



## CITY COUNCIL STAFF REPORT

DATE: August 3, 2016

UNFINISHED BUSINESS

SUBJECT: APPROVE ESCROW INSTRUCTIONS RELATED TO THE CONVEYANCE OF CITY PROPERTY TO 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 the escrow instructions for the conveyance of City owned property consisting of a 7.8 acre parcel at the northeast corner of Calle Alvarado and Amado to Selene Palm Springs, LLC.

### RECOMMENDATION:

- 1) Approve Escrow Instructions for the conveyance of a 7.8 acre parcel at the northeast corner of Calle Alvarado and Amado to Selene Palm Springs LLC ;
- 2) Authorize the City Manager to execute all necessary documents.

### Discussion:

The original agreement for the disposition of the 7.8 +/- acre parcel at the northeast corner of Calle Alvarado and Amado ("Property") was a Disposition and Development Agreement ("DDA") between the Community Redevelopment Agency of the City of Palm Springs ("RDA") and Re: Loftpartners Palm Springs, LLC, dated December 19, 2007. Under the terms of this DDA, the RDA would sell the Property to Loftpartners for the \$4,675,000. (A copy of the DDA is attached to this Staff Report.)

Following the recession, the City and Lauri Kibby, a principal in Loftpartners, negotiated a new agreement, the current Purchase and Sale Agreement, dated March of 2013, between the City and Selene Palm Springs LLC. Under the provisions of this Purchase and Sale Agreement, the City agreed to sell the Property to Selene Palm Springs LLC ("Selene") in the amount of \$2,000,000 for the development of a luxury hotel on the site.

ITEM NO. 4A

(A copy of the Purchase and Sale Agreement and the amendments thereto are attached to this Staff Report.)

Pursuant to a separate "Services Agreement" between the City and Selene Palm Springs, which was approved concurrently with the Purchase and Sale Agreement, Selene is obligated to also pay the City the amount of \$2,675,000 "for the unamortized parking improvements necessary or desirable for the construction of at least 350 parking spaces . . . 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 Selene. The Services Agreement contemplates that the \$2,675,000 payment would be used as the public contribution towards a financing mechanism authorized under the Statewide Community Infrastructure Program ("SCIP"). (A copy of the Services Agreement is attached to this Staff Report.) The proposed escrow instructions, at the request of Selene and its lender, eliminates reference to "at least 350 parking spaces" and no longer suggests that the 350 spaces is above or in excess of the minimum parking Selene would otherwise be required to provide for the luxury hotel project. There are restrictions on the use of the SCIP financing mechanism related to public use that will help ensure that public parking will be provided in excess of Selene's parking requirements; however, we do not know at this time how many unrestricted public parking spaces will be available.

Most of the provisions of the escrow instructions are standard terms and conditions. (A copy of the complete draft escrow instructions are attached to this Staff Report.) The provisions added to the escrow instructions by this agenda item are as follows:

The following are additional instructions to the above paragraph:

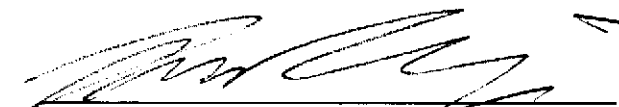
- A. Pursuant to Developer's letter submitted to Owner on December 23, 2015 in compliance with Paragraph 36 of the Purchase and Sale Agreement, the Developer's bridge lender is Beech Tree Capital.
- B. Grant Deed shall include the following deed restriction:
  1. Buyer grants Seller the right to maintain, operate, and use the property as a parking lot, at no cost to Seller, until such time as the Buyer or Buyer's Successor commences construction as contemplated and defined in Amendment No. 4 to the Purchase and Sale Agreement between the Grantor and Grantee executed by the parties dated November 19, 2015. Upon the commencement of construction as defined herein, this deed restriction shall terminate.
  2. Grant Deed shall include the following deed restriction:


Buyer shall install on the property public parking together with rights of access, ingress, and egress over appropriate areas of the property for the purpose of using such parking spaces for use of the general public in perpetuity. Buyer's obligations, which accrue solely to the named Buyer, or an assignee of the Buyer approved by the Seller (whose approval shall not be unreasonably

withheld), under this restriction, shall be deemed fully satisfied through Buyer's or Buyer's approved assignee's performance of its obligations pursuant to the Services Agreement, as amended, between the Buyer and the Seller. Upon completion of, and issuance of an occupancy permit for, a parking structure pursuant to the Services Agreement, this restriction shall terminate. Any other successor of Buyer in the property, including without limitation any successor following a default of Buyer under the Purchase and Sale Agreement or the Services Agreement, shall pay to the City the amount of Two Million, Six Hundred and Seventy Five Thousand Dollars (\$2,675,000.00), prior to the issuance of a building permit on the property, and such amount shall be increased annually by increases in the consumer price index for all urban consumers for the Los Angeles-Riverside-Orange County Standard Metropolitan Statistical Area as reported by the United States Bureau of Labor Statistics, or any successor to such index.

3. Buyer and Seller authorize and instruct Escrow Holder to accept and act on signature(s) throughout this escrow in the form of photo copies, e-mail or faxes, as defined in this Escrow as though they were original signature(s), to open escrow and for other purposes.

Additional material will be provided prior to the Council meeting.

  
Lauri Aylaian, Director of Community  
Development

  
David H. Ready, City Manager

  
Douglas Holland, City Attorney

- C: Disposition and Development Agreement, dated December 19, 2007
- Purchase and Sale Agreement, dated 03.06.2013
- Amendment No. 1 to Purchase and Sale Agreement, dated 03.05.2014
- Amendment No. 2 to Purchase and Sale Agreement, dated 10.01.2014
- Amendment No. 3 to Purchase and Sale Agreement, dated 04.15.2015
- Amendment No. 4 to Purchase and Sale Agreement, dated 11.04.2015
- Amendment No. 5 to Purchase and Sale Agreement, approved 06.15.2015
- Amendment No. 6 to Purchase and Sale Agreement, approved 07.13.2015
- Services Agreement, dated 03.06.2013
- Amendment No. 1 to Services Agreement, dated 11.04.2015
- Draft Escrow Instructions

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**By and Between**

**COMMUNITY REDEVELOPMENT AGENCY  
OF THE CITY OF PALM SPRINGS**

**and**

**RE: LOFTPARTNERS PALM SPRINGS, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**

**PALM SPRINGS MERGED REDEVELOPMENT PROJECT AREA NO. 2**

## TABLE OF CONTENTS

[NOTE: TOC TO BE UPDATE ONCE AGREEMENT IS FINAL]

I.	[§100]	SUBJECT OF AGREEMENT .....	1
	A.	[§101] Purpose of This Agreement .....	1
	B.	[§102] The Redevelopment Plan.....	1
	C.	[§103] The Project Area.....	2
	D.	[§104] The Site .....	2
	E.	[§105] Parties to This Agreement .....	2
	F.	[§108] Deposit .....	3
II.	[§200]	DISPOSITION OF THE SITE.....	4
	A.	[§201] Sale and Purchase; Lease.....	4
	B.	[§202] Escrow.....	5
	C.	[§203] Conveyance of Title and Delivery of Possession .....	8
	D.	[§204] Conditions Precedent.....	8
	E.	[§209] Form of Deed; Ground Lease .....	11
	F.	[§210] Condition of Title .....	11
	G.	[§211] Time for and Place of Delivery of Deed.....	11
	H.	[§212] Payment of the Purchase Price and Recordation of Deed and Memorandum of Lease.....	12
	I.	[§213] Title Insurance.....	12
	J.	[§214] Taxes and Assessments .....	12
	K.	[§215] Conveyance Free of Possession.....	13
	L.	[§216] Inspections; Conditions of the Agency Parcel.....	13
	M.	[§217] Zoning of the Site .....	15
	N.	[§218] Condition of the Agency Parcel and Parking Parcel.....	15
	O.	[§219] Preliminary Work by the Developer.....	16
	P.	[§220] Submission of Evidence of Equity Capital and Mortgage Financing..	16

III.	[§300]	DEVELOPMENT OF THE SITE.....	16
	A.	[§301] Development of the Site by the Developer.....	16
	B.	[§313] Responsibilities of the Agency.....	20
	C.	[§314] Taxes, Assessments, Encumbrances and Liens.....	20
	D.	[§315] Prohibition Against Transfer of Agency Parcel, the Buildings or Structures Thereon and Assignment of Agreement.....	20
	E.	[§316] Security Financing; Rights of Holders.....	21
	F.	[§322] Right of the Agency to Satisfy Other Liens on the Site After Title Passes.....	23
	G.	[§323] Certificate of Completion.....	23
	H.	[§324] Prevailing Wages.....	24
IV.	[§400]	USE OF THE SITE.....	25
	A.	[§401] Uses.....	25
	B.	[§402] Hotel Operator.....	25
	C.	[§403] Obligation to Refrain From Discrimination.....	26
	D.	[§404] Form of Nondiscrimination and Nonsegregation Clauses.....	26
	E.	[§405] Effect and Duration of Covenants.....	27
V.	[§500]	DEFAULTS, REMEDIES AND TERMINATION.....	28
	A.	[§501] Defaults - General.....	28
	B.	[§502] Legal Actions.....	28
	C.	[§506] Rights and Remedies are Cumulative.....	29
	D.	[§507] Option to Repurchase, Reenter and Repossess.....	29
	E.	[§508] Power of Termination.....	31
VI.	[§600]	GENERAL PROVISIONS.....	34
	A.	[§601] Notices, Demands and Communications Between the Parties.....	34
	B.	[§602] Conflicts of Interest.....	34
	C.	[§603] Nonliability of Agency Officials and Employees.....	34
	D.	[§604] Enforced Delay. Extension of Times of Performance.....	34

E.	[§605]	Inspection of Books and Records .....	35
F.	[§606]	Plans and Data .....	35
G.	[§607]	Attorneys' Fees .....	35
VII.	[§700]	SPECIAL PROVISIONS .....	35
A.	[§701]	Amendment of Redevelopment Plan .....	35
B.	[§702]	Submission of Documents to the Agency for Approval .....	36
C.	[§703]	Amendments to this Agreement .....	36
VIII.	[§800]	ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS .....	36
IX.		TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY .....	37

