



City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

March 15, 2012

Via Facsimile and Federal Overnight Express Signature Receipt Required

Mr. Colton T. Sudberry
Sudberry-Palm Avenue LLC
c/o Sudberry Properties
5465 Morehouse Drive; Suite 260
San Diego, California 92121

RE: 9th and Palm Avenue Project; Extension of Deadlines Set forth in DDA and Schedule of Performance

Dear Mr. Sudberry:

As you know, Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") and the City of Imperial Beach, a municipal corporation (the "City") are Parties to that certain Disposition and Development Agreement dated for identification purposes as of December 14, 2011 (the "DDA"). The DDA provides, among other matters, for the sale by the City to the Developer of certain real property described in the DDA as the "Site", for the development of the Site by the Developer as a commercial/retail center, and for the development by the Developer of certain off-Site Public Improvements, as collectively described in the DDA as the "Project". Any capitalized term not otherwise defined in herein shall have the meaning ascribed to such term in the DDA.

The DDA and the Schedule of Performance, attached to the DDA as Attachment No. 5, require that certain rights of the Parties be exercised and certain obligations of the Parties be performed on or before certain specified dates or deadlines stated therein. Although the City and the Developer have been working diligently to effectuate the DDA, the Parties mutually recognize and agree that certain dates and deadlines by which such rights shall be exercised and such obligations shall be performed are quickly approaching. To provide each of the Parties additional time within which to exercise their respective rights and perform their respective obligations pursuant to the DDA and the Schedule of Performance, the Parties desire to extend each such date and deadline set forth in the DDA and the Schedule of Performance by an additional nine (9) consecutive months from the date or deadline stated therein, including without limitation the deadline set forth in Section 606(c) of the DDA for the Parties to negotiate, complete and approve certain Attachments attached to the DDA and the date of April 1, 2012 set forth in Sections 208(aa) and 512(b) of the DDA.

Section 602(b) of the DDA provides in pertinent part as follows: "*Times of performance under this Agreement may . . . be extended in writing by both the City and Developer.*" Thus, an extension of

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the dates and deadlines set forth in the DDA and Schedule of Performance by which the Parties shall exercise their respective rights and perform their respective obligations by an additional nine (9) consecutive months from the dates or deadlines stated therein may be accomplished by the Parties' execution of this letter.

Section 606(b) of the DDA provides in pertinent part as follows: "*Except as otherwise expressly provided in this Agreement, approvals required of the City shall be deemed granted by the written approval of the City Manager or designee.*" In addition, City Council Resolution No. 2011-7132 in which the City Council of the City approved the DDA provides in pertinent part as follows: "*The City Manager, or designee, is hereby authorized, on behalf of the City, subject to approval as to form by the City Attorney and Special Counsel, to make such changes to the attachments and provisions of the DDA, sign all documents and take such actions that as City Manager may determine are necessary and appropriate to carry out and implement the purposes of Agreement, and to administer the City's obligations, responsibilities and duties to be performed under the Agreement.*"

Based on the authority provided to the City Manager by Sections 602(b) and 606(b) of the DDA and by the City Council Resolution approving the DDA, as described herein above, the City hereby approves the extension of each date and deadline set forth in the DDA and the Schedule of Performance by which the Parties shall exercise their respective rights and perform their respective obligations by an additional nine (9) consecutive months from the applicable date or deadline stated therein, including without limitation the deadline set forth in Section 606(c) of the DDA for the Parties to negotiate, complete and approve certain Attachments attached to the DDA and the date of April 1, 2012 set forth in Sections 208(aa) and 512(b) of the DDA.

By executing below, you, on behalf of the Developer in the DDA, hereby acknowledge and agree that the Developer mutually approves the extension of each date and deadline set forth in the DDA and the Schedule of Performance by which the Parties shall exercise their respective rights and perform their respective obligations by an additional nine (9) consecutive months from the applicable date and deadline stated therein, including without limitation the deadline set forth in Section 606(c) of the DDA for the Parties to negotiate, complete and approve certain Attachments attached to the DDA and the date of April 1, 2012 set forth in Sections 208(aa) and 512(b) of the DDA, as detailed above, and further acknowledge and agree that the Developer shall continue to be bound by the DDA and all its applicable Attachments, as amended in this letter.

Should you have any questions or comments, please do not hesitate to contact Greg Wade, Assistant City Manager/Community Development Director, at (619) 628-1354.

