



CITY COUNCIL/COMMUNITY REDEVELOPMENT
AGENCY STAFF REPORT

DATE: April 20, 2011

Public Hearing

SUBJECT: JOINT PUBLIC HEARING OF THE COMMUNITY REDEVELOPMENT AGENCY AND THE CITY COUNCIL CONSIDERING THE APPROVAL OF THE SECOND AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT WITH ENDURE, LLC (FORMERLY GEIGER LLC) THAT AUTHORIZES THE AGENCY TO PAY \$1,400,000 TOWARDS THE \$13,000,000 IN COSTS FOR REMEDIATION AND MONITORING THE SITE OF A 393,000 SQUARE FOOT RETAIL SHOPPING CENTER AT THE NORTHEAST CORNER OF RAMON ROAD AND GENE AUTRY TRAIL (HIGHWAY 111) IN THE CITY OF PALM SPRINGS, MERGED REDEVELOPMENT PROJECT AREA NO. 1.

FROM: David H. Ready, Executive Director

BY: Community and Economic Development

SUMMARY

Approval of the proposed Second Amendment to the Disposition and Development Agreement between the Community Redevelopment Agency and Endure, LLC (formerly Geiger LLC), that authorizes the Agency to pay \$1,400,000 in equal installments over 10 years, with no interest, towards the over \$10,000,000 costs for remediation and monitoring the site of a 393,000 square foot retail shopping center at the northeast corner of Ramon Road and Gene Autry Trail.

RECOMMENDATION:

1. Open the joint public hearing and receive public testimony;
2. [Community Redevelopment Agency] Adopt Resolution No. _____ "A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS APPROVING THE SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH ENDURE, LLC (FORMERLY GEIGER LLC) FOR THE DEVELOPMENT OF THE SPRINGS PROJECT;"
3. [City Council] Adopt Resolution No. _____ "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, CONCURRING WITH THE COMMUNITY REDEVELOPMENT AGENCY REGARDING THE

APPROVAL OF AMENDMENT NO. 2 TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH ENDURE, LLC;"

4. [Community Redevelopment Agency] Authorize the Executive Director to execute a budget transfer of \$140,000 from unallocated capital outlay funds to an account established for the purposes of executing this agreement.

STAFF ANALYSIS:

On November 16, 2005, the Agency entered into a DDA with Geiger, LLC (now Endure, LLC) for the sale of Agency land and the development of entire site as a commercial retail center currently referred to as "The Springs" at the northeast corner of Ramon Road and Gene Autry Trail. Typically redevelopment agencies will acquire contaminated parcels and remediate them at their own cost before securing a developer for the site. Given the large amount of resources necessary to remediate the entire site, plus the need to acquire and remediate an even larger adjacent parcel, the Agency's remediation could only be undertaken by a private party as part of an overall redevelopment of the site. At the time the DDA was entered into, the value of the Agency's 14 acres was valued at \$4,480,000 and the cost to Geiger, LLC to remediate the property was estimated at \$4,605,108; however, the total hard costs for the remediation and continued monitoring of the entire site is in excess of \$10,000,000.

In 2009, based on the effects of the recession, leasing at the center had stalled and the Developer asked for financial assistance to help secure several large tenants in the center, which would increase occupancy and therefore the capitalized value of the project. Rather than contributing directly to the tenant improvements, the Agency determined that it would be eligible to reimburse the Developer for the remediation cost that the Developer had undertaken on the Agency's behalf. On February 18, 2009, the First Amendment to the DDA was approved allowing the Agency to contribute towards the total cost of remediation and monitoring. The Agency agreed to pay \$277,000 a year for five years for a total of \$1,385,000.

