



CITY COUNCIL STAFF REPORT

DATE: MARCH 6, 2013

NEW BUSINESS

SUBJECT: APPROVAL OF (1) A PURCHASE AND SALE AGREEMENT WITH CDI VENTURES, LLC, FOR A 7.8± ACRE PARCEL AT THE NORTHEAST CORNER OF CALLE ALVARADO AND AMADO ROAD, FOR THE DEVELOPMENT OF A 200-ROOM DOLCE HOTEL, AND (2) A SEPARATE SERVICES AGREEMENT WITH CDI VENTURES, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED TO THE AGREEMENTS

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

SUMMARY

This action is to approve a Purchase and Sale Agreement with CDI Ventures, LLC (the "Developer") for a 7.8± acre parcel across Amado Road from the Palm Springs Convention Center for the development of a 200-room Dolce Hotel. The City will also provide assistance in the acquisition of the adjacent 2.7± acre parcel by the Developer, which is part of the overall project site.

The project was originally entitled in late 2007, receiving approval through the Architectural Advisory Committee and Planning Commission. The Preliminary Planned Development District Application and Tentative Tract Map application were approved by the City Council on July 18, 2007. In the years since the original approval, the entitlement has been kept active by the City, and the Developer has filed for an amendment to the Planned Development District to reflect the changes to the hotel with the elimination of an above-ground parking structure, reduction in the future number of condo units, and some changes to the hotel with the change of brand.

RECOMMENDATION:

1. Adopt Resolution No. _____ " A RESOLUTION OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING (1) A PURCHASE AND SALE AGREEMENT FOR A 7.8± ACRE AGENCY-OWNED PARCEL AT THE NORTHEAST CORNER OF CALLE ALVARADO AND AMADO ROAD, FOR

ITEM NO. 56

THE DEVELOPMENT OF A DOLCE HOTEL WITH 200 ROOMS, AND (2) A SERVICES AGREEMENT WITH CDI VENTURES , LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED TO THE AGREEMENTS”

DISCUSSION

This action would approve a Purchase and Sale Agreement with CDI Ventures, LLC (the “Developer”) for a 7.8± acre parcel across Amado Road from the Palm Springs Convention Center for the development of a 200-room Dolce Hotel and related improvements. The City would also assist the Developer in the acquisition of the adjacent 2.7 acre parcel, which is part of the overall project site.

A hotel project originally completed entitlement approval through the Architectural Advisory Committee and Planning Commission several years ago. The Preliminary Planned Development District Application and Tentative Tract Map application were approved by the City Council on July 18, 2007. In the years since the original approval, the entitlement has been kept active by the City. The Developer has filed for an amendment to the Planned Development District to reflect the changes to the hotel with the change of brand.

The City has a significant interest in the development of First Class Hotels near the Convention Center to support its \$44 million investment in the Center’s expansion. The Developer originally considered several Starwood brands for the Site, but in 2007 the Developer ultimately chose to work with Morgans Hotel Group and bring a luxury Mondrian Hotel to Palm Springs, which was the brand in place in 2007.

Since the original approval in 2007, the worldwide economic collapse has reshaped many industries, not the least of which is hospitality. As a result, the Developer has negotiated a Hotel Management Agreement with Dolce Hotels and Resorts, a small hotel brand with a group meeting focus.

Founded in 1981, Dolce Hotels and Resorts is based in Rockleigh, New Jersey and Paris, France; it has approximately 4,000 employees, many who have been with the company since its inception and manages approximately 5,000 rooms.

The company is extremely meeting-focused, and pioneered the first Conference Center Concept and Complete Meeting Package (CMP) for the meetings industry to allow meeting planners a convenient, complete, easy-to-understand pricing and one-stop-shop alternative for its clients. Dolce Hotels and Resorts has a reputation for creating inspiring working and learning environments through its superior cuisine and amenities, productive facilities and design and dedicated, personalized customer service. The company continues to evolve and remains at the forefront of the meetings industry.

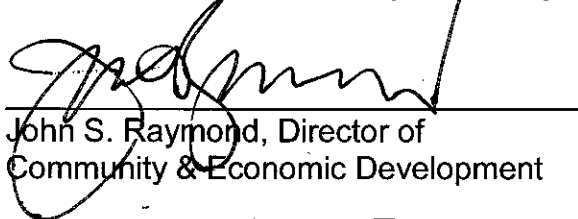
Properties they manage include the Aspen Meadows, home to the Aspen Institute, the Silverado Resort in Napa, and Dolce Chantilly in the Chantilly Forest near Paris. They also manage the corporate training centers for IBM and American Airlines.

The approved project features 200 hotel rooms and 50 condo-hotel units, with up to 150 condominiums. The Developer has received Preliminary Planned Development District approval, as well as approval of a Tentative Tract Map. A PDD Amendment is being processed, and the project will still come back to the City through the final Planned Development District approval process, as well as Final Map approval.

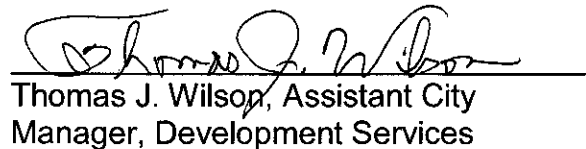
FISCAL IMPACT

The terms of the DDA will be that the Developer will pay fair market value for the Agency's parcel, \$2,000,000. In addition, the Developer will pay the City \$675,000 for the City's services in the assemblage of property necessary for the project, plus \$2,000,000 toward the replacement of Convention Center parking lost through the development of the hotel and payment for the current development entitlements owned by the City.