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Sincerely,

CITY OF IMPERIAL BEACH,
a municipal corporation

Dated: 3/28/12

By:  Signature on File
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:  Signature on File
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:  Signature on File

[SIGNATURES CONTINUE ON NEXT PAGE]

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CONSENT TO EXTENSION OF EACH DATE AND DEADLINE SET FORTH IN THE DDA AND THE SCHEDULE OF PERFORMANCE BY WHICH THE PARTIES SHALL EXERCISE THEIR RESPECTIVE RIGHTS AND PERFORM THEIR RESPECTIVE OBLIGATIONS BY AN ADDITIONAL NINE (9) CONSECUTIVE MONTHS FROM THE APPLICABLE DATE OR DEADLINE STATED THEREIN AS SET FORTH ABOVE

The Developer, Sudberry-Palm Avenue, LLC, a California limited liability company, hereby acknowledges, consents, and approves to the extensions stated above and agrees to continue to be bound by the DDA and all its applicable Attachments, as amended herein.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its Manager

Signature on File

Dated: 3/30/12

By: 
Colton T. Sudberry, President

cc: Gerald I. Solomon, Esq.
Solomon Minton Cardinal LLP
(via email only: gis@smclawoffices.com)



City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

December 20, 2012

Via Electronic Mail and Certified Mail, Return Receipt Requested

Mr. Colton T. Sudberry
Sudberry-Palm Avenue LLC
c/o Sudberry Properties
5465 Morehouse Drive; Suite 260
San Diego, California 92121

RE: 9th and Palm Avenue Project; Second Extension of Deadlines Set forth in DDA and Schedule of Performance

Dear Mr. Sudberry:

As you know, Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") and the City of Imperial Beach, a municipal corporation (the "City") are Parties to that certain Disposition and Development Agreement dated for identification purposes as of December 14, 2011, which was amended by that certain "Letter Agreement" entered into by the City and the Developer and dated March 15, 2012 (the "First Extension Letter Agreement"), as further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Developer and dated August 10, 2012, all collectively referred to herein as the "DDA" and incorporated herein by this reference.

The DDA provides, among other matters, for the sale by the City to the Developer of certain real property described in the DDA as the "Site", for the development of the Site by the Developer as a commercial/retail center, and for the development by the Developer of certain off-Site Public Improvements, as collectively described in the DDA as the "Project".

Any capitalized term not otherwise defined in herein shall have the meaning ascribed to such term in the DDA.

The DDA and the Schedule of Performance, attached to the DDA as Attachment No. 5, require that certain rights of the Parties be exercised and certain obligations of the Parties be performed on or before certain specified dates or deadlines stated therein. Pursuant to the First Extension Letter Agreement, the City and the Developer mutually agreed to the extension of certain dates and deadlines set forth in the DDA and the Schedule of Performance, each by an additional nine (9) consecutive months from the applicable date or deadline stated therein.

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Although the City and the Developer have been working diligently to effectuate the DDA, the Parties mutually recognize and agree that certain dates and deadlines by which such rights shall be exercised and such obligations shall be performed are quickly approaching.

To provide each of the Parties additional time within which to exercise their respective rights and perform their respective obligations pursuant to the DDA and the Schedule of Performance, as extended by the First Extension Letter Agreement, the Parties desire to further extend the following dates and deadlines (collectively referred to herein as the "Second Extended Dates and Deadlines") set forth in the DDA and the Schedule of Performance, each by an additional nine (9) consecutive months from the applicable date or deadline stated therein, as extended by the First Extension Letter Agreement:

- (a) The extended deadline of February 1, 2013 set forth in Section 606(c) of the DDA, by which the Parties must negotiate, complete and approve final forms of the Attachments to the DDA for the Closing,
- (b) The extended date of January 1, 2013 set forth in Sections 208(aa) and 512(b) of the DDA, by which the City may terminate the DDA with payment to the Developer of \$50,000 liquidated damages because of Project infeasibility,
- (c) The extended deadline of March 11, 2013 set forth in "Actions Relating to Design Requirements" - #3 of the Schedule of Performance, by which the Developer shall submit design development drawings and landscape and grading plans for the applicable Phase of the Project, and
- (d) The extended deadline of April 1, 2013 set forth in Section 216(a)(3) of the DDA, by which the Developer may terminate the DDA if, based on evidentiary reports, the environmental condition of the Property is not suitable or economically feasible for development of Project.

The further extension of the Second Extended Dates and Deadlines (defined above) set forth in the DDA and the Schedule of Performance, by which the Parties shall exercise their respective rights and perform their respective obligations, each by an additional nine (9) consecutive months from the applicable date or deadline stated therein, as extended by the First Extension Letter Agreement, may be accomplished by the Parties' execution of this Letter Agreement.