**Attachments**

Attachment No. 1	Map of the Site
Attachment No. 2	Legal Description of the Site
Attachment No. 3	Schedule of Performance
Attachment No. 4	Scope of Development
Attachment No. 5	Form of Grant Deed
Attachment No. 6	Promissory Note
Attachment No. 7	Deed of Trust

## DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS (the "Agency"), and RE: LOFT PARTNERS PALM SPRINGS, LLC, a Delaware limited liability company (the "Developer"). The Agency and the Developer agree as follows:

### I. [§100] SUBJECT OF AGREEMENT

#### A. [§101] Purpose of This Agreement

The purpose of this Agreement is to effectuate the Amended and Restated Redevelopment Plan (the "Redevelopment Plan") for the Palm Springs Merged Redevelopment Project Area No. 2 (the "Project") and adopted plans and policies of the City of Palm Springs ("City"), including the restoration and rehabilitation of private and public properties, elimination of blight, the renewal and enhancement of a vibrant commercial and tourist core near the City's downtown area, and ensuring the availability of conference and hotel uses near the Convention Center by providing for the disposition and development of certain real property (the "Site") included within the boundaries of the Project (the "Project Area") with a hotel and condominium project (the "Development"). The Developer shall construct or cause to be constructed on the site a "four star" Mondrian hotel, including at least two hundred (200) hotel rooms, at least fifty (50) condominium-hotel rooms, ten thousand (10,000) square feet of "under-roof" group meeting space, no more than one hundred fifty (150) condominium units, and on-site parking which meets 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, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

#### B. [§102] The Redevelopment Plan

This Agreement is subject to the provisions of the Amended and Restated Redevelopment Plan that was approved and adopted on February 19, 2003, by the City Council of the City of Palm Springs by Ordinance No. 1624, as amended. The Redevelopment Plan, as it now exists and as it may be subsequently amended pursuant to Section 701, is incorporated herein by reference and made a part hereof as though fully set forth herein. The Agency is entering into this Agreement to carry out the provisions of the Redevelopment Plan.



C. §103 The Project Area

The Project Area is located in the City of Palm Springs, California, and the exact boundaries thereof are specifically described in the Redevelopment Plan.

D. §104 The Site

The Site is that portion of the Project Area 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 Agency owns an approximately 7.8 acre portion of the Site ("Agency Parcel"). The Agency Parcel is currently used as a public parking lot. The Agency shall convey in fee all of the Agency Parcel to the Developer in accordance with the terms and provisions of this Agreement. The Developer owns an approximately 2.7 acre portion of the Site adjacent to the north of the Agency Parcel ("Developer Parcel"). The Developer Parcel and the Agency Parcel shall be collectively referred to herein as the "Condo/Hotel Parcel." The Developer intends to develop a hotel, meeting space, and condominiums on the Condo/Hotel Parcel, all as discussed in Section 101 above. That portion of the Condo/Hotel Parcel on which Developer intends to develop the hotel and meeting space condo hotel units is referred to herein as the "Hotel Parcel" and that portion of the Condo/Hotel Parcel on which Developer intends to develop the condominium is referred to herein as the "Condominium Parcel." The Agency Parcel, Developer Parcel, Hotel Parcel and Condominium Parcel are each shown on the Map of the Site (Attachment No. 1).

E. §105 Parties to This Agreement

1. §106 The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.). The office of the Agency is located at 3200 East Tahquitz Canyon Way, Palm Springs, CA 92263. "Agency" as used in this Agreement, includes the Redevelopment Agency of the City of Palm Springs and any assignee of or successor to its rights, powers and responsibilities.

2. §107 The Developer

The Developer is RE: LOFT PARTNERS PALM SPRINGS, LLC, a Delaware limited liability company. The principal office of the Developer is located at 100 South Sunrise Way, No. 498, Palm Springs, CA 92262. Wherever the term "Developer" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The qualifications and identity of the Developer are of particular concern to the Agency, and it is because of such qualifications and concerns that the

Agency has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the Agency if there is any significant change (voluntary or involuntary) in the management or control of the Developer prior to the issuance of a Certificate of Completion of the development of the Hotel Parcel. Notwithstanding the foregoing, the Developer may assign, one time only, its interest in this Agreement upon prior written notice to the Agency, but without the Agency's consent, to a single purpose entity owned and controlled by the Developer ("Permitted Transferee").

Any proposed buyer, transferee, conveyee, assignee or lessee shall have the qualifications and financial responsibility necessary and adequate, as may be reasonably determined by the Agency, to fulfill the obligations undertaken in this Agreement by the Developer. Any such proposed buyer, transferee, conveyee, assignee or lessee, by instrument in writing satisfactory to the Agency and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the Agency, shall expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all conditions and restrictions to which the Developer is subject. There shall be submitted to the Agency for review all instruments and other legal documents proposed to effect any such sale, transfer, conveyance, assignment or lease, and, if approved by the Agency, such approval shall be indicated to the Developer in writing.

In the absence of specific written agreement by the Agency, no sale, transfer, conveyance, assignment or lease, or the approval thereof by the Agency, shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

F. [\$108] Deposit

Developer shall deliver to the Agency a deposit of cash or certified check satisfactory to the Agency in the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) (the "Deposit") as security for the performance of the obligations of the Developer to be performed prior to the return of the Deposit to the Developer or its retention by the Agency as liquidated damages. The Deposit shall be delivered in accordance with the schedule attached hereto as Attachment No. 3.

In lieu of cash or certified check, the Deposit, at the option of the Developer, may be in the form of:

1. Negotiable certificates of deposit issued by a federal or state bank; or
2. An unconditional and irrevocable letter of credit, in favor of the Agency, from a bank authorized to do business in

California, in form and substance satisfactory to the Agency.

The Agency shall be under no obligation to pay or earn interest on the Deposit, but if interest is paid thereon, such interest shall become part of the Deposit.

Upon termination of this Agreement by the Agency as provided in Section 204 hereof, the Deposit (including all interest accrued thereon, if any) shall be retained by the Agency as liquidated damages as provided therein.

Upon termination of this Agreement by either party as provided in Section 204 hereof, the Deposit (including all interest accrued thereon, if any) shall be returned to the Developer by the Agency as provided therein.

If the Developer is in default with respect to any provision of this Agreement, the Agency may, but shall have no obligation to, use the Deposit or any portion of the Deposit to cure such default or to compensate the Agency for any expense or damage sustained by the Agency and resulting from such default. If this Agreement has not been terminated as a result of such default, the Developer, on demand from the Agency, shall promptly restore such Deposit to the full amount required by this Section.

If this Agreement shall not have been theretofore cancelled or terminated, or the Deposit shall not have been returned to the Developer, the Agency shall return the Deposit to the Developer upon completion of the improvements and development of the Site for which a final Certificate of Completion has been issued pursuant to Section 323 hereof.

## II. [§200] DISPOSITION OF THE SITE

### A. [§201] Sale and Purchase

In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to sell, and the Developer agrees to purchase for development, the entire Agency Parcel for the sum of Four Million Six Hundred Thousand Seventy Five Thousand Dollars (\$4,675,000) (the "Purchase Price"), \$3,742,750 of which shall be paid at the close of escrow and the remaining balance of which, in the amount of Nine Hundred Thirty Two Thousand Two Hundred and Fifty Dollars (\$932,250.00), shall be paid in accordance with the terms and provisions of the Promissory Note attached hereto as Attachment 6 ("Note"), which Promissory Note shall be secured by the Deed of Trust attached hereto as Attachment ("Deed of Trust"), which shall only encumber Parcel 3 of Tentative Map No. 35036.

The Developer acknowledges and understands that the Agency Parcel will be conveyed to the Developer for purposes of development pursuant to this Agreement and not for speculation in undeveloped land.

B. §202 Escrow

The Agency agrees to open an escrow with First American Title Insurance Company, or any other escrow company approved by the Agency and the Developer, as escrow agent (the "Escrow Agent"), in Palm Springs, California, within the time established in the Schedule of Performance (Attachment No. 3) for the purpose of conveying fee title to the Agency Parcel to the Developer. This Agreement constitutes the joint escrow instructions of the Agency and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The Agency 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, delivered to the Agency and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

The Developer shall deposit with the Escrow Agent an amount equal to the Purchase Price less the initial outstanding principal amount of the Note in accordance with the provisions of Section 208 of this Agreement.

The Developer shall timely and properly execute, acknowledge (as necessary) and deliver the Note and the Deed of Trust.

The Developer shall also pay in escrow to the Escrow Agent 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:

1. One-half (1/2) of the escrow fee; and
2. The portion of the premium for the title insurance policies or special endorsements to be paid by the Developer as set forth in Section 209 of this Agreement.

The Agency shall timely and properly execute, acknowledge and deliver a deed conveying to the Developer fee title to the Agency Parcel in accordance with the requirements of Section 203 of this Agreement, together with an estoppel certificate certifying that the Developer has completed all acts (except deposit of the Purchase Price less the initial outstanding principal amount of the Note) necessary to entitle the Developer to such conveyance, if such be the fact.

The Agency shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Agency 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:

1. Costs necessary to place the title to the Agency Parcel in the condition for conveyance required by the provisions of this Agreement;
2. One-half (1/2) of the escrow fee;
3. Cost of drawing the deed and memorandum of lease;
4. Recording fees;
5. Notary fees;
6. The premium for an A.L.T.A. standard title insurance owners policy to be paid by the Agency as set forth in Section 209 of this Agreement and the cost for a corresponding A.L.T.A. survey;
7. Ad valorem taxes, if any, upon the Agency Parcel for any time prior to conveyance of title; and
8. Any state, county or city documentary transfer tax.

Upon delivery of the deed to the Escrow Agent by the Agency pursuant to Section 205 of this Agreement, the Escrow Agent shall record such deed when 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 Agency Parcel are not to be transferred.

The Escrow Agent is authorized to:

1. Pay and charge the Agency and the Developer, respectively, for any fees, charges and costs payable under this Section. Before such payments are made, the Escrow Agent shall notify the Agency and the Developer of the fees, charges and costs necessary to clear title and close the escrow;
2. 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 Agency and the Developer; and

3. 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.

