



CITY COUNCIL STAFF REPORT

DATE: NOVEMBER 4, 2015 NEW BUSINESS

SUBJECT: APPROVING AMENDMENT NO. 4 TO A PURCHASE AND SALE AGREEMENT WITH SELENE PALM SPRINGS, LLC; APPROVING AMENDMENT NO. 1 TO THE SERVICES AGREEMENT WITH SELENE PALM SPRINGS, 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 Amendment No. 4 to a Purchase and Sale Agreement with Selene Palm Springs, LLC (the "Developer") and Amendment No. 1 to a Services Agreement with the Developer, related to the development of a hotel project for the 7.8+ acre parcel located at Amado Road and Calle Alvarado in Section 14, providing for (1) extensions of certain performance dates, (2) a funding source for public parking to be incorporated in the hotel project, and (3) an additional repurchase option as a City remedy.

RECOMMENDATION:

- 1) Approve Amendment No. 4 to Agreement No. A6329 with Selene Palm Springs LLC for the sale of a 7.8 acre parcel at the northeast corner of Calle Alvarado and Amado;
- 2) Approve Amendment No. 1 to the Services Agreement with Selene Palm Springs, LLC for the funding of replacement public parking within the proposed hotel project on the 7.8 acre parcel at the northeast corner of Calle Alvarado and Amado;
- 3) Authorize the City Manager to execute all necessary documents.

Background:

In March, 2013 the City and Developer entered a Purchase and Sale Agreement for the sale of a 7.8 +/- acre parcel for the development of a luxury hotel on the site. As originally conceived, the City would convey the property to the Developer when all


entitlements had been approved, building permits issued, and construction started. The Developer would pay the City the amount of \$2,000,000 for the property. The Developer also agreed in a separate Services Agreement to pay the City \$675,000 for City to assist the Developer in the assemblage and acquisition of certain additional properties initially proposed to be included in the project. The Developer also agreed in the Services Agreement to pay the City \$2,000,000 (payable in fourteen monthly installments after the issuance of building permits) for unamortized parking improvements and the existing entitlements approved for an earlier project on the site.

The Purchase and Sale Agreement has been amended three times primarily to accommodate changes in the name of the Developer and to make modest modifications in the performance schedule.

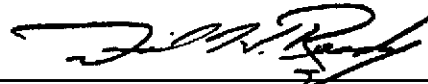
An additional revision to the performance schedule is again warranted. The City Council recently reviewed certain actions the City performed in its capacity as the Successor Agency to the former Palm Springs Redevelopment Agency. The Council's review included the property the City proposes to sell to the Developer. The City originally purchased this property in 1991. In December of 2007, the City transferred the property to the Redevelopment Agency. In March of 2012 the Redevelopment Agency attempted to transfer the property back to the City; however, this transaction occurred after the effective date of the RDA Dissolution Act and the State disallowed the transfer. Thus, the City, as the Successor Agency to the RDA is obligated to dispose of the property in a manner consistent with the Dissolution Act. As a result of the City Council's review, the Council determined that the City did not fully comply with certain notice requirements for meetings of the Oversight Board and did not disclose previous appraisals of the property to the Oversight Board. The Purchase and Sale Agreement, the Services Agreement, and all amendments will be reviewed again by the Oversight Board on November 5, 2015 and will be resubmitted to the State. It is uncertain when the State will act. In addition, the Developer's general contractor has advised the Developer that it will take at least nine months to complete the required preconstruction and early release of materials before the project will be ready for construction. The preconstruction process includes the completion of the construction drawings, value engineering, budgeting, preconstruction, and mobilizing for construction activities. Thus, it is appropriate for the Council to again consider modifications to the performance schedule.

The Developer is requesting that the property be conveyed before the start of construction. Escrow is proposed to close no later than June 30, 2016. The purchase price of \$2,000,000 has not changed. No later than 9 months after close of escrow or December 15, 2016, whichever date is later, the Developer is required to complete the Final Planned Development Permit and submit building permit applications to the City. Construction is to start within 15 months of the close of escrow of the sale of the property to the Developer (which would be no later than September 30, 2017) and the expected opening is September 30, 2018 but no later than December 31, 2018.

