

SECOND AMENDMENT TO SET ASIDE AGREEMENT TO SECURE PERFORMANCE OF CONTRACT

THIS SECOND AMENDMENT TO SET ASIDE AGREEMENT TO SECURE PERFORMANCE OF CONTRACT (Second Amendment to Set-Aside Agreement) is made this 11th day of June, 2024 by and between Pacific Sunshine Development, LLC, a California limited liability company (hereinafter called "Owner"), and East West Bank, a California banking corporation (hereinafter called "Bank").

WHEREAS Owner and the City of Watsonville (City) are parties to that certain Public and On-Site Improvement Agreement with Developer (Improvement Agreement) signed on or about September 27, 2017 and amended on August 23, 2021 (First Amendment) and again on June 11, 2024 (Second Amendment) (collectively "Improvement Agreement"), and

WHEREAS Owner and Bank are parties to that certain Set Aside Agreement dated September 6, 2017 and the First Amendment To Set Aside Agreement To Secure Performance Of Contract signed on August 31, 2021 (collectively referred to as the "Set-Aside Agreement"), and

WHEREAS the purpose of the Set-Aside Agreement was to pay for work required by the Improvement Agreement, and

WHEREAS the Set-Aside Agreement provides, inter alia, that the Set-Aside Agreement was entered into "for the benefit of the City of Watsonville which is a third-party beneficiary" of the Set-Aside Agreement, and

WHEREAS Owner and Bank wish to change said Set-Aside Agreement because conditions to the project have changed since it was originally signed, and

WHEREAS City holds \$74,267.96 under Paragraph A. of the Set-Aside Agreement along with \$1,342,175.54 to secure completion of the improvements covered by the Improvement Agreement, totaling \$1,416,443.50 (Remaining Funds), and

WHEREAS Owner has completed some but not all work required by the Improvement Agreement, and

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties agree as follows:

A. For the purpose of assuring City that enough funds will be available to pay for and complete the work described in the Improvement Agreement, Owner shall set aside additional funds for the following purposes as described in the Second Amendment to Public and On-Site Improvement Agreement:

1. Performance Guarantee	\$205,590
2. Payment Guarantee	\$347,230
3. Warranty Guarantee	\$10,280
4. Monumentation Performance Guarantee	<u>\$4,000</u>
	<u>\$567,100</u>

Total:

B. Since the Remaining Funds exceed the funds needed to pay for and complete the work described in the Improvement Agreement, it is agreed by the parties that no additional funds need to be set aside.

C. Bank agrees that no Remaining Funds will be paid out or released unless and until Bank has received written authorization to do so from the Director of Public Works and Utilities of the City of Watsonville. When all required conditions have been satisfactorily completed, the amount of said Remaining Funds then

in possession of the Bank may be released to Owner upon written authorization from the Director of Public Works and Utilities.

- D. If Owner fails to perform any work required by the Improvement Agreement within the time periods specified in Section 1 of the Improvement Agreement, as amended, , then all Remaining Funds held by the Bank, or any portion thereof demanded by the Director of Public Works and Utilities, shall be paid over to the City of Watsonville upon written demand and notice from the Director.
- E. Bank shall give Owner ten (10) days' written notice that the City has notified Bank of a default of performance and demanded payment of the Remaining Funds from Bank to City.
- F. This Second Amendment to the Set Aside Agreement is entered into not only for the use and benefit of Owner and Bank, but for the use and benefit of the City of Watsonville which is a third-party beneficiary of this Second Amendment to the Set Aside Agreement.
- G. It is further agreed by the parties hereto that in the event it is necessary for either party, or the City of Watsonville as the third-party beneficiary, to maintain any judicial action to secure performance of any obligation arising under this Agreement Extension, the prevailing party shall be entitled to reasonable attorney's fees, as well as costs of suit.
- H. Except as specifically amended or modified in this Second Amendment to the Set Aside Agreement, all other terms and provisions of the Set Aside Agreement shall remain unchanged.
- I. The recitals set forth at the beginning of this Second Amendment to the Set Aside Agreement of any matters or facts shall be conclusive proof of the truthfulness thereof and the terms and conditions set forth in said recitals, if any, shall be deemed a part of the Second Amendment to the Set Aside Agreement.

[Signature on Next Page]

Second Amendment to Set Aside Agreement

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first hereinabove written.

“Owner”

PACIFIC SUNSHINE DEVELOPMENT, LLC

By 

Siyan (Tony) Qin, Chief Executive Officer

“Bank”

EAST WEST BANK

Yuanyuan Tung, VP/Branch Manager
19625 Stevens Creek Blvd.
Cupertino, CA 95014

APPROVED:

CITY OF WATSONVILLE

By _____
Tamara Vides, Interim City Manager

By _____
Courtney Lindberg, Director of Public Works and Utilities

APPROVED AS TO FORM:

Samantha Zutler, City Attorney