All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. 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.

If this escrow is not in condition to close before the time for conveyance established in Section 203 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement in the manner set forth in Section 204 hereof and demand the return of its monies, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner set forth in Section 204 hereof. If neither the Agency nor the Developer shall have fully performed the acts to be performed before the time for conveyance established in Section 203, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the ten (10) day period, the Escrow Agent is authorized to hold all monies, papers and documents with respect to the Agency Parcel until instructed in writing by both the Agency and the Developer or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section shall be construed to impair or affect the rights or obligations of the Agency or the Developer to specific performance.

Any amendment of these escrow instructions shall be in writing and signed by both the Agency 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.

All communications from the Escrow Agent to the Agency or the Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands and communications between the Agency and the Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Section 202 of this Agreement.

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

C. [\$203] 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 Agency Parcel shall be completed on or prior to the date specified in the Schedule of Performance (Attachment No. 3). The Agency 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.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 215 of this Agreement. The Developer shall accept title and possession on or before said date.

D. [\$204] Conditions Precedent

1. Agency Conditions

Close of escrow shall be subject to the fulfillment or waiver by the Agency of each of the conditions precedent described below. Each of the following conditions are solely for the benefit of the Agency and shall be fulfilled or waived prior to close of escrow:

- a. Developer shall have submitted to Agency evidence reasonably satisfactory to Agency that developer has obtained commitments for the equity capital and mortgage financing necessary to finance a portion of the development of the Agency Parcel that is being closed upon pursuant to this Agreement, which evidence may be provided in the form of a letter or letters of intent.
- b. Developer has provided the confirmation and the abstract required pursuant to Section 402.
- c. Developer shall not be in default of any of its obligations under the terms of this Agreement.
- d. There shall be no litigation pending with respect to the Agreement or any City approvals related to the Development, the outcome of which could materially interfere with the development of that portion of the Agency Parcel that is being closed upon.
- e. Developer has obtained or will obtain all discretionary permits and land use approvals required for the

development of that portion of the Agency Parcel that is being closed upon pursuant to this Agreement, excepting a final planned development permit and a final map which are anticipated to be issued or approved subsequent to the approval of this Agreement but prior to the close of escrow, and ministerial permits such as grading and building permits.

2. Developer Conditions

Close of escrow is subject to the fulfillment or waiver by the Developer of each of the conditions precedent described below, which are solely for the benefit of the Developer and which shall be fulfilled or waived prior to close of escrow:

- a. Developer's approval of the condition of title pursuant to Section 206.
- b. The Developer has obtained binding commitments for the equity capital and mortgage financing necessary to finance a portion of the development of the Site pursuant to this Agreement.
- c. Developer has obtained or will obtain all discretionary permits and land use approvals required for the development of the Site pursuant to this Agreement, excepting a final planned development permit and a final map, and ministerial permits such as grading and building permits.
- d. The Agency shall not be in default of any of its obligations contained herein and all representations and warranties of the Agency contained herein shall be true and correct in all material respects.

3. Termination for Failure of Condition

In the event that, prior to the time established in the Schedule of Performance (Attachment No. 3) for close of escrow, there is a failure of one or more conditions described in Section 204 that is not waived by the benefited party, the party for whose benefit the condition is established may terminate this Agreement by written notice to the other party. In the event of such a termination, the Agency shall return the Deposit to the Developer and no party shall have any further rights or liabilities to the other under this Agreement.



4. Liquidated Damages

IF THIS AGREEMENT IS TERMINATED BY THE AGENCY FOR A DEFAULT OF THE DEVELOPER PRIOR TO CLOSE OF ESCROW, THE DEPOSIT MAY BE RETAINED BY THE AGENCY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS, MAKING IT NECESSARY FOR THE AGENCY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT SUCH SITE WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION THAT SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE; OF INTERESTED PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEPOSIT HELD BY THE AGENCY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE AMOUNT OF SUCH DEPOSIT SHALL BE PAID TO THE AGENCY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE AGENCY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE DEVELOPER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

By: \_\_\_\_\_

By: \_\_\_\_\_

E. [\$205] Form of Deed

The Agency shall convey to the Developer fee title to the Agency Parcel in the condition provided in Section 206 of this Agreement by grant deed in substantially the form set forth in Attachment No. 5.

F. [\$206] Condition of Title

Within the times set forth in the Schedule of Performance (Attachment No. 3), the Agency shall submit a Preliminary Title Report for the Agency Parcel to the Developer for approval, together with legible copies of all documents referenced therein. Developer shall approve or disapprove any exceptions to title within fifteen (15) business days from the time of receipt. Failure by the Developer to either approve or disapprove the exceptions to title within such time shall be deemed an approval. If the condition of title is not acceptable to Developer, the Agency shall have thirty (30) days to eliminate exceptions to title. If Agency is unable to eliminate exceptions to title, Developer may terminate this Agreement pursuant to Section 204. Notwithstanding the foregoing, the City shall remove all monetary encumbrances other than a lien for taxes not yet due and payable.

The Agency shall convey to the Developer fee simple title to the Agency Parcel free and clear of all recorded liens, encumbrances, assessments, leases, and taxes except as are consistent with this Agreement and as approved by the Developer pursuant to this Section.

G. [\$207] Time for and Place of Delivery of Deed

Subject to any mutually agreed upon extensions of time, the Agency shall deposit the grant deed for the Agency Parcel with the Escrow Agent on or before the date established for close of escrow in the Schedule of Performance (Attachment No. 3).

H.     [\$208] Payment of the Purchase Price and Recordation of Deed

The Developer shall deposit the required portion of the Purchase Price the (less the initial outstanding principal amount of the Note) that corresponds to the Agency Parcel and other sums required hereunder with the Escrow Agent prior to the close of escrow, provided that the Escrow Agent shall have notified the Developer in writing that the grant deed, properly executed and acknowledged by the Agency, have been delivered to the Escrow Agent and that title is in condition to be conveyed in conformity with the provisions of Section 206 of this Agreement. Upon the close of escrow, the Escrow Agent shall file the grant deed for recordation among the land records in the Office of the County Recorder of Riverside County, shall deliver the corresponding portion of the Purchase Price and other required sums to the Agency and shall deliver to the Developer a title insurance policy insuring title in conformity with Section 209 of this Agreement.

I.     [\$209] Title Insurance

Concurrently with recordation of the grant deed, First American Title Insurance Company, or some other title insurance company satisfactory to the Agency and the Developer having equal or greater financial responsibility ("Title Company"), shall provide and deliver to the Developer one or more title insurance policies issued by the Title Company insuring that title is vested in the Developer in the condition required by Section 206 of this Agreement. The Title Company shall provide the Agency with a copy of the title insurance policies, and the title insurance policies shall be in an amount reasonably determined by Developer.

The Agency shall pay only for that portion of the title insurance premium attributable to an A.L.T.A. standard owners form policy of title insurance in the amount of the portion of the Purchase Price paid for the Agency Parcel. The Developer shall pay for all other premiums for title insurance coverage or special endorsements.

Concurrently with close of escrow, the Title Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the Agency Parcel. The Developer shall pay the entire premium for any such increase in coverage requested by it.

J.     [\$210] Taxes and Assessments

Ad valorem taxes and assessments on the Agency Parcel, if any, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the Agency. All such ad valorem taxes and assessments levied or imposed for any period commencing after closing of the escrow shall be paid by the Developer.

K. [§211] Conveyance Free of Possession

Except as otherwise provided in the Scope of Development (Attachment No. 4), the Agency Parcel shall be conveyed free of any possession or right of possession by any person except that of the Developer and the easements of record.

L. [§212] Inspections; Conditions of the Agency Parcel

1. Inspections

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

2. "As Is"

Developer agrees it will rely solely on its own investigation and agrees to purchase the Agency Parcel "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.

3. Developer Indemnity

Developer agrees, from and after close of escrow, to defend, indemnify, protect and hold harmless the Agency 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 Agency Parcel (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.

4. 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 Agency Parcel, unless the presence of such Hazardous Materials at, on, in, beneath or from the Agency Parcel 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 nonstatutory 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.

5. 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 Agency.
- 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 governmental authority to be capable of posing a risk of injury to health, safety or property.

6. Materiality

Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Developer for the benefit of the Agency set forth in this Agreement are a material element of the consideration to the Agency for the performance of its obligations under this Agreement, and that the Agency 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 Agency shall not be satisfied, waived or otherwise extinguished by Agency's issuance of any Certification of Completion under Section 323 of this Agreement.

M. [§213] Zoning of the Site

The Agency 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.

N. [§214] Condition of the Agency Parcel

Except as may be otherwise specifically provided in the Scope of Development (Attachment No. 4), the Agency Parcel shall be conveyed from the Agency to the Developer in an "as is" condition. The Agency shall not be responsible for any items of site work except those that are listed in the Scope of Development as the Agency's responsibilities.

It shall be the sole responsibility of the Developer, at the Developer's sole expense, to investigate and determine the soil conditions of the Agency Parcel and the suitability of such soil conditions for the improvements to be constructed by the

Developer. If the soil conditions are not in all respects entirely suitable for the use or uses to which the Agency Parcel will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the soil conditions in a condition suitable for development.

O. [\$215] Preliminary Work by the Developer

Prior to the conveyance of title from the Agency, representatives of the Developer shall have the right of access to the Agency Parcel 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 Agency 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 Agency, but without warranty or representation by the Agency as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Agency Parcel by the Developer prior to conveyance of title thereto shall be done only after written consent of the Agency and at the sole expense of the Developer. The Developer shall save and protect the Agency 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 Agency. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

P. [\$216] Submission of Evidence of Equity Capital and Mortgage Financing

No later than the time specified in the Schedule of Performance (Attachment No. 3), the Developer shall submit to the Agency Counsel evidence satisfactory to the Agency that the Developer has obtained the equity capital and commitments for mortgage financing.

III. [\$300] DEVELOPMENT OF THE SITE

A. [\$301] Development of the Site by the Developer

1. [\$302] Scope of Development

The Site shall be developed as provided in the Scope of Development (Attachment No. 4).

2. [\$303] Preliminary Planned Development

Developer has previously prepared and submitted to the City and the City approved schematic drawings and an 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 Agency. Any such changes shall be within the limitations of the Scope of Development (Attachment No. 4).