The proposed Amendment No. 1 to the Services Agreement deletes the assemblage and acquisition requirement and provides that the Developer will deposit \$2,675,000 with the City at the time of issuance of building permits. These monies will be deposited in an escrow account and will be used solely for the construction of public parking facilities on the property and as a part of the project. It is anticipated that these funds, coupled with the City's recently approved participation in the statewide Community Infrastructure Program ("SCIP") will be the vehicle for funding at least 350 public parking spaces. These additional parking spaces will be in addition to the minimum parking the Developer is required to provide for the project and represent the replacement



Douglas Holland, City Attorney



David H. Ready, City Manager

Attachments:

Amendment No. 1 to Purchase and Sale Agreement
Amendment No. 2 to Services Agreement

AMENDMENT NO. 4 TO PURCHASE AND SALE AGREEMENT (SELENE)

THIS AMENDMENT NO. 4 TO PURCHASE AND SALE AGREEMENT ("Amendment") is made and entered into by and between the City of Palm Springs, a California charter city ("City") and Selene Palm Springs, LLC, a California limited liability company ("Developer").

RECITALS

A. City entered into a Purchase and Sale Agreement with a predecessor company of Developer on March 6, 2013 for the purpose of developing and maintaining a Dolce Hotel Project ("Hotel") on property owned by the City.

B. The Purchase and Sale Agreement has been amended three previous times to address delays caused by changes in state law and the additional reviews and oversight required to comply with the requirements of state law and to fully satisfy certain requirements of state law. In addition, Developer and City have identified and are in the process of implementing a financing tool to fund replacement public parking that will also require additional time to complete. This Amendment will modify the performance schedule in response to such delays.

NOW, THEREFORE, in consideration of the foregoing Recitals and promises and covenants contained in this Agreement, the City and Developer agree as follows:

Section 1. The foregoing Recitals are true and correct.

Section 2. Section 7 of the Purchase and Sale Agreement is amended to read:

7. **Purchase Date.** Property shall be purchased prior to the start of construction by Developer but no later than June 30, 2016. Escrow shall be opened no less than thirty (30) days before the anticipated Purchase date.

Section 3. The term "City Attorney" as used in Section 8 of the Purchase Agreement shall mean the City Attorney of City and the City's Financial Consultant, as designated by the City Manager.

Section 4. Section 15 of the Purchase and Sale Agreement is amended to read:

15. *Anticipated Opening Date of the Hotel:* September 30, 2018

Section 5. Section 16 of the Purchase and Sale Agreement is amended to read:

16. *Benchmark Schedule:*

Entitlements: No later than 9 month from close of escrow or December 15, 2016, whichever is later, for completion of the Final Planned Development Permit and submission of building permit applications to the City's Building Department.

Start of Construction: Within 15 months of the close of escrow on the sale of the Property from the City to the Developer.

Opening Date: Expected September 30, 2018 but no later than December 31, 2018.

Section 6. Subsection h is added to Section 18 (Developer's Obligations at Closing) to read:

g. At all times after the Close of Escrow and until the Developer commences construction, Developer shall allow the City Property to be used as a parking lot, available to the public at no cost.

Section 7. Section 19 of the Purchase and sale Agreement is amended in its entirety to read:

19. Default Repurchase Conditions.

a. Option to Repurchase Upon Failure to Commence Construction. City and Developer acknowledge and agree that as a material consideration inducing the City to enter into this Agreement and sell the City Property to Developer, Developer intends to commence construction, and has received various discretionary development entitlements for, a First Class Hotel on the City property on or before the date for the Start of Construction identified in the Benchmark Schedule above. For the purposes of this Section 19, the Parties acknowledge that the Hotel Project as previously approved by the City as a Preliminary Planned Development, is a "First Class Hotel." For the purposes of this Section, the term "commence construction" shall mean Developer has completed all pre-construction engineering and design, has received all necessary permits, licenses, and entitlements from all government entities, including the City, has entered into binding and enforceable agreements with General Contractor and MEP and Structural contractors (consistent with industry practice) as can reasonably be considered necessary so that physical construction of the Hotel Project may begin and proceed to completion without foreseeable interruption of material duration. and has started grading of the City Property and commenced the construction of improvements on the City Property. The City and Developer hereby further acknowledge and agree that if Developer should fail to commence construction of the Hotel Project at the City property on or before the Start of Construction Date, and fails to cure the same within sixty (60) days following written notice thereof by City, City shall have the option to repurchase the Property from Buyer (the "Repurchase Option A"), subject to the terms and conditions set forth in this Section 19a. Notwithstanding anything to the contrary contained herein, City's Repurchase Option A shall vest and come into existence only upon the occurrence of the Start of Construction Date, and only in the event Developer should fail to commence construction of the Hotel Project at the City Property on or before the Start of Construction Date and fails to cure the same within sixty (60) days following written notice thereof by City. In the event Developer commences construction of the Hotel Project at the City Property on or before Start of Construction Date (or, if applicable, within sixty (60) days following written notice by the City), the Repurchase Option A shall automatically terminate and be of no further force or effect.