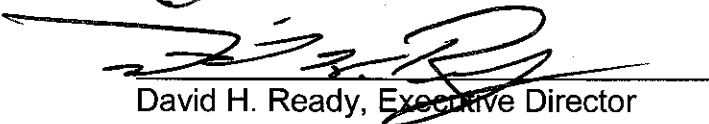
The project's value is estimated at approximately \$84 million, which will provide a property tax benefit to the City in addition to the TOT. Based on the quality of the Hotel as a First Class Hotel, it is also eligible for the City's Hotel Incentive Program for the higher end hotels. The high-quality, meeting-focused rooms in proximity and available to the Convention Center will help ensure the success of that facility, which is critical to the overall tourism economy of the City.



John S. Raymond, Director of
Community & Economic Development



Thomas J. Wilson, Assistant City
Manager, Development Services



David H. Ready, Executive Director

Attachments:

Purchase and Sale Agreement
Services Agreement

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made by and between City of Palm Springs ("Seller"), and CDI Ventures, LLC and/or its affiliates, assigns, successors ("Purchaser"). In consideration of the mutual covenants and representations herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. *Purpose of This Agreement:* The purpose of this Agreement is to provide for the development and maintenance of the Dolce Hotel Project ("Dolce"), a First Class Superior Hotel (Four+ stars), on property ("Site") in close proximity to the City's Convention Center ("Convention Center"), consistent with the adopted plans and policies of the City. The Dolce will enhance the vibrant commercial and tourist core near the City's downtown area and ensure the availability of significant and necessary hotel, meeting, and conference uses near the Convention Center. The operation of the Dolce will provide needed first class hotel facilities that will compliment and advance the use of the Convention Center and attract high-end visitors to the City and encourage a wider range of attractions, activities, and events at the Convention Center. The Dolce will consist of at least two hundred (200) hotel rooms, (15,000) square feet of "under-roof" group meeting space, two restaurants, a lounge and bar, spa and workout amenities, and on-site parking which meet the requirements of the City. The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City, and the health, safety, and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

2. *Owner:* City of Palm Springs, a charter city organized under the laws of the State of California. The office of the City is located at 3200 East Tahquitz Canyon Way, Palm Springs, CA, 92263. The term "City" as used in this Agreement includes any assignee or successor to the City's rights, powers, and responsibilities under law.

3. *Purchasing Entity:* CDI Ventures, LLC, a California limited liability company. The principal office of the Developer is located at 9190 W Olympic Blvd., No. 412, Beverly Hills, CA 90212. The term "Developer" as used in this Agreement includes any permitted transferee, conveyee, or assignee of the Developer with the qualifications and financial responsibility necessary and adequate, consistent with the provisions of this Agreement and as may be reasonably determined by the City, to fulfill the obligations undertaken in this Agreement by the Developer.

4. *Site:* The Site consists of two properties. The first is the City owned property ("City Property") of approximately 7.8 acres comprised of 3 lots identified as APN's: 508-034-012; 508-034-013; 508-034-014, located in the County of Riverside, City of Palm Springs, and generally located at the northeast corner of Amado and Calle Alvarado. The City Property is currently used as a public parking lot. The City shall convey in fee all of the City Property to the Developer, and the Developer shall acquire, develop, and maintain the City Property in accordance with the terms and provisions of this Agreement. The City Property is shown on the Map of the Site (Attachment No. 1) and is more particularly described in the Legal Description of the Site (Attachment No. 2). The second property ("Developer Property") is an approximately 2.7 acre parcel immediately north of the City Property. Developer shall acquire, develop, and maintain the Developer Property in accordance with the terms and provisions of this Agreement. The Developer Property is shown on the Map of the Site (Attachment No. 1) and is more particularly described in the Legal Description of the Site (Attachment No. 2). The City Property and the Developer Property are collectively referred to in this Agreement as the Site. The Parties acknowledge both the City Property and the Developer Property are necessary for the development of the Dolce in order to meet the minimum lot size required to achieve the height, mass, and set-back requirements of the City's zoning and land use requirements and regulations.

5. *Purchase Price of the City Property:* Two Million United States Dollars (\$2,000,000)

6. *Required Use of the Site:* Construction and maintenance of the Dolce Palm Springs Project, a Dolce brand, Upper upscale, first class superior (four+ star) hotel, with at least 200 guest rooms, 15,000 square feet of meeting space, two restaurant(s), a lounge & bar, spa and workout amenities, parking for the hotel which meets the minimum parking requirements of the City, and other features as determined as appropriate by CDI. Developer acknowledges and understands that the City Property will be conveyed to the Developer for the purpose of development pursuant to this Agreement and not for speculation in undeveloped land.

7. *Purchase Date:* Property shall be purchased on the start of construction by Developer but no later than December 31, 2013. Escrow shall be opened no less than 45 days before the anticipated Purchase Date.