3. [\$304] Construction Plans, Drawings and Related Documents

The Developer shall prepare and submit construction plans, drawings and related documents to the City/Agency for architectural and site planning review and written approval as and at the times established in the Schedule of Performance (Attachment No. 3). The construction plans, drawings and related documents shall be submitted in two stages: preliminary and final working drawings and plans. Final working drawings and plans are hereby defined as those in sufficient detail to obtain a building permit.

The Developer shall also prepare and submit to the City/Agency for its approval preliminary and final landscaping and finish grading plans for the Site. Such final plans shall be prepared and submitted within the times established in the Schedule of Performance (Attachment No. 3), subject to extensions as are authorized herein or as mutually agreed to by the parties hereto.

During the preparation of all final drawings and plans, City/Agency 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/Agency. The City/Agency and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City/Agency can receive prompt and speedy consideration.

If any revisions or corrections of plans approved by the City/Agency 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/Agency shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

1. [\$305] City/Agency Approval of Plans, Drawings and Related Documents

Subject to the terms of this Agreement, the City/Agency shall have the right of architectural and site planning review of all plans and drawings, including any changes therein.

The City/Agency shall approve or disapprove the plans, drawings and related documents in a timely fashion referred to in Section 304 of this Agreement within the times established in the Schedule of Performance (Attachment No. 3). Once an aspect of the plans, drawings and related documents has been approved by the City/Agency, a later rendering of such aspect, or a more detailed iteration of such aspect, shall be approved by the City/Agency absent a material change thereto. Any disapproval shall state in writing with reasonable specificity the reasons for disapproval and the



changes that the City/Agency requests be made. Such reasons and such changes must be consistent with the Scope of Development (Attachment No. 4) and any items previously approved or deemed approved hereunder by the City/Agency. The Developer, upon receipt of a disapproval based upon powers reserved by the City/Agency hereunder, shall revise such plans, drawings and related documents and resubmit them to the City/Agency as soon as possible after receipt of the notice of disapproval, provided that in no case shall the City/Agency be entitled to require changes inconsistent with the Scope of Development and any previously approved items.

If the Developer desires to make any substantial change in the construction plans after their approval by the City/Agency, the Developer shall submit the proposed change to the City/Agency for its approval. If the construction plans, as modified by the proposed change, conform to the requirements of Section 304 of this Agreement, the approvals previously granted by the City/Agency under this Section and the Scope of Development (Attachment No. 4), the City/Agency shall approve the proposed change and notify the Developer in writing within thirty (30) days after submission to the City/Agency. If any such change in the construction plans is rejected by the City/Agency, in whole or in part, such rejection shall be by written notice thereof by the City/Agency to the Developer setting forth in detail the reasons therefor, and such rejection shall be made within said thirty (30) day period.

5. [\$306] 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 Agency or others. The Agency and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

6. [\$307] 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 the Schedule of Performance (Attachment No. 3) or such reasonable extension of said dates as may be granted by the Agency or as provided in Section 604 of this Agreement. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the Agency.

During the period of construction, but not more frequently than once a month, the Developer shall submit to the Agency a written progress report of the construction when and as requested by the Agency. The report shall be in such form and detail as may reasonably be required by the Agency and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

7. [\$308] 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 Agency 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 Agency as an additional or coinsured. The Developer shall also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency 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 Parcel as hereinafter provided in Section 323.

8. [\$309] 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.

9. [\$310] Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the Agency and 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 Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency. The Agency and 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.

10. [\$311] 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.

11. [§312] 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, ancestry or national origin.

B. [§313] Responsibilities of the Agency

The Agency, without expense to the Developer or assessment or claim against the Site, shall perform all work specified herein and in the Scope of Development (Attachment No. 4) for the Agency to perform within the times specified in the Schedule of Performance (Attachment No. 3).

C. [§314] 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 Parcel, the Developer shall not place or allow to be placed on the Site 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 Site (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.

The Developer understands that under certain conditions, its control of the Site or portion thereof under this Agreement may give rise to the imposition of a possessory interest tax on said property, and in such event, the Developer agrees to pay when due any such possessory interest tax.

D. [§315] Prohibition Against Transfer of Agency Parcel, the Buildings or Structures Thereon and Assignment of Agreement

After close of escrow of the Agency Parcel and prior to the issuance by the Agency of a Certificate of Completion with respect to the improvements pursuant to Section 323, with the exception of the sale of individual condominium-hotel and condominium 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 Agency. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion for the improvements on the Hotel Parcel. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Agency Parcel or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

In the absence of specific written agreement by the Agency, no such transfer, assignment or approval by the Agency shall be deemed to relieve the Developer or any other party from any obligations under this Agreement until completion of development of the Hotel Parcel as evidenced by the issuance of a Certificate of Completion therefor.

E. [§316] Security Financing: Rights of Holders

1. [§317] No Encumbrances Except Mortgages, Deeds of Trust, Sales and Lease-Backs or Other Financing for Development

Notwithstanding Sections 314 and 315 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 Parcel, but only for the purpose of securing loans of funds to be used for financing the acquisition or development of the Agency Parcel, the construction of improvements on the Hotel Parcel, and any other expenditures necessary and appropriate to develop the Site under this Agreement. The Developer shall notify the Agency 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 Parcel. The Developer shall not enter into any such conveyance for financing without the prior written approval of the Agency (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 Agency 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 Agency within ten (10) days after notice thereof to the Agency by the Developer. In any event, the Developer shall promptly notify the Agency 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.

2. [§318] 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, nor shall any covenant or any other provision in the grant deed for the Hotel Parcel be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

3. [\\$319] Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders: Right to Cure

Whenever the Agency 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 Agency 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 Agency therefor. Each such holder shall (insofar as the rights of the Agency 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 Agency by written agreement satisfactory to the Agency. 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 Agency 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 Agency, to a Certificate of Completion from the Agency.

4. [\\$320] 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 Agency 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 Agency, if it so desires, shall be entitled to a conveyance from the holder to the Agency 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 Agency.

5. §321] Right of Agency 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 Agency may cure the default prior to completion of any foreclosure. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in curing the default. The Agency 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 Parcel as authorized herein.

F. §322] Right of the Agency 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 Parcel, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, the Agency 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.

G. §323] 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 Parcel, the Agency 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 Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Hotel Parcel 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 Parcel 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 that such party shall be bound by any covenants contained in the grant deed, in accordance with the provisions of Sections 401-405 of this Agreement. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the Hotel Parcel, neither the Agency nor any other person shall have any rights, remedies or controls with respect to the Hotel Parcel 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 Parcel.

The Agency shall not unreasonably withhold a Certificate of Completion. If the Agency refuses or fails to furnish a Certificate of Completion for the Hotel Parcel after written request from the Developer, the Agency shall, within ten (10) days after receipt of such written request, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain the Agency'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 Agency will issue its Certificate of Completion upon the posting of a bond by the Developer with the Agency in an amount representing a fair value of the work not yet completed. If the Agency 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.

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.

H. [\$324] Prevailing Wages

When improvements which are considered to be public works under State law are constructed, the Developer is required to (i) pay and to cause its contractor and subcontractors to pay, prevailing wages for the construction of the improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq. and (ii) implement regulations of the Department of Industrial Relations and (ii) comply with the other applicable provisions of Labor Code Sections 1720 et seq. Neither Agency nor

Developer believe that the project to be developed on the Site is a public work for purposes of State law. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. or to implement regulations of the Department of Industrial Relations in connection with construction of the improvements or any other work undertaken or in connection with the Site.

#### IV. [§400] USE OF THE SITE

##### A. [§401] Uses

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 four star Mondrian hotel and meeting space with parking and related uses, including no less than two hundred (200) hotel rooms, 50 condominium-hotel units, ten thousand (10,000) square feet of "under-roof" meeting space, no more than one hundred fifty (150) condominium units. The hotel will provide no less than a one hundred fifty (150) room block commitment to the Convention Center under the Convention Center's Committable Rooms Program as further set forth in the Hotel Operating Agreement described in Section 402 below.

The Developer shall use the Site and the improvements thereon for no purpose other than hotel and condominium related uses without the prior written consent of the Agency. The foregoing covenant shall run with the land. For purposes of this Section, a "four star hotel" means a full service hotel comparable to other Mondrian hotels in operation as of the date of this Agreement.

##### B. [§402] Hotel Operator

The Developer shall cause the hotel to be constructed on the Hotel Parcel to be operated pursuant to an operating and/or management agreement ("Hotel Operating Agreement") with a qualified operator ("Operator"). The Hotel Operating Agreement shall provide for no less than a one hundred fifty (150) room block commitment to the Convention Center under the Convention Center's Committable Rooms Program. The Operator shall be satisfactory to the Agency, in its reasonable discretion and shall have a reputation, experience and qualifications for managing a four star hotel, as defined in Section 401. Prior to conveyance of the Agency Parcel to the Developer, the Developer shall provide to the Agency 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.



If the Operator is not a publicly traded company or entity, then any change in the identity of the Operator prior to issuance of a Certificate of Completion shall require the prior written approval of the Agency, which approval shall not be unreasonably withheld or delayed if the new Operator meets the qualifications set forth in this Agreement. 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.

C. [\$403] 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.

D. [\$404] 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:

1. 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."

2. 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:

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."

3. 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."

E. [\$405] Effect and Duration of Covenants

Except as otherwise provided, the covenants contained in this Agreement and the grant deed shall remain in effect until \_\_\_\_\_ (the termination date of the Redevelopment Plan). 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 Agency, its successors and assigns, the Agency and any successor in interest to the Site or any part thereof.

The Agency 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 Agency without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site, any parcel or subparcel, or in the Agency Parcel. The Agency 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.

V. **[§500] DEFAULTS, REMEDIES AND TERMINATION**

A. **[§501] Defaults – General**

Subject to the extensions of time set forth in Section 604, 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.

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.

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.

B. **[§502] Legal Actions**

1. **[§503] Institution of Legal Actions**

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Riverside, State of California.

