment. Section 1. C. of the First Amended Agreement is amended to read as follows:

"C. Option Term. The extended term of the First Amended Agreement shall expire at 5:00 p. m. on November 8, 2022. So long as the First Amended Agreement has not already expired, Buyer may extend the term for one 53-day period (the "Option Term"), but only if Buyer timely gives notice of election to extend and deposits the additional option consideration pursuant to section 1.B. Any decision to grant or deny said extension will be subject to the sole discretion of the Seller. The Option Period shall expire at 5:00 p. m. on the fifty-third (53rd) day following the grant of such extension, unless such day is not a Business Day, in which case the extension period shall expire on the next following day which is a Business Day. A Business Day shall mean Monday through Friday, except for holidays on which the Riverside County Recorder's office is closed. In no event may the Option Term, as extended, terminate after the date of December 31, 2022."

4. Affirmation Regarding Absence of Defaults. Each Party hereby represents and warrants to the other Party that, as of the Effective Date of this Second Amendment, the non-representing Party is not in material uncured default of the First Amended Agreement and that there have been no events that, with the passage of time, the giving of notice, or both, would constitute an event of default under the First Amended Agreement. Each Party understands that the foregoing representation and warranty constitutes material consideration to the other Party for the other Party's entry into this Second Amendment.

5. Effect Upon First Amended Agreement. Except as expressly amended by this Second Amendment, the First Amended Agreement is hereby ratified and confirmed and remains in full force and effect, unmodified except as otherwise expressly herein provided. Wherever the term "Agreement" appears in the First Amended Agreement, it shall be read and understood to mean the First Amended Agreement as amended by this Second Amendment. In the event of any direct conflict or inconsistency between the terms of the First Amended Agreement and this Second Amendment, the terms of this Second Amendment shall be controlling to the extent of such conflict or inconsistency.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, Buyer and Seller have executed this Second Amendment to the Real Estate Option and Purchase and Sale Agreement and Joint Escrow Instructions on the dates indicated next to each of the signatures of their authorized representatives, as appear below.

BUYER:

Date: _____ 2022

DESERT WAVE VENTURES, LLC, a
Delaware limited liability company

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

By: _____
Donald Rady
Its: Managing Member

APPROVED AS TO FORM:

By: _____
Marco A. Gonzalez, Counsel

Date: _____, 2022

SELLER:

SUCCESSOR AGENCY TO THE PALM
DESERT REDEVELOPMENT AGENCY, a
public body, corporate and politic

By: _____
L. Todd Hileman, Executive Director

ATTEST:

By: _____
Anthony J. Mejia, City Clerk

APPROVED AS TO FORM:

By: _____
Successor Agency Counsel