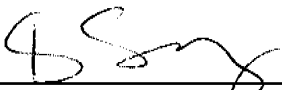
Earlier this year the Developer made an additional request for remediation reimbursement, in the amount of \$1,400,000 to provide additional assistance to the Developer in securing attractive leasing opportunities for the Palm Springs market. The proposed Second Amendment to the DDA would provide for additional Agency payment towards the total cost of remediation and monitoring. The Agency would pay \$140,000 per year for ten years for a total of \$1,400,000. The proposed payment schedule to Endure LLC would be payments of \$140,000 from 2011 through 2020 and in addition, the Agency would make payments of \$277,000 in March 2012 and March 2013 as per the First Amendment to the DDA. Under this formula, the value of the land plus the overall Agency payment towards the remediation and monitoring of the site would be approximately 56% of the total cost of remediation of the former Agency-owned parcel.

The payments provided are deemed a payment towards the total remediation and monitoring costs incurred by the Developer on the Site. The funds shall be used at the discretion of the Developer for any purpose on the project, but shall not be construed as inducing the relocation of any tenant from any existing shopping center in Palm Springs. Two additional provisions are contained in the DDA Amendment: the payments are not considered an asset of the Developer and would stop upon any sale or involuntary conversion of the project; and, the Agreement contains a provision that payments under the Second Amendment shall be terminated if the Ross Dress for Less Store ("Ross") located at 233 South Farrell Drive, #A vacates the premises prior to the expiration of their five year lease extension, entered into in 2011. This latter provision would not be effective if:


- (a) If Ross vacates the 233 South Farrell Drive site but within 180 days of closing opens a new retail apparel store in the space; or
- (b) If the lease is terminated at the request or election of the property owner or lender of the 233 South Farrell Drive site for the purpose of releasing the property to another tenant, assembling the space with other adjacent space, or preparing the shopping center or a section of the shopping center for demolition or redevelopment, or other purpose.

FISCAL IMPACT:

This expense is being paid for from Unscheduled Capital Projects in Merged Project Area No. 1.



Diana Shay, Redevelopment Coordinator



Tom Wilson, Assistant City Manager



John Raymond, Director
Community and Economic Development



David H. Ready, City Manager

Attachments:

Second Amendment to Disposition and Development Agreement

**AMENDMENT NO. 2 TO
DISPOSITION AND DEVELOPMENT AGREEMENT
Endure Investments, LLC**

The Springs Shopping Center

This Amendment is entered into this _____ day of April 2011, by and between the Community Redevelopment Agency of the City of Palm Springs, a California community redevelopment agency ("Agency"), and Endure Investments, LLC (formerly Geiger, LLC), a Nevada Limited Liability Company ("Developer"), with reference to the following facts:

- A. On November 16, 2005, Agency and Developer entered into a Disposition and Development Agreement (the "DDA") with regard to the development of 393,000 square foot retail shopping center ("Project") on an approximately 37 acre site (the "Site"), commonly referred to as "The Springs Shopping Center."
- B. Under the provisions of the DDA, the Agency agreed to sell 14 acres of the Site to the Developer at no cost to the Developer in recognition of the Developer's substantial costs in the remediation of the Site. Pursuant to the Summary Report issued in 2005 at the time the DDA was approved, the Developer incurred \$4,605,108 in pro-rated remediation costs, which exceeded the fair market value of the land of \$4,480,000. The parties have subsequently acknowledged that the total remediation costs for the Site, including on-going monitoring expenses, are in excess of \$13,000,000. The parties agree that the Site would not have been marketable or usable for any economic purpose if the Site had not been remediated and that the Agency should pay a portion of the remediation and monitoring costs which were necessarily incurred to make the Site usable.
- C. On February 18, 2009, Agency and Developer entered into Amendment No. 1 to the DDA adding a section to the DDA for Agency payment toward remediation and monitoring costs. The parties agreed that the sum of \$1,385,000, payable in five equal installments, without interest, would be a fair and equitable payment towards the remediation and monitoring costs of the Site.
- D. The parties agree that an additional Agency contribution towards remediation of the site to be paid in ten equal annual installments of \$140,000, without interest, for a total additional Agency contribution of \$1,400,000 towards remediation and monitoring costs of the Site is a fair and equitable payment towards the remediation and monitoring costs of the Site.
- E. The development of the Project and the payment of Agency funds towards the remediation and monitoring of the Site, including Agency owned land, as provided for in the First Amendment to the DDA and in this Second

Amendment is in the vital and best interest of the City and the welfare of its residents and is in accordance with the public purposes and provisions of applicable state and local laws.