8. *Escrow:* The City agrees to open an escrow with an escrow company located in the City of Palm Springs, California (the "Escrow Agent") within the time established above in Section 8 for the purpose of conveying fee title of the City Property to the Developer. This Agreement constitutes the joint escrow instructions of the City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Section in writing, deliver to the City and to the Developer within five (5) days after the opening of the escrow, then shall carry out its duties as Escrow Agent hereunder.

a. Prior to the opening of escrow, the Developer shall submit to the City Attorney, for approval by the City Attorney in his sole reasonable discretion, a proposed Financing Plan that shall include:

- (i) a cash flow projection for operation of the Dolce;
- (ii) a cost breakdown for development based upon government permits and approvals and any design documents;
- (iii) a sources and uses table identifying the proposed use of each source of funding for the Project during the construction period; and
- (iv) evidence reasonably satisfactory to the City Attorney that the Developer has sufficient additional funds available and is able to commit such funds to cover the difference, if any, between costs of development of the Project and the amount available to the Developer from external sources.

b. The City Attorney's review of the Financing Plan shall be for the purposes of determining if the contemplated financing will be reasonably available, will provide sufficient funds for construction of the Project, and for its operation consistent with the terms of this Agreement and will otherwise be provided on terms consistent with the terms and conditions of this Agreement.

c. Upon opening of Escrow per this Section 9, the Developer shall deposit with the Escrow Agent \$500,000.00 as an initial non-refundable deposit ("Deposit") to be applied against the Purchase Price. The Deposit shall be forwarded by wire transfer in accordance with wire transfer instructions provided by the Escrow Agent, to be invested by the Escrow Agent in a federally insured interest-bearing account as approved by the Parties. Seller shall have the option of terminating this Agreement if the full amount of the Deposit is not delivered to the Title

Company as prescribed herein. The Deposit shall be non-refundable except as otherwise expressly provided elsewhere in this Agreement. The Deposit shall be applied against the Purchase Price. Purchaser agrees to promptly deliver or cause the Title Company to deliver written acknowledgment by the Title Company that the executed copy of this Agreement and the Deposit have been received by and are being held by the Title Company in accordance with the terms of this Agreement. If the sale of the Property is consummated under this Agreement, the Deposit shall be paid to Seller and applied to the payment of the Purchase Price at Closing. If Purchaser terminates this Agreement solely in accordance with any right to terminate granted to Purchaser by the terms of this Agreement, the Deposit shall be returned to Purchaser within 3 days, and no party hereto shall have any further obligations under this Agreement except for such obligations which by their terms expressly survive the termination of this Agreement (the "Surviving Obligations"); provided, however, that in no event shall any portion of the Deposit be refundable to Purchaser in connection with any termination by Purchaser pursuant to the provisions of Section 12 of this Agreement.

d. Prior to the close of escrow, Developer shall deposit with the Escrow Agent the balance of the Purchase Price (\$2 Million Dollars less the \$500,000 Deposit) by wire transfer in accordance with wire transfer instructions provided by the Escrow Agent.

e. The Developer shall also pay into escrow the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow.

- (i). One-half (1/2) of the escrow fee; and
- (ii). The portion of the premium for the title insurance policies or special endorsements to be paid by the Developer as set forth in the additional escrow instructions.

f. The City shall timely and properly execute, acknowledge and deliver a deed conveying to the Developer fee title to the City Property in accordance with the requirements as set forth herein together with an estoppel certificate certifying that the Developer has completed all acts (except deposit of the Initial Deposit) necessary to entitle the Developer to such conveyance, if such be the fact.

g. The City shall pay into escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the City of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

- (i). Costs necessary to place the title to the City Property in the condition for conveyance required by the provisions of this Agreement;
- (ii). One-half (1/2) of the escrow fee;
- (iii). Cost of preparing the deed;
- (iv). Recording fees;
- (v). Notary fees;
- (vi). The premium for an A.L.T.A. standard title insurance owners policy to be paid by the City and the cost for a corresponding A.L.T.A. survey;
- (vii). Ad valorem taxes, if any, upon the City Property for any time prior to conveyance of title; and
- (viii). Any state, county or city documentary transfer tax.

h. Upon delivery of the deed to the Escrow Agent by the City, and the completion and satisfaction of all pre-conditions for closing as provided in this Agreement, including without limitation the deposit of the full purchase price and the delivery of Evidence of Financing per 9.a.iv above, the Escrow Agent shall record such deed. Title can be vested in the Developer in accordance with the terms and provisions of this Agreement. Immediately thereafter, Escrow Agent shall record the Deed of Trust. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing the City Property are not to be transferred.

i. The Escrow Agent is authorized to:

(i). Pay and charge the City and the Developer, respectively, for any fees, charges and costs payable under this Agreement. Before such payments are made, the Escrow Agent shall notify the City and the Developer of the fees, charges and costs necessary to clear title and close the escrow;

(ii). Disburse funds and deliver the deed and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the City and the Developer; and

(iii). Record any instruments delivered through this escrow, if necessary or proper, to vest title in the Developer in accordance with the terms and provisions of this Agreement.

j. All funds received in this escrow shall be deposited by the Escrow Agent in an escrow account or accounts with any state or national bank doing business in the State of California. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a thirty (30) day month.

k. Any amendment of these escrow instructions shall be in writing and signed by both the City and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

l. All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in this Agreement for notices, demands and communications between the City and the Developer.

m. The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under this Agreement.

n. Neither the City nor the Developer shall be liable for any real estate commissions or brokerage fees that may arise here from. The City and the Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

9. *Conveyance of Title and Delivery of Possession:* Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred, and subject to any mutually agreed upon extensions of time, conveyance to the Developer of fee title to the City Property shall be completed on or prior to the date specified in this Agreement. The City and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

a. Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Developer shall hold the City harmless from any injury or damages arising out of any activity pursuant to this section. The Developer shall have access to all data and information on the Site available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

b. Any preliminary work undertaken on the City Property by the Developer prior to conveyance of title thereto shall be done only after written consent of the City and at the sole expense of the Developer. The Developer shall save and protect the City against any claims resulting from such preliminary work, access or use thereof. Copies of data, surveys and tests obtained or made by the Developer shall be filed with the City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

10. *Inspections and Conditions of the Site.*

a. Inspections: Developer has conducted a Phase I Environmental Study and Soils Analysis of the Site and is satisfied with their condition. No further analysis or studies of the Site are required.