2. [\$504] Applicable Law; Interpretation

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

3. [\$505] Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

C. [\$506] Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [\$507] Option to Repurchase, Reenter and Repossess

The Agency shall have the right at its option to repurchase the Agency Parcel together with all improvements thereon, if after conveyance of title to the Agency Parcel and prior to the issuance of the Certificate of Completion for the Hotel Parcel, the Developer shall:

1. Fail to commence construction of approved improvements on the the Agency Parcel within the time established therefor in the Schedule of Performance (Attachment No. 3), for any reason whatsoever. For purposes of this provision, the Developer shall be deemed to "commence construction" when and only when the Developer has received City approval of the final plans and

specifications for all improvements provided in this Agreement, completed rough grading on the Agency Parcel, and commenced installation and construction of improvements provided herein pursuant to permits issued by the City for the construction of such improvements; or

2. Once construction has been commenced in accordance with subparagraph 1 above, fail to diligently prosecute construction of the improvements through completion within the time established therefor in the Schedule of Performance (Attachment No. 3), where such failure has not been cured within three (3) months after written notice thereof from the Agency; or
3. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Agency; or
4. Without the prior written consent of Agency, directly or indirectly, voluntarily or involuntarily sell, assign, transfer, dispose of or further encumber or agree to sell, assign, transfer, dispose of or further encumber or suffer to exist any other lien against all or any portion of or any interest in the Agency Parcel, except for (i) a Permitted Transfer, (ii) equipment or "soft goods" financing, (iii) mezzanine or similar debt, or (iv) any sale or transfer that is expressly permitted by the terms of this Agreement. For the purpose of this paragraph, the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law, irrespective of the fact that the Agency Parcel may be exempt from such transaction during the period when owned by Agency.

This option shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

- A. Any mortgage, deed of trust or other security instrument affecting the Agency Parcel as permitted by this Agreement; or
- B. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

To exercise its right to repurchase, reenter and take possession with respect to the Agency Parcel, the Agency shall pay to the Developer in cash an amount equal to:

- I. The cash Purchase Price for the Agency Parcel paid by the Developer; plus
- II. The costs actually incurred by the Developer for "hard" and "soft" costs related to the Agency Parcel and the improvements to be constructed thereon, including, without limitation, architectural, engineering and legal fees, fees paid to any governmental entity, and the cost of all on-site labor and materials for the construction of the improvements existing on the Agency Parcel at the time of the repurchase, reentry and repossession, exclusive of amounts financed; less
- III. Any gains or income withdrawn or made by the Developer from the Project Area or the improvements thereon; and less
- IV. The amount of any unpaid assessments and any liens against the Agency Parcel.

E. [\$508] Power of Termination

The Agency shall have the additional right, at its option, to terminate the estate conveyed to the Developer, to reenter and take possession of the Agency Parcel with all improvements thereon and to revest in the Agency the estate theretofore conveyed to the Agency, if after conveyance of title to the Agency Parcel and prior to issuance of the Certificate of Completion for the Hotel Parcel, the Developer shall:

1. Fail to commence construction of approved improvements on the portion of the Agency Parcel within the time established therefor in the Schedule of Performance (Attachment No. 3), for any reason whatsoever. For purposes of this provision, the Developer shall be deemed to "commence construction" when and only when the Developer has commenced rough grading (if required) pursuant to a permit issued by the City for the construction of the improvements provided for herein, the final plans and specifications for which had been approved by the City; or
2. Once construction has been commenced in accordance with subparagraph 1 above, fail to diligently prosecute construction of the improvements through completion within the time established therefor in the Schedule of Performance (Attachment No. 3), where such failure has not been cured within three (3) months after written notice thereof from the Agency; or

3. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Agency; or
4. Without the prior written consent of Agency, directly or indirectly, voluntarily or involuntarily sell, assign, transfer, dispose of or further encumber or agree to sell, assign, transfer, dispose of or further encumber or suffer to exist any other lien against all or any portion of or any interest in the Site, except for (i) a Permitted Transfer, (ii) equipment or "soft goods" financing, (iii) mezzanine or similar debt, or (iv) any sale or transfer that is expressly permitted by the terms of this Agreement. For the purpose of this paragraph, the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law, irrespective of the fact that the Site may be exempt from such transaction during the period when owned by Agency.

The interest created pursuant to this Section shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from Agency's option to repurchase the Agency Parcel under the same or similar conditions specified in Section 507 above. The Agency's power of termination shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or
2. Any rights or interest provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

Upon reverting title to the Agency Parcel or any part thereof in the Agency as provided in this Section, the Agency shall use its best efforts to resell the Agency Parcel or part thereof as soon and in such manner as the Agency shall find feasible to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the Agency and in accordance with the uses specified for the Agency Parcel or part thereof in the Redevelopment Plan. Upon resale of the Agency Parcel, the proceeds thereof shall be applied:

1. First, to reimburse the Agency for all costs and expenses incurred by the Agency, including, but not limited to, salaries to personnel in connection with the recapture, management and resale of the

Agency Parcel or part thereof (but less any income derived by the Agency from the Agency Parcel or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Agency Parcel or part thereof (or, in the event the Agency Parcel is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges [as determined by the County assessing official] as would have been payable if the Agency Parcel were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Agency Parcel or part thereof; and any amounts otherwise owing the Agency by the Developer; and

2. Second, to reimburse the Developer the sum of the following: (a) the cash portion of that portion of the Purchase Price for the Agency Parcel paid by the Developer; plus (b) any cash payments previously made by the Developer for the development of the Agency Parcel and for the improvements existing on the Agency Parcel at the time of the reentry and repossession, exclusive of amounts financed but 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 any governmental entity, and the cost of all on-site labor and materials for the construction of the improvements existing on the Site at the time of the such reimbursement, exclusive of amounts financed; less (c) any gains or income withdrawn or made by the Developer from the Agency Parcel or the improvements thereon; and less (d) the amount of any unpaid assessments against the Agency Parcel.

Any balance remaining after such reimbursements shall be retained by the Agency as its property.

**As set forth above, this section is intended to create and reserve in the Agency a "power of termination" under California law, and not a forfeiture. The terms and provisions of this Section shall be construed in light of the fact that the Agency will convey the Agency Parcel to the Developer for development pursuant to the Redevelopment Plan, and not for speculation in undeveloped land.**



## VI. [§600] GENERAL PROVISIONS

### A. [§601] Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between the Agency and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and the Developer as set forth in Section 105 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

### B. [§602] Conflicts of Interest

No official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

### C. [§603] Nonliability of Agency Officials and Employees

No official or employee of the Agency shall be personally liable to the Developer in the event of any default or breach by the Agency or for any amount that may become due to the Developer or on any obligations under the terms of this Agreement.

### D. [§604] Enforced Delay: Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; act of terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the Agency shall not excuse performance by the Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to

run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer.

E. [\$605] Inspection of Books and Records

The Agency has the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement.

The Developer also has the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the Agency pertaining to the Site as pertinent to the purposes of this Agreement.

F. [\$606] Plans and Data

Where the Developer does not proceed with the purchase of the Agency Parcel and development thereof, and when this Agreement is terminated for any reason, the Developer shall deliver to the Agency any and all plans and data concerning the the Agency Parcel, and the Agency or any other person or entity designated by the Agency shall be free to use such plans and data, including plans and data previously delivered to the Agency, for any reason whatsoever without cost or liability therefor to the Developer or any other person.

G. [\$607] Attorneys' Fees

Should any action be brought arising out of this Agreement including, without limitation, any action for declaratory or injunctive relief, the prevailing party shall be entitled to reasonable attorneys' fees and costs and expenses of investigation incurred, including those incurred in appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code or any successor statutes, and any judgment or decree rendered in any such actions or proceedings shall include an award thereof.

**VII. [\$700] SPECIAL PROVISIONS**

A. [\$701] Amendment of Redevelopment Plan

Pursuant to provisions of the Redevelopment Plan for modification or amendment thereof, the Agency agrees that no amendment that changes the uses or development permitted on the Site or changes the restrictions or controls that apply to the Site or otherwise directly affect the use of the Site shall be made or become effective without the prior written consent of the Developer. Amendments to the Redevelopment Plan applying to other property in the Project Area shall not require the consent of the Developer.

B. §702 Submission of Documents to the Agency for Approval

Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the Agency for approval, which shall be deemed approved if not acted on by the Agency within a specified time, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by the Agency within the stated time. If there is no time specified herein for such Agency action, the Developer may submit a letter requiring Agency approval or rejection of documents within thirty (30) days after submission to the Agency or such documents shall be deemed approved.

C. §703 Amendments to this Agreement

The Developer and the Agency agree to mutually consider reasonable requests for amendments to this Agreement that may be made by any of the parties hereto, lending institutions or bond counsel or financial consultants to the Agency, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

D. §704 Conflicts

In the event of a conflict between the terms and provisions of this Agreement and the terms and provisions of the Attachments, the terms and provisions of the Attachments shall control.

**VIII. §800 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS**

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through \_\_, inclusive, and Attachment Nos. 1 through 5, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency and the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Developer.

If, at any time after the date on which this Agreement is approved, the City approves a disposition and development agreement for any condominium hotel project in the City (including, but not limited to, the Hard Rock Hotel project being proposed as of the date of this Agreement) which is reasonably comparable to the Project and which disposition and development agreement contains terms or provisions that are materially

more favorable than the terms and provisions contained herein, then the corresponding terms and provisions of this Agreement shall be deemed to be amended to match (as near as possible) such favorable terms and provisions. Any such amendment shall be automatic and shall require no further action on the part of the Agency or the Developer.

**IX. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY**

This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within forty-five (45) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency.

\_\_\_\_\_, 2007

COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF PALM  
SPRINGS, a public body, corporate and  
politic

By: [Signature]  
Title: EXECUTIVE DIRECTOR

ATTEST  
By: [Signature]  
Assistant Secretary  
01/29/2008

By: \_\_\_\_\_  
Title: \_\_\_\_\_

"AGENCY"

Approved as to form:

[Signature]  
Agency Counsel

APPROVED BY THE COMMISSIONERS  
AGENCY BY RES. NO. 1348 12-19-07  
AOSJK

01.17.2008, 2007

RE: LOFT PARTNERS PALM SPRINGS,  
LLC, a Delaware limited liability company

By: [Signature]  
Title: Managing Member  
The Casa Group, LLC  
"DEVELOPER"

more favorable than the terms and provisions contained herein, then the corresponding terms and provisions of this Agreement shall be deemed to be amended to match (as near as possible) such favorable terms and provisions. Any such amendment shall be automatic and shall require no further action on the part of the Agency or the Developer.