NOW, THEREFORE, the parties hereto agree as follows:

1. Section 2.2 of the DDA is amended to read:

2.2 **Ownership Transfer or Assignment.**

2.2.1 **Restrictions on Rights and Powers under Agreement.** For the reasons set forth in Section 2.1, the Developer acknowledges and agrees that no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as set forth in this Section 2.2. Notwithstanding any other provision of this Agreement, any permitted or non-permitted transfer made by the Developer subsequent to any Amendment to the Agreement shall relieve the Agency from any obligation to make any payment to Developer under Amendment No. 2 to the Agreement.

2. Section 2.4 of the DDA is amended to read:

2.4 **Assignment by Operation of Law.** Neither this Agreement nor any Amendments or any interest therein shall be assignable by operation of law (including the transfer of this Agreement, as amended, by testacy or intestacy). Any involuntary assignment shall constitute a Material Default by the Developer. In such event, this Agreement shall not be treated as an asset of the Developer. The following is a nonexclusive list of acts which shall be considered an involuntary assignment:

(a) If the Developer is or becomes bankrupt or insolvent or if any involuntary proceeding is brought against the Developer (unless, in the case of a petition filed against the Developer, the same is dismissed within ninety (90) days), or the Developer makes an assignment for the benefit of creditors, or institutes a proceeding under or otherwise seeks the protection of federal or State bankruptcy or insolvency laws, including the filing of a petition for voluntary bankruptcy or instituting a proceeding for reorganization or arrangement;

(b) If a writ of attachment or execution is levied on this Agreement or on the Developer Parcel, or on any portion thereof, where such writ is not discharged within ninety (90) days; or

(c) If, in any proceeding or action in which the Developer is a party, a receiver is appointed with authority to take possession of the Developer Parcel, or any portion thereof, where possession is not restored to the Developer within ninety (90) days.

3. Section 4.3 to the DDA is further amended to read:

4.3 Agency Payment Toward Remediation and Monitoring Costs.

a. Initial Agency Payment (DDA Amendment No. 1). Agency shall pay to Developer the sum of \$1,385,000 in five equal annual installments, without interest. The first annual payment will be made on or after March 1, 2009, at the direction of the Executive Director, and on each subsequent March 1 each year thereafter until the full amount has been paid to the Developer. The payments provided under this Section shall be deemed a payment towards the total remediation and monitoring costs incurred by the Developer on the Site and those costs were and are necessary to ensure that the Site was and is marketable and usable.

b. Additional Agency Payment (DDA Amendment No. 2). Agency shall pay to Developer the sum of \$1,400,000 in ten equal annual installments, without interest. The first annual payment will be made on or after July 1, 2011, at the direction of the Executive Director, and on each subsequent July 1 each year thereafter until the full amount has been paid to the Developer. The payments provided under this Section shall be deemed a payment towards the total remediation and monitoring costs incurred by the Developer on the Site and those costs were and are necessary to ensure that the Site was and is marketable and usable.

4. Section 13 shall read as follows:

13. Nonpayment for Relocating Tenants

Notwithstanding any of the provisions contained in Section 4.3 above, the purpose of the payments made by the Agency to the Developer under the Agreement as amended shall be for the purpose of reimbursing the Developer for a portion of the cost of remediating the contamination of the Agency's parcel on the project site. The funds shall be used at the discretion of the Developer for any lawful purpose on the project, but shall not be construed as inducing the relocation of any tenant from any existing shopping center in Palm Springs. As such, payments under Section 4.3 (b) above shall be terminated if the Ross Dress for Less Store ("Ross") located at 233 South Farrell Drive, #A vacates the premises prior to the expiration of their five year lease extension, entered into in 2011. The exceptions to this provision are:

- (a) If Ross vacates the store but within 180 days of closing it opens a new retail apparel store in the space; or
- (b) If the lease is terminated at the election of the Landlord, property owner, or lender for the purpose of releasing the property to another tenant, assembling the space with other adjacent space, preparing the shopping center or a section of

the shopping center for demolition or redevelopment, or other purpose.