b. "As Is": Developer agrees it will rely solely on its own investigation and agrees to purchase the Site "as is," in its current physical condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Materials (as defined herein) thereon or therein.

c. Developer Indemnity: Developer agrees, from and after close of escrow, to defend, indemnify, protect and hold harmless the City and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("Indemnitees") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein) or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), whenever arising, unless caused in whole or in part by any of the Indemnitees, resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials (as defined herein), at, on, in, beneath or from the Site (collectively referred to as "Contamination"). Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at Developer's sole cost.

d. Release and Waiver. The Developer hereby releases and waives all rights, causes of action and claims Developer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials (as defined herein), at, on, in, beneath or from the Site, unless the presence of such Hazardous Materials at, on, in, beneath or from the Site is

caused in whole or in part by any of the Indemnitees. In furtherance of the intentions set forth herein, Developer acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Developer hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or non-statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section.

11. *Definitions*

a. As used in this Agreement, the term "Environmental Response Actions" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by Developer or City.

b. As used in this Agreement, the term "Environmental Response Costs" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

c. As used in this Agreement, the term "Hazardous Materials" means any substance, material or waste which is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; or (6) determined by California, federal, or local government authority to be capable of posing a risk of injury to health, safety, or property.

12. *Materiality:* Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Developer for the benefit of the City set forth in this Agreement are a material element of the consideration to the City for the performance of its obligations under this Agreement, and that the City would not have entered into this Agreement unless Developer's obligations were as provided for herein. Developer further acknowledges and agrees that the provisions of this Section which extend representations, warranties, indemnifications, and/or covenants of Developer to the benefit of the City shall not be satisfied, waived or otherwise extinguished by City's issuance of any Certification of Completion under Section 323 of this Agreement.

13. *Zoning of the Site:* The City and the Developer agree that on the date of execution of this Agreement the Site is zoned so as to permit the development and construction, of improvements in accordance with the provisions of this Agreement and the use, operation and maintenance of such improvements.

14. *Preliminary Work by the Developer:* Prior to the conveyance of title from the City, representatives of the Developer shall have the right of access to the City Property at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Developer shall hold the City harmless from any injury or damages arising out of any activity pursuant to this section. The Developer shall have access to all data and information on the Site available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Site by the Developer prior to conveyance of title thereto shall be done only after written consent of the City and at the sole expense of the Developer. The Developer shall save and protect the City against any claims resulting from such preliminary work, access or use thereof. Copies of data, surveys and tests obtained or made by the Developer shall be filed with the City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

15. *Anticipated Opening Date of the Dolce:* December 2015

16. *Benchmark Schedule:*

Entitlements: No later than June 30, 2013 for completion of Planned Development Amendment including City Council approvals and receipt of entitlements if required.

Start of Construction: No later than December 31, 2013

Opening Date: Expected December 31, 2015 but no later than March 2016.

17. *Seller's Obligations at the Closing.* At the Closing, or at such other time as indicated below, Seller shall deliver to Purchaser the following:

a. *Title Policy.* Within a reasonable period of time following Closing, an Owner's Policy of Title Insurance in California standard form (the "Owner's Policy"), issued by Title Company on behalf of Fidelity Title Insurance Company, naming Purchaser as insured, in the amount of the Purchase Price, insuring that Purchaser owns good and indefeasible fee simple title to the Property, subject only to the Permitted Encumbrances and routine exceptions required by the title insurer. Purchaser, at Purchaser's sole expense, may elect to obtain additional or extended coverage or endorsements over the base Owner's Policy, but obtaining such additional coverage or endorsements will not be a condition precedent to Purchaser's Closing obligations pursuant to this Agreement.

b. *Evidence of Authority.* Such authorizing documents of Seller as shall be reasonably required by the Title Company to evidence Seller's authority to consummate the transactions contemplated by this Agreement.

18. *Purchaser's Obligations at the Closing.* Prior to Closing, Purchaser shall deliver to Seller the following:

a. *Purchase Price.* The Purchase Price by wire transfer of immediately available funds.

b. *Evidence of Authority.* Such organizational and authorizing documents of Purchaser as shall be reasonably required by Seller and/or the Title Company authorizing Purchaser's

acquisition of the Property pursuant to this Agreement and the execution of this Agreement and any documents to be executed by Purchaser at the Closing.

c. Taxpayer I.D. Certificate. Taxpayer I.D. Certificate, in the form attached to this Agreement as Exhibit E.

d. Title Insurance Requirements. Such customary affidavits, certificates, authority documentation and other documents as the Title Company may reasonably require of Purchaser to issue the Owner's Policy.

e. Evidence of Financing. Developer shall have submitted to the City Attorney at least 10 business days before closing, the following evidence of financing:

(i) Demonstration to the satisfaction of the City Attorney or designee the availability of funds sufficient to pay all costs relating to acquisition of the City Property and development of the Dolce on the Site, including sufficient equity capital, bonding capacity and borrowing ability to fund the Dolce in writing from a Permitted Mortgagee(s).

(ii) A letter from a Qualified Institutional Lender to the effect that the Developer has established a commercial account with such financial institution and maintains a good relationship with such financial institution.

(iii) Developer and its financing partner shall evidence the ability to or have secured a Construction Loan for the Project which shall demonstrate to the satisfaction of the City Attorney or designee the Developer's ability to fund construction.