Section 602(b) of the DDA provides in pertinent part as follows: "*Times of performance under this Agreement may . . . be extended in writing by both the City and Developer.*" In addition, Section 606(b) of the DDA provides in pertinent part as follows: "*Except as*

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otherwise expressly provided in this Agreement, approvals required of the City shall be deemed granted by the written approval of the City Manager or designee.” In this regard, City Council Resolution No. 2011-7132 in which the City Council of the City approved the DDA provides in pertinent part as follows: “The City Manager, or designee, is hereby authorized, on behalf of the City, subject to approval as to form by the City Attorney and Special Counsel, to make such changes to the attachments and provisions of the DDA, sign all documents and take such actions that as City Manager may determine are necessary and appropriate to carry out and implement the purposes of Agreement, and to administer the City’s obligations, responsibilities and duties to be performed under the Agreement.”

Further, on December 5, 2012, the City Council of the City, by Resolution No. 2012-7282, specifically approved the extension of various dates and deadlines set forth in the DDA and the Schedule of Performance, as determined necessary by the City Manager, by an additional nine (9) months, and authorized the City Manager, or his designee, to execute this Letter Agreement to extend such dates and deadlines as determined necessary by the City Manager by an additional nine (9) months.

Finally, the City’s extension of dates and deadlines in the DDA and the Schedule of Performance are consistent with the approvals of the City Council, Imperial Beach Redevelopment Agency Successor Agency and its Oversight Board as set forth in Resolution No. 2012-7243, Resolution No. SA-12-15, and Resolution No. OB-12-10, respectively, for the purposes of implementing the Project and effectuating the DDA and the approvals set forth in those Resolutions.

The City Manager has determined it necessary to extend the dates and deadlines defined above collectively as the Second Extended Dates and Deadlines for the purposes of implementing the Project and effectuating the DDA. Pursuant to the authority described herein above, the City hereby approves the extension of the Second Extended Dates and Deadlines (defined above) set forth in the DDA and the Schedule of Performance, by which the Parties shall exercise their respective rights and perform their respective obligations, each by an additional nine (9) consecutive months from the applicable date or deadline stated therein, as extended by the First Extension Letter Agreement.

By executing below, you, on behalf of the Developer in the DDA, hereby acknowledge and agree that the Developer mutually approves the extension of the Second Extended Dates and Deadlines (defined above) set forth in the DDA and the Schedule of Performance, by which the Parties shall exercise their respective rights and perform their respective obligations, each by an additional nine (9) consecutive months from the applicable date or deadline stated therein, as extended by the First Extension Letter Agreement, and further

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acknowledge and agree that the Developer shall continue to be bound by the DDA and all its applicable Attachments, as amended in this letter.

Should you have any questions or comments, please do not hesitate to contact Greg Wade, Assistant City Manager/Community Development Director, at (619) 628-1354.

Sincerely,

CITY OF IMPERIAL BEACH,
a municipal corporation

Signature on File

Dated: 12/21/12

By:

Gary R. Brown
City Manager

APPROVED AS TO FORM
City Attorney

Signature on File

By:

Jennifer M. Lyon

KANE, BALLMER & BERKMAN
Special Counsel

Signature on File

By:

Kendall D. Berkey

[SIGNATURES CONTINUE ON NEXT PAGE]

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CONSENT TO THE FURTHER EXTENSION OF THE "SECOND EXTENDED DATES AND DEADLINES" (DEFINED ABOVE) SET FORTH IN THE DDA AND THE SCHEDULE OF PERFORMANCE, BY WHICH THE PARTIES SHALL EXERCISE THEIR RESPECTIVE RIGHTS AND PERFORM THEIR RESPECTIVE OBLIGATIONS, EACH BY AN ADDITIONAL NINE (9) CONSECUTIVE MONTHS FROM THE APPLICABLE DATE OR DEADLINE STATED THEREIN, AS EXTENDED BY THE FIRST EXTENSION LETTER AGREEMENT, AS SET FORTH ABOVE.

The Developer, Sudberry-Palm Avenue, LLC, a California limited liability company, hereby acknowledges, consents, and approves to the extensions stated above and agrees to continue to be bound by the DDA and all its applicable Attachments, as amended herein.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC.,
a California corporation, its Manager

Dated: December 21, 2012

By: _____

Signature on File

Charles J. Todd, Chief Operating Officer

cc: Gerald I. Solomon, Esq.
Solomon Minton Cardinal LLP
(via email only: gis@smclawoffices.com)