**IX. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY**

This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within forty-five (45) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency.

\_\_\_\_\_, 2007

COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF PALM  
SPRINGS, a public body, corporate and  
politic

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

*Signed in Counterpart*

"AGENCY"

Approved as to form:

\_\_\_\_\_  
Agency Counsel

\_\_\_\_\_, 2007

RE: LOFT PARTNERS PALM SPRINGS,  
LLC, a Delaware limited liability company

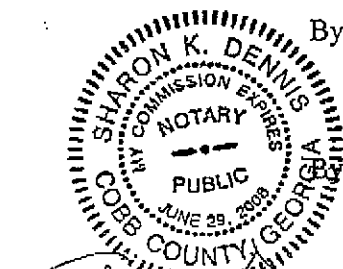
By: \_\_\_\_\_

Title: MANAGING MEMBER

Title: \_\_\_\_\_

Title: \_\_\_\_\_

*Signed in Counterpart*



*Sharon K. Dennis*  
1-11-08

SHARON K DENNIS  
NOTARY PUBLIC  
COBB COUNTY, GEORGIA  
MY COMMISSION EXPIRES JUNE 29, 2008

more favorable than the terms and provisions contained herein, then the corresponding terms and provisions of this Agreement shall be deemed to be amended to match (as near as possible) such favorable terms and provisions. Any such amendment shall be automatic and shall require no further action on the part of the Agency or the Developer.

**IX. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY**

This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within forty-five (45) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency.

\_\_\_\_\_, 2007

COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF PALM  
SPRINGS, a public body, corporate and  
politic

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

*Signed in Counterpart*

"AGENCY"

Approved as to form:

\_\_\_\_\_  
Agency Counsel  
\_\_\_\_\_, 2007

RE: LOFT PARTNERS PALM SPRINGS,  
LLC, a Delaware limited liability company

By: M. De

Title: Oxford Lodging XYZ Palm Springs, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

*Signed in Counterpart*

"DEVELOPER"

**ATTACHMENT NO. 1**

**MAP OF THE SITE**

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

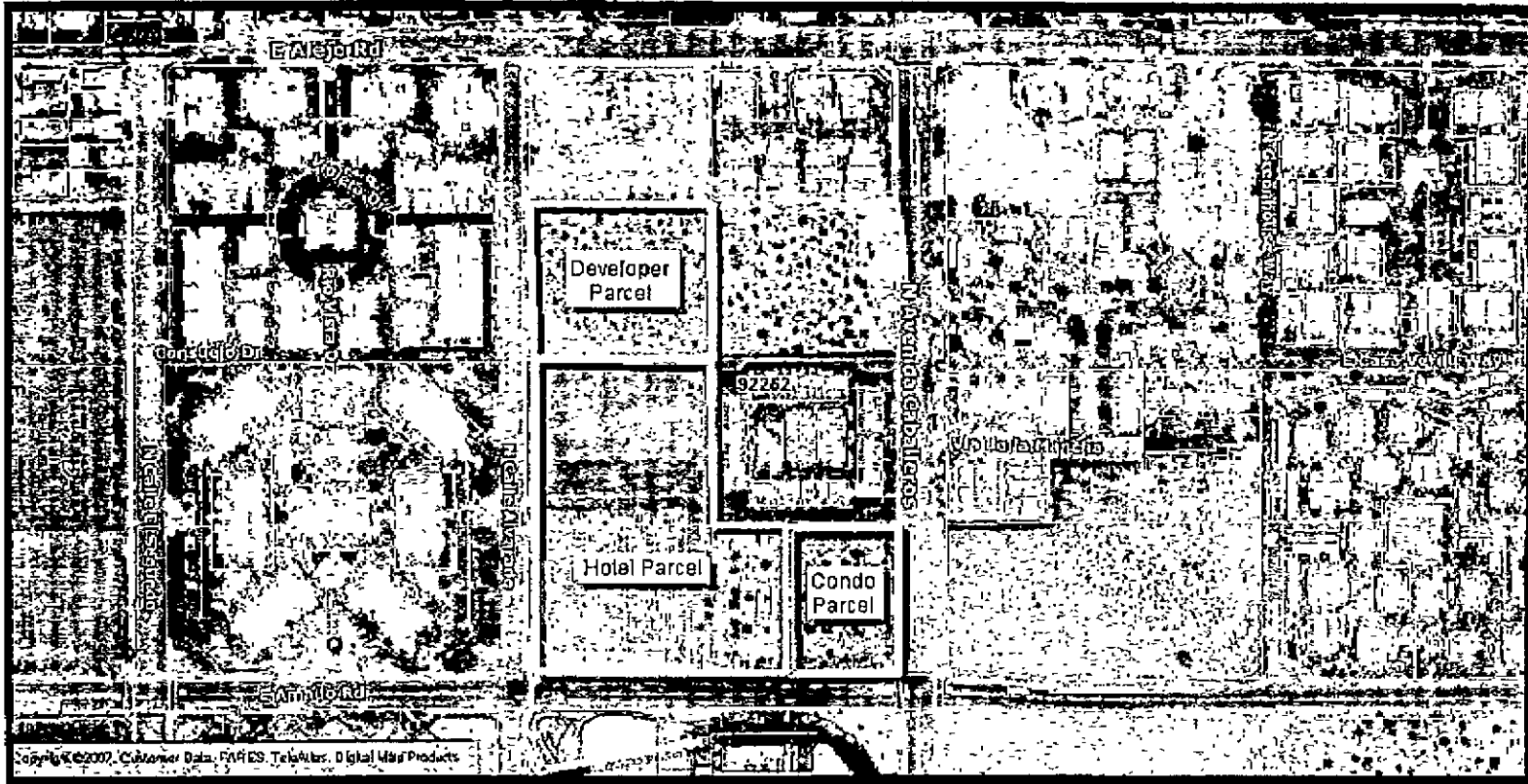
:

:

:

:

:



## Mondrian Hotel Parcel

Agency Parcel = Hotel  
Parcel plus Condo Parcel

Copyright © 2006 All Rights Reserved. The information contained herein is the proprietary property of the contributor supplied under license and may not be approved except as licensed by Digital Map Products



300ft

CityGIS



**ATTACHMENT NO. 2**

**LEGAL DESCRIPTION OF THE SITE**

Agency Parcel:

All that certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described as follows:

BLOCKS 103, 105 AND 106 IN SECTION 14, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICAL PLAT THEREOF.

Developer Parcel:

BLOCK 102 IN SECTION 14, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICAL PLAT THEREOF.

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

	<u>Item To Be Performed</u>	<u>Time for Performance</u>	<u>Agreement Reference</u>	<u>Estimated Date</u>
1.	Developer executes and delivers DDA to Agency	On or before December 19, 2007		
2.	Agency holds public hearing on DDA	December 19, 2007		
3.	Agency approves or disapproves DDA and, if approves, executes DDA	On or before December 31, 2007		December 31, 2007
4.	<u>Submission – Certificates of Insurance.</u> The Developer shall furnish to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies.	Within 30 days after execution of this Agreement by the Agency.		January 31, 2008.
5.	<u>Deposit:</u> The Developer delivers the Deposit to the Agency.	Within 90 day after execution of this Agreement by the Agency and the Developer.	Section 108	March 31, 2008
6.	<u>Submission – Final Planned Development District Application.</u> The Developer shall prepare and submit to the City Planning and Engineering Departments for review and approval the Final PDD and related documents containing the overall plan for development of the Site. The City process includes the Architectural Advisory Committee, Planning Commission, and City Council approval. Such Final PDD application shall include final Site Plan, Architectural Elevations, Landscaping and Grading Plans, Lighting Plans, and other plans necessary to approve the Planned Development District.	Within 120 days after execution of this Agreement by the Agency.	Section 304	April 30, 2008
7.	<u>Submission – Evidence of Equity Financing, Hotel Management Agreement, and Condominium Licensing and marketing Agreement.</u> The Developer shall submit to the Agency Counsel for review and approval evidence of equity capital financing, the Hotel Management Agreement, and the Condominium Licensing and Management Agreement.	Within 120days after execution of this Agreement by the Agency and the Developer.	Section 216	April 30, 2008
8.	<u>Acceptance -- Evidence of Equity Financing</u>	Within 30 days after	Section 216,	May 30,

	<u>Hotel Management Agreement, and Condominium Licensing and marketing Agreement by Agency Counsel.</u>	submission to the Agency Counsel.	Section 402	2008
9.	<u>Opening of Escrow:</u> The Agency shall open an escrow for conveyance of the Conveyance Parcel to the Developer.		Section 202	June 30, 2008
10.	<u>Title Report.</u> Agency delivers to Developer Preliminary Title Report.	Within 30 days after opening Escrow.	Section 206	July 30, 2008
11.	<u>Approval or Disapproval of Title Exceptions.</u> Developer approves or disapproves title exceptions.	Within 15 days after delivery of Preliminary Title Report to Developer.	Section 206	August 15, 2008
12.	<u>Agency delivers Clean Title to Developer.</u>		Section 206	October 30, 2008
13.	<u>Initial Submission – Hotel Construction Plans</u> The Developer shall submit to the City for review and approval Hotel Building Plans for the site.	Within 270 days after approval by the City of the Final Planned Development District.	Section 304	March 30, 2009
14.	<u>Escrow Fees and Charges.</u> Escrow Agent gives notice of fees, charges, and costs to close Escrow.	One (1) week prior to Closing.	Section 202	
15.	<u>Submission of Evidence of Mortgage or Construction Financing.</u> The Developer shall deposit the Evidence of Mortgage or Construction Financing into escrow.	On or before 1:00 p.m. on the last business day preceding the Closing Date	Section 208	
16.	<u>Deposit of Purchase Price and Developer's Share of Escrow Costs.</u> The Developer shall deposit the Purchase Price of Hotel Parcel and Developer's share of escrow costs into escrow.	On or before 1:00 p.m. on the last business day preceding the Closing Date	Section 208	
17.	<u>Deposit of Grant Deed and Agency's share of Escrow Costs.</u> The Agency shall deposit the executed grand deed for the Conveyance Parcel and Agency's share of escrow costs into escrow.	On or before 1:00 p.m. on the last business day preceding the Closing Date	Section 208	
18.	<u>Deposit of Promissory Note and Deed of Trust for Condo Parcel.</u> The Developer shall deposit an executed Promissory Note and Deed of Trust for the Condo Parcel into escrow.	On or before 1:00 p.m. on the last business day preceding the Closing Date	Section 201	
19.	<u>Estoppel Certificate, Certificates evidencing insurance.</u> The Developer shall deposit an Estoppel Certificate and Certificate Evidencing Insurance into escrow.	On or before 1:00 p.m. on the last business day preceding the Closing Date	Section 202	