(iv) Such other documents, as the City, in its good faith discretion, determines will assist in the evaluation of whether the Developer is able to acquire the City Property and the Developer Property, construct the Dolce, and perform in a timely manner all of its other obligations and commitments set forth in this Agreement.

f. Acquisition of Developer's Property. Developer shall have acquired the Developer's Property prior to close of escrow. A close of escrow on the Developer's Property simultaneous with the close of escrow on the City Property shall be deemed compliance with this provision.

g. Developer Default. Developer shall not be in default of any of its obligations under the terms of this agreement

19. Default Repurchase Conditions: City shall have the right to terminate this Agreement upon the failure of Developer to commence construction per the benchmark schedule above, complete the Dolce per the benchmark schedule above, open escrow no later than November 15, 2013, or close escrow by December 31, 2013, except as may be reached by mutual agreement between City and the Developer.

a. City shall have the right and option to repurchase the City Property and/or purchase the Site together with all improvements thereon, if after conveyance of title to the City Property and prior to issuance of the Certificate of Completion or Occupancy therefore, the Developer shall:

(i). Fail to commence construction of approved improvement on the City Property within the timeline established above. For the purposes of this provision, the Developer shall be

deemed to “commence construction” when, and only when, the Developer has received initial approval to commence construction, which may be defined as a rough grading permit;

(ii). Fail to diligently prosecute construction of the improvements through completion within the timeline established above;

(iii). Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment;

(iv). Fail to obtain City consent and approval to, directly or indirectly, voluntarily or involuntarily, sell, assign, transfer, dispose of or further encumber except for a permitted transfer, equipment or “soft goods” financing, mezzanine or similar debt, or any sale or transfer that is expressly permitted by the terms of this Agreement.

b. City shall have the right to purchase, repurchase, or transfer to another entity, under the conditions above, and Developer shall receive the value for the property equal to the price paid for the City Property; plus any cash payments previously paid by the Developer for the development of the City Property for the improvements thereon, financed costs associated with the design and entitlement, amounts financed inclusive of all “hard” and “soft” costs related to the site and the improvements to be constructed thereon, including without limitation, architectural, engineering and legal fees, fees paid to governmental entities, cost of all on-site labor and materials for the construction of the improvements existing on the Parcel at the time of repurchase less any unpaid assessments.

20. Breach by Seller. In the event that Seller shall fail to consummate this Agreement for any reason, except Purchaser's default or a termination of this Agreement by Purchaser or Seller pursuant to a right to do so under the provisions hereof, Purchaser, as its sole and exclusive remedy may either:

a. terminate this Agreement and receive a refund of the Earnest Money, and neither party shall have any further right or obligation hereunder other than the Surviving Obligations, or

b. pursue the remedy of specific performance of Seller's obligations under this Agreement; provided, however, that

(i) Purchaser shall only be entitled to such remedy if

(A) any such suit for specific performance is filed within sixty (60) days after Purchaser becomes aware of the default by Seller,

(B) Purchaser is not in default under this Agreement,

(C) Purchaser has tendered to the Title Company

(ii) the Purchase Price in immediately available funds and the Title Company has acknowledged receipt of same, in writing, to Seller, or

(iii) evidence of available financing for the Purchase Price, in form and from a financial institution or source reasonably acceptable to Seller, with funding conditioned only upon receipt of an order from a court of competent jurisdiction granting such remedy to Purchaser as a result of such suit, and the Title Company has acknowledged receipt of same, in writing, to Seller, and

(iv) Purchaser has furnished ten (10) days prior written notice to Seller of its intent and election to seek specific enforcement of this Agreement; and

(v) notwithstanding anything to the contrary contained herein, Seller shall

not be obligated to expend any sums to cure any defaults under this Agreement and if Purchaser seeks specific performance under this Agreement, Purchaser agrees to accept the Property in its "WHERE IS, AS IS" condition.

(D) Purchaser hereby agrees that prior to its exercise of any rights or remedies as a result of any defaults by Seller, Purchaser will first deliver written notice of said default to Seller, and if Seller so elects, Seller shall have the opportunity, but not the obligation, to cure such default within ten (10) days after Seller's receipt of such notice. In no event whatsoever shall Purchaser file any instrument of record against title to the Property; provided, however, Purchaser may file a lis pendens of this Agreement simultaneously with its filing of a suit for specific performance pursuant to this Agreement. Notwithstanding any of the foregoing to the contrary, in no event whatsoever shall Purchaser have the right to seek money damages of any kind as a result of any default by Seller under any of the terms of this Agreement except with respect to Seller's indemnification of Purchaser provided in this Agreement. In no event shall Seller be liable to Purchaser for any punitive, speculative or consequential damages.

21. *Hotel Incentive Program:* Developer shall be eligible to participate in the City's Hotel Incentive Program (Palm Springs Municipal Code Chapter 5.26) and shall receive the 75% rebate so long as Developer commences construction as provided in the City's Hotel Incentive Program.

22. *No Representations Or Warranties By Seller; Acceptance Of Property.* Purchaser acknowledges and agrees that, except as may be expressly provided in this agreement, seller has not made, does not make and specifically negates and disclaims any representations, warranties (other than the special warranty of title as set out in the deed, as defined below), promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the value, nature, quality or condition of the property, including, without limitation, the water, soil and geology, (b) the income to be derived from the property, (c) the suitability of the property for any and all activities and uses which purchaser or any tenant may conduct thereon, (d) the compliance of or by the property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the property, (f) the manner or quality of the construction or materials, if any, incorporated into the property, (g) the manner, quality, state of repair or lack of repair of the property, (h) compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the property of hazardous materials (as defined below) or (i) any other matter with respect to the property. Additionally, no person acting on behalf of seller is authorized to make, and by execution hereof of purchaser acknowledges that no person has made, any representation, agreement, statement, warranty, guaranty or promise regarding the property; and no such representation, warranty, agreement, guaranty, statement or promise if any, made by any person acting on behalf of seller shall be valid or binding upon seller unless expressly set forth herein. Purchaser further acknowledges and agrees that having been given the opportunity to inspect the property, purchaser is relying solely on its own investigation of the property and not on any information provided or to be provided by seller and agrees to accept the property at the closing and waive all objections or claims against seller (including, but not limited to, any right or claim of contribution) arising from or related to the property or to any hazardous materials on the property. Purchaser further acknowledges and agrees that any information provided or to be provided with respect to the property was obtained from a variety of sources and that seller has not made any independent investigation or verification of such information and