b. In the event Developer fails to commence construction of the Hotel Project at the City Property on or before the Start of Construction Date, and fails to cure the same within sixty (60) days following written notice thereof by the City, City shall have the right to exercise the Repurchase Option A by written notice to the Developer (the "City's Repurchase Election Notice") delivered no later than six (6) months after the Start of Construction Date. In the event City fails to timely and properly

exercise its Repurchase Option A, the Repurchase Option A shall automatically terminate and be of no further force or effect. In the event City timely and properly exercises its Repurchase Option A, the purchase price payable by City to Developer with respect to the City Property shall be an amount equal to the Purchase Price paid by Developer to City hereunder for the City Property or the fair market, as determined through an appraisal of the City Property, acceptable to both parties, whichever amount is higher. In the event the City timely and properly exercises its Repurchase Option A, then (i) the closing shall occur on the date specified in the Repurchase Election Notice, which shall be no earlier than sixty (60) days and no later than one hundred and eighty (180) days after the date of the City's service on Developer of the Repurchase Election Notice, (ii) Developer and City shall each pay one-half (1/2) of the escrow fees, (iii) Developer shall pay for (1) any documentary tax stamps and (2) an ALTA standard Owner's Policy of Title Insurance in the full amount of the purchase price showing fee title vested in the City; and (iv) the City shall pay the recording fee for any other instruments which are recorded through such escrow.

c. Option to Repurchase in the event of a Failure to Complete Construction or Timely Open the Hotel. The City and Developer acknowledge and agree that if Developer should fail to complete the construction of the Hotel Project at the City property on or before the Opening Date as provided in the benchmark Schedule, and fails to cure the same within sixty (60) days following written notice thereof by City, City shall have the option (as one of its remedies) to repurchase the Property from Buyer (the "Repurchase Option B"), subject to the terms and conditions set forth in this Section 19c. Notwithstanding anything to the contrary contained herein, City's Repurchase Option B shall vest and come into existence only upon the occurrence of the Opening Date, and only in the event Developer should fail to complete construction of, and/or open the Hotel Project at the City Property on or before the Opening Date and fails to cure the same within sixty (60) days following written notice thereof by City. In the event Developer completes the construction of, and opens, the Hotel Project at the City Property on or before Opening Date (or, if applicable, within sixty (60) days following written notice by the City), the Repurchase Option B shall automatically terminate and be of no further force or effect.

d. In the event Developer fails to complete construction of and open the Hotel Project at the City Property on or before the Completion Date, and fails to cure the same within sixty (60) days following written notice thereof by the City, City shall have the right to exercise the Repurchase Option B by written notice to the Developer (the "City's Repurchase Election Notice") delivered no later than six (6) months after the Opening Date. In the event City fails to timely and properly exercise its Repurchase Option B, the Repurchase Option B shall automatically terminate and be of no further force or effect. In the event City timely and properly exercises its Repurchase Option B, the purchase price payable by City to Developer with respect to the City Property shall be an amount equal to the Purchase Price paid by Developer to City hereunder for the City Property; plus any cash payments previously paid by the Developer for the development of the City Property since October 1, 2013 for the improvements thereon, financed costs associated with design and entitlements, 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, paid to government entities, cost of all on-site labor and materials for the construction of the improvements existing on the City Property at the time of repurchase pursuant to Section 19c and 19d (but not

including any payment under the Services Agreement between the City and Developer for the construction of Parking Facilities), or the fair market value of the City Property, including any improvements thereon, as determined through an appraisal of the City Property as of the date of Notice of Repurchase Option B performed by an appraiser hired by the City and the Developer, whichever amount is lower. In the event the City timely and properly exercises its Repurchase Option B, then (i) the closing shall occur on the date specified in the Repurchase Election Notice, which shall be no earlier than sixty (60) days and no later than one hundred and eighty (180) days after the date of the City's service on Developer of the Repurchase Election Notice, (ii) Developer and City shall each pay one-half (1/2) of the escrow fees, (iii) Developer shall pay for (1) any documentary tax stamps and (2) an ALTA standard Owner's Policy of Title Insurance in the full amount of the purchase price showing fee title vested in the City; and (iv) the City shall pay the recording fee for any other instruments which are recorded through such escrow.