20.	<u>Estoppel Certificate, Taxpayer ID Certificate, FIRPTA Certificate.</u> The Agency shall deposit an Estoppel Certificate, Taxpayer ID Certificate, FIRPTA Certificate.	On or before 1:00 p.m. on the last business day preceding the Closing Date	Section 202	
21.	<u>Close of Escrow, recordation and delivery of documents.</u> The Agency shall convey fee title to the Conveyance Parcel to the Developer, and the Developer shall accept such conveyance. The Escrow Agent shall cause the Grant Deed and Deed of Trust to be recorded with the Riverside County Recorder.	As soon as possible upon Receipt of All documents required to close.	Section 203	November 30, 2009
22.	<u>Commencement of Construction of Developer's Improvements.</u> The Developer Within 30 days after receipt thereof by the Developer shall commence construction of the improvements to be constructed on the Site.	On a schedule that will coordinate with the Developer's construction schedule.	Section 307	December 1, 2009
23.	<u>Completion of Construction of Developer's Improvements</u> The Developer shall complete construction of the Hotel and Condo-Hotel Units improvements on the Site.	Within 18 months after commencement of construction.	Section 307	June 1, 2011
24.	<u>Request - Certificate of Completion.</u> The Developer shall request from the Agency a Certificate of Completion on the Hotel Parcel Development.	Promptly after completion of all construction required to be completed by the Developer on the site.	Section 323	June 1, 2011
25.	Payment for Condo Parcel. The Developer shall make payment to the Agency of the balance due under the Condo Parcel Promissory Note and the Agency shall cause to be recorded a Substitution and Reconveyance retiring the Promissory Note and Deed of Trust.	Prior to issuance of a Certificate of Completion by the Agency.		June 11, 2011
26.	<u>Issuance - Certificate of Completion.</u> The Agency shall furnish the Developer with a Certificate of Completion on completed phases of work	Within 10 days after receipt of written request thereof by the Developer.	Section 323	June 11, 2011

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and Agency. A failure by either party to enforce a

breach of any particular time provision shall not be construed as a waiver of any other time provision. The Executive Director of Agency shall have the authority to approve extensions of time without Agency Board action not to exceed a cumulative total of 180 days as provided in Section 903.

## ATTACHMENT NO. 4

### SCOPE OF DEVELOPMENT

#### I. PRIVATE DEVELOPMENT

##### A. General

The Developer agrees that the Site shall be developed and improved in accordance with the provisions of this Agreement and the plans, drawings and related documents approved by the Agency pursuant hereto. The Developer and its supervising architect, engineer and contractor shall work with Agency staff to coordinate the overall design, architecture and color of the improvements on the Site.

##### B. Developer's Improvements

The Developer shall construct, or cause to be constructed, on the Site a "four star" Mondrian Hotel of at least two hundred (200) rooms, at least fifty (50) condominium-hotel rooms, plus not more than one hundred fifty (150) condominium units, and on-site parking which meets the requirements of the City. A "four star" hotel means a full service hotel comparable to other Mondrian Hotels in operation as of the date of this Agreement. The hotel will contain at least ten thousand (10,000) square feet of "under roof" group meeting space and on-site parking which meets the requirements of the City. The hotel shall provide the Convention Center with no less than one hundred fifty (150) room block commitment under the Convention Center's Committable Rooms Program.

##### C. Architecture and Design

The Developer's improvements shall be of high architectural quality, shall be well landscaped and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design and exterior finish of the building must be consonant with, visually related to, physically related to and an enhancement of adjacent buildings within the Project Area. The Developer's plans submitted to the Agency shall describe in detail the architectural character intended for the Developer's improvements.

##### D. Landscaping

Landscaping shall embellish all open spaces upon the Site to integrate the Developer's improvements with adjacent sites within the Project Area. Landscaping includes such materials as paving, trees, shrubs and other plant materials, landscape containers, plaza furniture, top soil preparation, automatic irrigation and landscape and

pedestrian lighting. Landscaping shall carry out the objectives and principles of the Agency's desire to accomplish a high quality aesthetic environment.

E. Signs

All signs on the exterior of the buildings are of special concern to the Agency and must be approved by the Agency (which approval shall not be unreasonably withheld).

F. Screening

Trash areas shall be screened on at least three (3) sides and have movable doors or other devices to obscure such areas from view. All fire standpipes and such other fire related mechanical devices shall be screened. Rooftop equipment shall be reasonably hidden so as to mitigate views from principal elevations surrounding the development.

G. Applicable Codes

The Developer's improvements shall be constructed in accordance with the Uniform Building Code (with City modifications) and the Municipal Code.

## II. SITE CLEARANCE AND PREPARATION

The Developer shall perform, or cause to be performed, at its sole cost and expense, the following work:

A. On-Site Demolition and Clearance

1. On the Site, demolish or salvage, clear, grub and remove (as may be needed and called for in the approved plans) all on-site buildings, pavements, walks, curbs, gutters and other improvements; and
2. Remove, plug and/or crush in place utilities, such as storm sewers, sanitary sewers, water systems, electrical overhead and underground systems and telephone and gas systems located on the Site, as may be required following any necessary relocation of the utilities.

B. Compaction, Finish Grading and Site Work

The Developer shall compact, finish grade and do such site preparation as is necessary for the construction of the Developer's Improvements on the Site.

### III. PUBLIC IMPROVEMENTS

The Agency shall perform, or cause to be performed, the following work in connection with the development of the Site by the Developer: NONE



ATTACHMENT NO. 5

FORM OF GRANT DEED

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

THE REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*) (herein called "Grantor"), acting to carry out the Redevelopment Plan (herein called "Redevelopment Plan") for the Palm Springs Merged Redevelopment Project Area No. 2, under the Community Redevelopment Law, hereby grants to RE: LOFT PARTNERS PALM SPRINGS, LLC, a Delaware limited liability company (herein called "Grantee"), the real property (the "Site") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Site is conveyed subject to the Amended and Restated Redevelopment Plan and pursuant to a Disposition and Development Agreement (the "DDA") entered into by and between the Grantor and the Grantee and dated \_\_\_\_\_, 2007. The Site is also conveyed subject to encumbrances of record.

2. a. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall use, operate and maintain the Site and the improvements thereon only for a four star Mondrian hotel, and related retail uses as further described in Section 401 of the DDA. The Grantee shall use the Site and the improvements thereon for no other purpose without the prior written consent of the Grantor. The foregoing covenant shall run with the land.

b. Following completion of construction of the improvements, Grantee shall maintain in accordance with the Maintenance Standards, as hereinafter defined, the private improvements and public improvements and landscaping to the curblines on the Site. Said improvements shall include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site and in the public right-of-way to the nearest curblines abutting the Site. To accomplish the maintenance, Grantee shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this paragraph.

(1) Maintenance Standards. The following standards ("Maintenance Standards") shall be complied with by Grantee and its maintenance staff, contractors and subcontractors:

- (a) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.
- (b) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.
- (c) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

- (d) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governmental requirements. Precautionary measures shall be employed recognizing that all areas are open to public access.
- (e) The improvements shall be maintained in conformance and in compliance with the \_\_\_\_\_ franchise agreement standards, or equivalent, as the same may be amended from time to time with the approval of the Grantor and in accordance with the custom and practice generally applicable to comparable hotels located within Riverside County, California.

(2) Failure to Maintain Improvements. If Grantee does not maintain the private and public improvements on the Site to the curbline(s) in the manner set forth herein and in accordance with the Maintenance Standards, Grantor shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to Grantee. However, prior to taking any such action, Grantor agrees to notify Grantee in writing if the condition of said improvements does not conform to the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Grantee to cure the deficiencies. Upon notification of any maintenance deficiency, Grantee shall have thirty (30) days within which to commence to correct, remedy or cure the deficiency and thereafter diligently and continuously complete correction, remedy or cure of the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then Grantee shall have forty-eight (48) hours to rectify the problem.

In the event Grantee fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after expiration of any applicable cure period, then Grantor shall have the right to maintain such improvements. Grantee agrees to pay Grantor such charges and costs upon demand. Until so paid, the Grantor shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Site. Any lien in favor of the Grantor created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgagee or beneficiary thereunder expressly subordinates his interest, of record, to such lien. No lien in favor of the Grantor created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Grantee acknowledges and agrees that

the Grantor and Grantor may also pursue any and all other remedies available in law or equity in the event of a breach of the maintenance obligations and covenants set forth herein.

3. Prior to the issuance of a Certificate of Completion by the Grantor as provided in Section 323 of the DDA, the Grantee shall not, except as permitted by the DDA, sell, transfer, convey, assign or lease the whole or any part of the Site without the prior written approval of the Grantor. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion with respect to the improvements upon the Hotel Parcel. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

4. Grantee hereby grants to Grantor the option to repurchase the Site hereby conveyed and all improvements subsequently constructed thereon, if prior to the issuance of a Certificate of Completion pursuant to Section 323 of the DDA, Grantee shall:

- a. Fail to commence construction of approved improvements on the Site within the time established therefor in the DDA, for any reason whatsoever. For purposes of this provision, the Developer shall be deemed to "commence construction" when and only when the Developer has received City approval of the final plans and specifications for all improvements provided in this Agreement, completed rough grading on the Site, and commenced installation and construction of improvements provided herein pursuant to permits issued by the City for the construction of such improvements; or
- b. Once construction has been commenced in accordance with subparagraph 1 above, fail to diligently prosecute construction of the improvements through completion within the time established therefor in the DDA, where such failure has not been cured within three (3) months after written notice thereof from the Grantor; or
- c. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Grantor; or
- d. Without the prior written consent of Grantor, directly or indirectly, voluntarily or involuntarily sell, assign, transfer, dispose of or further encumber or agree to sell, assign, transfer, dispose of or further encumber or suffer to exist any other lien against all or any portion of or any interest in the Site, except for any sale, assignment, transfer, disposal or encumbrance that is expressly permitted by the terms of the DDA. For the purpose of this paragraph, the terms "sell" and "transfer" shall include, in addition

to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law, irrespective of the fact that the Site may be exempt from such transaction during the period when owned by Grantor.