makes no representations as to the accuracy, truthfulness or completeness of such information. Seller is not liable or bound in any manner by any verbal or written statement, representation or information pertaining to the property, or the operation thereof, furnished by any real estate broker, contractor, agent, employee, servant or other person. Purchaser further acknowledges and agrees that to the maximum extent permitted by law, the sale of the property as provided for herein is made on an "as is" condition and basis with all faults. It is understood and agreed that the purchase price has been adjusted by prior negotiation to reflect that all of the property is sold by seller and purchased by purchaser subject to the foregoing. Except for acts or omissions prior to closing, purchaser hereby agrees to indemnify, protect, defend, save and hold harmless seller from and against any and all debts, duties, obligations, liabilities, suits, claims, demands, causes of action, damages, losses, fees and expenses (including, without limitation, attorneys' fees and expenses and court costs) in any way relating to, or in connection with or arising out of purchaser's acquisition, ownership, leasing, use, operation, maintenance and management of the property.

23. *Development of the Site by the Developer*

- a. **Scope of Development.** The Site shall be developed as provided in the Scope of Development (Attachment No. 3).
- b. **Preliminary Planned Development.** The City has maintained previously prepared and submitted schematic drawings and entitlement application (collectively a "Preliminary Planned Development"). The Site shall be developed as generally established in the Preliminary Planned Development and related documents except as changes may be mutually agreed upon between the Developer and the City. Any such changes shall be within the limitations of the Scope of Development (Attachment No. 3).

24. *Construction Plans, Drawings and Related Documents.* The Developer shall prepare and submit to the City for its approval:

- a. **Construction plans, drawings and related documents for architectural and site planning review and written approval.** The construction plans, drawings and related documents shall be submitted in stages: preliminary and final working drawings and plans for each phase of work. Final working drawings and plans are hereby defined as those in sufficient detail to obtain a foundation and/or a building permit.
- b. **Preliminary and final landscaping and finish grading plans for the Site.** Such final plans shall be prepared and submitted within the times agreed to between parties and subject to extensions as are authorized herein or as mutually agreed to by the parties hereto.
- c. **During the preparation of all final drawings and plans,** City staff and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to and review of construction plans and related documents by the City. The City and the Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

25. *City Approval of Plans, Drawings, and Related Documents.* Subject to the terms of this Agreement, and consistent with the provisions of the City's Municipal Code, the City shall have the right of architectural and site planning review of all plans and drawings, including any changes therein.

a. The City shall approve, conditionally approve, or disapprove the plans, drawings and related documents referred to in this Agreement. Once an aspect of the plans, drawings and related documents has been approved by the City, a later rendering of such aspect, or a more detailed iteration of such aspect, shall be approved by the City absent a material change thereto.

b. Any disapproval shall state in writing with reasonable specificity the reasons for disapproval and the changes that the City requests be made. Such reasons and such changes must be consistent with the Scope of Development (Attachment No. 3) and any items previously approved or deemed approved hereunder by the City. The Developer, upon receipt of a disapproval based upon powers reserved by the City under the City's Municipal Code, shall revise such plans, drawings and related documents and resubmit them to the City as soon as possible after receipt of the notice of disapproval, provided that in no case shall the City be entitled to require changes inconsistent with the Scope of Development and any previously approved items.

c. If the Developer desires to make any substantial change in the construction plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the construction plans, as modified by the proposed change, conform to the requirements of this Agreement, the approvals previously granted by the City under this Scope of Development (Attachment No. 3), the City shall approve the proposed change and notify the Developer in writing within ten (10) days after submission to the City by written notice thereof by the City to the Developer setting forth in detail the reasons therefor.

26. *Cost of Construction.* The cost of developing the Site and constructing all improvements thereon shall be borne by the Developer, except for work expressly set forth in this Agreement to be performed or paid for by the City or others. The City and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

27. *Construction Schedule.* After close of escrow, the Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements and the development of the Site. The Developer shall begin and complete all construction and development within the times specified in this Agreement or such reasonable extension of said dates as may be granted by the City. During the period of construction, but not more frequently than once a month, the Developer shall submit to the City a written progress report of the construction when and as requested by the City. The report shall be in such form and detail as may reasonably be required by the City and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

28. *Bodily Injury, Property Damage and Workers' Compensation Insurance.* Prior to the commencement of construction on the Site or any portion thereof, the Developer shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least ONE MILLION DOLLARS (\$1,000,000) for any person, FIVE MILLION DOLLARS (\$5,000,000) for any occurrence and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) property damage, naming the City as an additional or coinsured. The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. The obligations set forth in this Section shall remain in effect only until a final Certificate of Completion has been issued covering the hotel construction,

29. *City and Other Governmental Agency Permits.* Before commencement of construction or development of any buildings, structures or other work of improvement upon the Site (unless such construction, development or work is to be commenced before the conveyance of title), the Developer shall, at its own expense, secure or cause to be secured any and all permits that may be required by the City or any other governmental agency affected by such construction, development or work. If any revisions or corrections of plans approved by the City shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the Developer and the City shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

30. *Rights of Access.* For the purposes of assuring compliance with this Agreement, representatives of the City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the City shall be those who are so identified in writing by the City Manager. The City shall indemnify and defend the Developer and hold it harmless from any damage caused or liability arising out of this right to access.