Section 8. Except as expressly provided above, all other terms and conditions of the Purchase and Sale Agreement, as amended, shall remain unchanged and in full force and effect.

The Parties have executed this Agreement and acknowledge November 4, 2015 as the effective date of this Agreement.

"City"
City of Palm Springs

Date: _____

By: _____

David H. Ready
City Manager

APPROVED ASS TO FORM

ATTEST

By: _____

Douglas Holland
City Attorney

By: _____

James Thompson
City Clerk

Developer
Selene Palm Springs, LLC

Date: _____

By: _____

Lauri Kibby for CDI Ventures, LLC
Managing Member for Selene Palm
Springs, LLC

AMENDMENT NO. 1 TO SERVICES AGREEMENT (SELENE)

THIS AMENDMENT NO. 1 TO SERVICES AGREEMENT ("Amendment") is made and entered into by and between the City of Palm Springs, a California charter city ("City") and Selene Palm Springs, LLC, a California limited liability company ("Developer"), the successor to Praetor Investments, LLC and CDI Ventures, LLC.

RECITALS

A. City entered into a Services Agreement with a predecessor company of Developer on March 6, 2013 for the purpose of providing for the assemblage and acquisition of certain property and to provide funding for replacement parking within a parking structure and/or parking facilities on the City's Convention Center Parking Lot in conjunction with the Dolce Hotel Project proposed for development by the Developer.

B. Developer and City have identified and are in the process of implementing a financing tool to fund replacement public parking and Developer will construct an onsite parking structure that will garage at least 350 public parking spaces in a parking structure in addition to otherwise satisfying the on-site parking requirements of the Dolce Hotel Project. The Parties anticipate that the parking structure and related parking improvements will be funded through the Statewide Community Infrastructure Program ("SCIP"). City has joined SCIP and has commenced the process of forming a Community Facilities District to be funded in part through SCIP.

NOW, THEREFORE, in consideration of the foregoing Recitals and promises and covenants contained in this Agreement, the City and Developer agree as follows:

Section 1. The foregoing Recitals are true and correct.

Section 2. Section 1 of the Services Agreement is amended to read:

1. *Purpose of This Agreement:* The City and Developer have entered into a Purchase and Sale Agreement for the 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. The City Property will be developed and maintained as the Dolce Hotel Project. The Parties acknowledge that the construction of the Dolce Hotel Project will displace the existing public parking spaces on the City Property and it is the desire of the Parties that the existing parking spaces be replaced within a parking structure and related parking facilities ("Parking Facilities") that Developer will construct and maintain in conjunction with the Dolce hotel Project.

Section 3. Section 2 of the Services Agreement is deleted in its entirety.

Section 4. Section 3 of the Services Agreement is amended to read:

3. *Existing Improvements and Entitlement Rights:* Developer shall pay City the amount of \$2,675,000.00 for the unamortized parking improvements necessary or desirable for the construction of

at least 350 public parking spaces within the Parking Facilities to replace existing public parking spaces on the City Property that will be lost as a result of the sale of the City property to the Developer and the construction of the Dolce Hotel Project. Prior to or upon the issuance of building permits, the Developer shall cause the full \$2,675,000.00 to be deposited in an escrow account designated and approved by the City to be held by the City until such time as the funds are required to fund all or a portion of contributions necessary for the SCIP and the construction of the Parking Facilities. This payment will be deposited in a trust account approved by and for the benefit of the City to be used solely for funding replacement public parking. The payment shall be paid to City prior to or at the time of close of escrow of the sale of the City Property from the City to the Developer.

Section 5. Except as expressly provided above, all other terms and conditions of the Purchase and Sale Agreement, as amended, shall remain unchanged and in full force and effect.

The Parties have executed this Agreement and acknowledge November 4, 2015 as the effective date of this Agreement.

"City"
City of Palm Springs

Date: _____

By: _____

David H. Ready
City Manager

APPROVED ASS TO FORM

ATTEST

By: _____

Douglas Holland
City Attorney

By: _____

James Thompson
City Clerk

Developer
Selene Palm Springs, LLC

Date: _____

By: _____

Lauri Kibby for CDI Ventures, LLC,
Managing Member of Selene Palm
Springs, LLC