- 5. Except as expressly amended herein, the DDA shall remain in full force and effect.

IN WITNESS WHEREOF, Agency and Developer have signed this Amendment on the respective dates set forth below.

“Agency”

Dated: _____

Community Redevelopment Agency of the City of Palm Springs, a California community redevelopment agency

By: _____
David Ready, Executive Director

APPROVED AS TO FORM:

ATTEST:

By: _____
Douglas Holland
Agency Counsel

By: _____
James Thompson
Agency Secretary

“Developer”

Endure Investments, LLC

Dated: _____

By _____

Its

**COMMUNITY REDEVELOPMENT AGENCY
CITY OF PALM SPRINGS
PUBLIC HEARING NOTIFICATION**



City Council
Meeting Date: April 20, 2011
Subject: Amendment 2 to Agreement A0503c – Endure Investment

AFFIDAVIT OF PUBLICATION

I, Kathie Hart, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was published in the Desert Sun on April 2 and April 9,, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Kathie Hart", is written over a horizontal line.

Kathie Hart, CMC
Chief Deputy City Clerk

AFFIDAVIT OF POSTING

I, Kathie Hart, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was posted at City Hall, 3200 E. Tahquitz Canyon Drive, on the exterior legal notice posting board and in the Office of the City Clerk on March 31, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Kathie Hart", is written over a horizontal line.

Kathie Hart, CMC
Chief Deputy City Clerk

NOTICE OF JOINT PUBLIC HEARING
CITY COUNCIL AND COMMUNITY REDEVELOPMENT AGENCY
CITY OF PALM SPRINGS

AMENDMENT NO. 2 TO THE DISPOSITION AND DEVELOPMENT AGREEMENT
WITH ENDURE INVESTMENTS, LLC

NOTICE IS HEREBY GIVEN that the City Council ("City") and Community Redevelopment Agency ("Agency") of the City of Palm Springs, California, will hold a Joint Public Hearing at 6:00 p.m. Wednesday April 20, 2011, in the Council Chamber at City Hall, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262.

The purpose of this hearing is to consider the approval of Amendment No. 2 to Agreement No. A0503, a Disposition and Development Agreement ("DDA") with Endure Investments LLC.

The Agency proposes to amend the existing DDA with Endure Investments, LLC, to provide for the reimbursement of certain costs for the landfill remediation and operation of the landfill monitoring system.

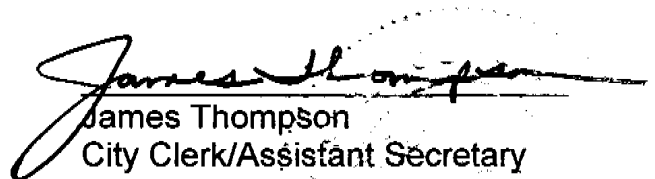
Response to this notice may be made verbally at the Public Hearing and/or in writing before the hearing. Written comments can be made to the City/Agency of the City of Palm Springs by letter (for mail or hand delivery) to:

James Thompson, City Clerk
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Any challenge of the proposed project in court may be limited to raising only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the City Clerk at, or prior, to the public hearing. (Government Code Section 65009(b)(2)).

An opportunity will be given at said hearing for all interested persons to be heard. Questions regarding this case may be directed to John S. Raymond, Director of Community & Economic Development (760) 323-8228.

Si necesita ayuda con esta carta, porfavor llame a la Ciudad de Palm Springs y puede hablar con Nadine Fieger telefono (760) 323-8245.


James Thompson
City Clerk/Assistant Secretary