31. *Local, State, and Federal Laws.* The Developer shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

32. *Antidiscrimination During Construction.* The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, ancestry or national origin.

33. *Responsibilities of the City.* The City, without expense to the Developer or assessment or claim against the Site, shall perform all work specified for the City to perform within the times specified in the construction schedule.

34. *Taxes, Assessments, Encumbrances and Liens.* The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Site for any period subsequent to conveyance of title to or delivery to Developer. Prior to the issuance of a Certificate of Completion for the Hotel the Developer shall not place or allow to be placed on the City Property any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. The Developer shall remove or have removed any levy or attachment made on the City Property (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

35. *Prohibition Against Transfer of City Property, the Buildings or Structures Thereon and Assignment of Agreement.* After close of escrow of and prior to the issuance by the City of a Certificate of Completion with respect to the improvements pursuant to Scope of Development (Attachment 3), with the exception of the sale of individual villas and fractional units, the Developer shall not, except as expressly permitted by this Agreement, sell, transfer, convey, assign or lease the whole or any part of the buildings or improvements thereon without the prior written approval of the City. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion for the Hotel improvements. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the City Property

or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

- a. In the absence of specific written agreement by the City, no such transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement until completion of development of the Hotel as evidenced by the issuance of a Certificate of Completion therefor.
- b. Changes may be mutually agreed upon between the Developer and the City. Any such changes shall be within the limitations of the Scope of Development (Attachment No. 3).

36. *Security Financing; Rights of Holders.* No Encumbrances except Mortgages, Deeds of Trust, Sales and Lease-Backs or Other Financing for Development. Notwithstanding Sections ___ and ___ of this Agreement, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted before issuance of a Certificate of Completion for the Hotel, but only for the purpose of securing loans of funds to be used for financing the acquisition or development of the Site, the construction of Hotel improvements, and any other expenditures necessary and appropriate to develop the City Property under this Agreement. The Developer shall notify the City in advance of any mortgage, deed of trust, sale and lease-back or other form of conveyance for financing if the Developer proposes to enter into the same before issuance of a Certificate of Completion for the Hotel. The Developer shall not enter into any such conveyance for financing without the prior written approval of the City (unless such lender shall be one of the ten (10) largest banking institutions doing business in the State of California, or one of the ten (10) largest insurance lending institutions in the United States qualified to do business in the State of California), which approval the City agrees to give if any such conveyance is given to a responsible financial or lending institution or other acceptable person or entity. Such lender shall be deemed approved unless rejected in writing by the City within ten (10) days after notice thereof to the City by the Developer. In any event, the Developer shall promptly notify the City of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the improvements on the Site whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

37. *Holder Not Obligated to Construct Improvements.* The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the City Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

38. *Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure.* Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the City therefor. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such

holder, the right to cure or remedy a breach or default of the Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the City, to a Certificate of Completion from the City.

39. *Failure of Holder to Complete Improvements.* In any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site or any portion thereof has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and all other amounts due under the loan secured thereby including, without limitation, any prepayment obligation. If ownership has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- b. All expenses with respect to foreclosure;
- c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or portions thereof;
- d. The costs of any authorized improvements made by such holder; and
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City

40. *Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default.* In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site or any portion thereof prior to the completion of development, and the holder has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site or applicable portion thereof to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Hotel Property as authorized herein.

41. *Right of the City to Satisfy Other Liens on the Site After Title Passes.* After the close of escrow and prior to the issuance of a Certificate of Completion for construction and development on the Hotel Property, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, the City shall have the right to satisfy any such liens or encumbrances, provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale.

42. *Certificate of Completion.* Promptly after completion and satisfactory inspection by the City of all construction and development to be completed by the Developer upon the Hotel Property the City shall furnish the Developer with a Certificate of Completion upon written request therefor by the Developer. Such Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of Riverside County.

- a. A Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Hotel Property and of full compliance with the terms hereof. After issuance of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Hotel Property covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the Hotel, neither the City nor any other person shall have any rights, remedies or controls with respect to the Hotel Property that it would otherwise have or be entitled to exercise under this Agreement as a result

of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties shall be as set forth in the grant deed of the Hotel Property.

b. The City shall not unreasonably withhold a Certificate of Completion. If the City refuses or fails to furnish a Certificate of Completion for the Hotel after written request from the Developer, the City shall, within ten (10) days after receipt of such written request, provide the Developer with a written statement of the reasons the City refused or failed to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping, the City will issue its Certificate of Completion upon the posting of a bond by the Developer with the City in an amount representing a fair value of the work not yet completed. If the City shall have failed to provide such written statement within said ten (10) day period, the Developer shall be deemed entitled to the Certificate of Completion.

c. Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093 or a Certificate of Occupancy.

43. *Uses of the Site.* The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that the Developer and its successors and assignees shall use, operate and maintain the Site and the improvements thereon only for a First Class Hotel, equivalent to a 4+ star category, as described in this Agreement. The Developer shall use the Site and the improvements thereon for no purpose other than hotel and hotel related uses without the prior written consent of the City. The foregoing covenant shall run with the land.

44. *Hotel Operator.* The Developer shall cause the Hotel to be operated pursuant to an operating and/or management agreement ("Hotel Operating Agreement") with a Dolce Hotels and Resorts, qualified operator ("Operator"). The Hotel Operating Agreement shall provide for no less than a one hundred fifty (150) room block commitment (needs to be changed to an appropriate block number based on the final mix) to the Convention Center under the Convention Center's Committable Rooms Program. Prior to conveyance of the Site to the Developer, the Developer shall provide to the City written confirmation that it has entered into the Hotel Operating Agreement with the Operator together with an abstract of Hotel Operating Agreement which identifies the material terms and provisions contained therein.

Any change in the identity of the Operator prior to issuance of a Certificate of Completion shall require the prior written approval of the City, which approval shall not be unreasonably withheld or delayed if the new Operator is as qualified as Dolce Hotels and Resorts. As used herein "change in the identity of Operator" shall mean any change in fifty percent (50%) or more of the ownership or control of the Operator or in a general partner, managing partner or other entity having a controlling interest in Operator.

45. *Obligation to Refrain From Discrimination.* The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

a. Form of Nondiscrimination and Nonsegregation Clauses:

The Developer shall refrain from restricting the rental, sale or lease of the Site on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

i. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

ii. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

iii. That there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

iv. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

b. Effect and Duration of Covenants. The covenants against discrimination shall remain in effect in perpetuity. The covenants established in this Agreement and the grant deed shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, the City and any successor in interest to the Site or any part thereof.

c. The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the City without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site, any parcel or subparcel, or in the Site. The City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

46. *Defaults, Remedies and Termination*

a. Subject to the extensions of time set forth herein, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

b. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

c. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

47. Miscellaneous

a. Notices. All notices, demands and requests which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective either: (a) on the date personally delivered to the address identified in Sections 1 and 2 above, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (b) on the day sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified in Sections 1 and 2 above; (c) on the first (1st) business day after being deposited into the custody of a nationally recognized overnight delivery service such as Federal Express, addressed to such party at the address specified in Sections 1 and 2 above, or (d) on the date delivered by facsimile to the respective numbers specified Sections 1 and 2 above.

b. Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

c. Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

d. Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

e. Time of Essence. Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of California, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

f. Governing Law. This Agreement shall be governed by the laws of the State of California and the laws of the United States pertaining to transactions in such State.

g. Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

h. Attorneys' Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages, as provided herein, attorneys' fees and expenses incurred in such suit.

i. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; in making

proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart with each party's signature.

j. **Effective Date.** As used herein the term "Effective Date" shall mean the date of approval by the City Council.

k. **Sales Date:** As used herein the term "Sales Date" shall mean the date the Title Company is in receipt of both this Agreement executed by Purchaser and Seller (whether in counterparts or not) and the Earnest Money, as indicated by the dating of the Title Company's signature in the blank provided for same.

l. **Merger Provision.** Except as otherwise expressly provided herein, any and all rights of action of Purchaser for any breach by Seller of any representation, warranty or covenant contained in this Agreement shall merge with the Deed and other instruments executed at Closing, shall terminate at Closing and shall not survive Closing.

PURCHASER: By: _____

Date of Execution by Purchaser Name: _____

Title: _____

SELLER: By: _____

Date of Execution by Seller Name: _____

Title: _____

SERVICES AGREEMENT

This Agreement (this "Agreement") is made by and between City of Palm Springs ("City"), and CDI Ventures, LLC and/or its affiliates, assigns, successors ("CDI").

1. *Purpose of This Agreement:* The City and CDI have entered into a Purchase and Sale Agreement for sale of land owned by the City ("City Property") generally located at the northeast corner of Amado and Calle Alvarado and is currently used as a public parking lot. This property together with an approximately 2.89 acre parcel of land CDI will acquire ("Developer Property") will be developed and maintained as the Dolce Hotel Project. The Developer Property is described as Lot 102 in Sec. 14, Township 4 South, Range 4 East, San Bernardino Meridian, and is adjacent to and north of the City Property. The Developer desires City assistance in the acquisition of the Developer Property and to purchase certain improvements and development rights of the City associated with the City Property.

2. *City Services:* City shall assist CDI in the assemblage and acquisition of the Developer Property to accommodate and allow for density requirements for the Dolce Hotel Project. CDI will pay the City a fee of \$675,000 for such services. This payment shall be paid to City upon the close of escrow of the sale of the Developer Property to CDI.

3. *Existing Improvements and Entitlement Rights:* Developer shall pay City for the unamortized parking improvements and the existing entitlements for the development of the City Property and the Developer Property in an amount of \$2,000,000. This payment shall be paid in fourteen (14) equal monthly installments commencing on the first day of the first month following the issuance of the first grading or building permit on either the City Property or the Developer Property.

4. *Security:* CDI shall furnish security in the form of a bond, or bonds, or cash, or in such other form as may be approved by the City Manager and the City Attorney, in the amount or \$2,000,000 to guarantee its faithful performance of its obligations under Section 3 of this Agreement.

5. *Miscellaneous*

a. *Notices.* All notices, demands and requests which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective either: (a) on the date personally delivered to the address identified in Sections 1 and 2 of the Purchase and Sale Agreement between the parties above, in the manner provided in Purchase and Sale Agreement.

b. *Entire Agreement.* This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

c. **Amendment.** This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

d. **Headings.** The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

e. **Time of Essence.** Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of California, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

f. **Governing Law.** This Agreement shall be governed by the laws of the State of California and the laws of the United States pertaining to transactions in such State.

g. **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

h. **Attorneys' Fees.** In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages, as provided herein, attorneys' fees and expenses incurred in such suit.

i. **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart with each party's signature.

j. **Effective Date.** As used herein the term "Effective Date" shall mean the date of approval by the City Council.

City of Palm Springs

CDI Ventures, LLC

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____