This option shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

- a. Any mortgage, deed of trust or other security instrument permitted by the DDA; or
- b. Any rights or interests provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

To exercise its right to repurchase, reenter and take possession with respect to the Site, the Grantor shall pay to the Grantee in cash an amount equal to:

- a. The cash Purchase Price for the Site paid by the Grantee; plus
- b. The costs actually incurred by the Developer for "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 any governmental entity, and the cost of all on-site labor and materials for the construction of the improvements existing on the Site at the time of the repurchase, reentry and repossession, exclusive of amounts financed; less
- c. Any gains or income withdrawn or made by the Grantee from the Site or the improvements thereon; and less
- d. The amount of any unpaid assessments and any liens against the Site.

5. The Grantor shall have the additional right, at its option, to terminate the estate conveyed to the Grantee, to reenter and take possession of the Site with all improvements thereon and to revert in the Grantor the estate theretofore conveyed to the Grantee, if after conveyance of title to the Site and prior to issuance of the Certificate of Completion for the Hotel Parcel, the Grantee shall:

- a. Fail to commence construction of approved improvements on the Site within the time established therefor in the DDA, for any reason whatsoever. For purposes of this provision, the Grantee shall be deemed to "commence construction" when and only when the

Grantec has received City approval of the final plans and specifications for all improvements provided in this Agreement, completed rough grading on the Site, and commenced installation and construction of improvements provided herein pursuant to permits issued by the City for the construction of such improvements; or

- b. Once construction has been commenced in accordance with subparagraph a. above, fail to diligently prosecute construction of the improvements through completion within the time established therefor in the DDA, where such failure has not been cured within three (3) months after written notice thereof from the Grantor; or
- c. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Grantor; or
- d. Without the prior written consent of Grantor, directly or indirectly, voluntarily or involuntarily sell, assign, transfer, dispose of or further encumber or agree to sell, assign, transfer, dispose of or further encumber or suffer to exist any other lien against all or any portion of or any interest in the Site, except for any sale or transfer that is expressly permitted by the terms of the DDA. For the purpose of this paragraph, the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law, irrespective of the fact that the Site may be exempt from such transaction during the period when owned by Grantor.

The interest created pursuant to this paragraph 5 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from Agency's option to repurchase the Site under the same or similar conditions specified in paragraph 4 above. The Grantor's power of termination shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

- a. Any mortgage, deed of trust or other security instrument permitted by the DDA; or
- b. Any rights or interest provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

Upon revesting title to the Site or any part thereof in the Grantor as provided in this paragraph 5, the Grantor shall use its best efforts to resell the Site or part

thereof as soon and in such manner as the Grantor shall find feasible to a qualified and responsible party or parties (as determined by the Grantor) who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the Grantor and in accordance with the uses specified for the Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the proceeds thereof shall be applied:

- a. First, to reimburse the Grantor for all costs and expenses incurred by the Grantor, including, but not limited to, salaries to personnel in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Grantor from the Site or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site or part thereof (or, in the event the Site is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges as determined by the County assessing official as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Grantee; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site or part thereof; and any amounts otherwise owing the Grantor by the Grantee; and
- b. Second, to reimburse the Grantee the sum of the following: (i) the cash purchase price for the Site paid by the Grantee; plus (ii) any cash payments previously made by the Grantee for the development of the Site and for the improvements existing on the Site at the time of the reentry and repossession, exclusive of amounts financed; less (iii) any gains or income withdrawn or made by the Grantee from the Site or the improvements thereon; and less (iv) the amount of any unpaid assessments against the Site.

Any balance remaining after such reimbursements shall be retained by the Grantor as its property.

**As set forth above, this section is intended to create and reserve in the Grantor a "power of termination" under California law, and not a forfeiture. The terms and provisions of this Section shall be construed in light of the fact that the Grantor will convey the Site to the Grantee for development pursuant to the Redevelopment Plan, and not for speculation in undeveloped land.**

6. The Grantee 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 Grantee 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 in the Site.

All deeds, leases or contracts made relative to the Site, the improvements thereon or any part thereof shall contain or be subject to substantially the following nondiscrimination clauses:

a. 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, lessces, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

b. 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:

"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, sublessees, subtenants or vendees in the premises herein leased."

- c. 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, sublessees, subtenants or vendees in the premises."

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA, provided, however, that any successor of Grantee to the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. Except as otherwise provided, the covenants contained in paragraph 2 of this Grant Deed shall remain in effect until \_\_\_\_\_ (the termination date of the Redevelopment Plan). The covenants against discrimination contained in paragraph 6 of this Grant Deed shall remain in perpetuity. The covenants contained in paragraphs 3, 4 and 5 shall remain in effect until issuance of a Certificate of Completion pursuant to Section 323 of the DDA.

9. The covenants contained in paragraphs 2, 3, 4, 5 and 6 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, and any successor in interest to the Site or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The

covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

10. In the event of any express conflict between this Grant Deed or the DDA, the provisions of this Grant Deed shall control.

11. Any amendments to the Redevelopment Plan that change the uses or development permitted on the Site or change the restrictions or controls that apply to the Site or otherwise affect the Site shall require the written consent of the Grantee. Amendments to the Redevelopment Plan applying to other property in the Project Area shall not require the consent of the Grantee.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized this \_\_\_ day of \_\_\_\_\_, 2007.

COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF PALM  
SPRINGS, a public body, corporate and  
politic

By: \_\_\_\_\_

Title: \_\_\_\_\_

"GRANTOR"

Approved as to form:

\_\_\_\_\_  
Agency Counsel

The provisions of this Grant Deed are hereby approved and accepted.

\_\_\_\_\_, 2007

RE: LOFT PARTNERS PALM SPRINGS,  
LLC, a Delaware limited liability company

By: \_\_\_\_\_

Title: \_\_\_\_\_

"GRANTEE"

## ACKNOWLEDGMENTS

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

Agency Parcel:

All that certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described as follows:

BLOCKS 103, 105 AND 106 IN SECTION 14, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICAL PLAT THEREOF.

Developer Parcel:

BLOCK 102 IN SECTION 14, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICAL PLAT THEREOF.

**ATTACHMENT NO. 6**

**PROMISSORY NOTE**

[To Be Produced with Escrow Documents.]

ATTACHMENT NO. 7

DEED OF TRUST

[To Be Produced with Escrow Documents.]

41160844 3

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made by and between City of Palm Springs ("Owner") and CDI Ventures, LLC and/or its affiliates, assigns, successors ("Developer"). 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, Owner and Developer 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. *Developer and 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. Owner 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. Developer 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 Owner and applied to the payment of the Purchase Price at Closing. If Developer terminates this Agreement solely in accordance with any right to terminate granted to Developer by the terms of this Agreement, the Deposit shall be returned to Developer 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 Developer in connection with any termination by Developer 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. *Owner's Obligations at the Closing.* At the Closing, or at such other time as indicated below, Owner shall deliver to Developer 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 Developer as insured, in the amount of the Purchase Price, insuring that Developer owns good and indefeasible fee simple title to the Property, subject only to the Permitted Encumbrances and routine exceptions required by the title insurer. Developer, at Developer'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 Developer's Closing obligations pursuant to this Agreement.

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

18. *Developer's Obligations at the Closing.* Prior to Closing, Developer shall deliver to Owner 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 Developer as shall be reasonably required by Owner and/or the Title Company authorizing Developer's acquisition of the Property pursuant to this Agreement and the execution of this Agreement and any documents to be executed by Developer 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 Developer 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 Owner.* In the event that Owner shall fail to consummate this Agreement for any reason, except Developer's default or a termination of this Agreement by Developer or Owner pursuant to a right to do so under the provisions hereof, Developer, 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 Owner's obligations under this Agreement; provided, however, that

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

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

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

(C) Developer 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 Owner, or

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

(iv) Developer has furnished ten (10) days prior written notice to Owner of its intent and election to seek specific enforcement of this Agreement; and (v) notwithstanding anything to the contrary contained herein, Owner shall not be obligated to expend any sums to cure any defaults under this Agreement and if Developer seeks specific performance under this Agreement, Developer agrees to accept the Property in its "WHERE IS, AS IS" condition.

c. Developer hereby agrees that prior to its exercise of any rights or remedies as a result of any defaults by Owner, Developer will first deliver written notice of said default to Owner, and if Owner so elects, Owner shall have the opportunity, but not the obligation, to cure such default within ten (10) days after Owner's receipt of such notice. In no event whatsoever shall Developer file any instrument of record against title to the Property; provided, however, Developer 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 Developer have the right to seek money damages of any kind as a result of any default by Owner under any of the terms of this Agreement except with respect to Owner's indemnification of Developer provided in this Agreement. In no event shall Owner be liable to Developer 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 Owner; Acceptance Of Property.* Developer 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. Developer 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. Developer 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. Owner 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. Developer 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:

(i) 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;

(ii) 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;

(iii) 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

(iv) 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 Developer and Owner (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.

1. Merger Provision. Except as otherwise expressly provided herein, any and all rights of action of Developer for any breach by Owner 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.

DEVELOPER: CDI Ventures, LLC

Date of Execution by Developer:

By: William H. Goldberg

Name: William H. Goldberg

Title: Member

OWNER: City of Palm Springs

Date of Execution by Owner:

By: [Signature]

Name: David H. Ready

Title: CITY MANAGER [Signature]

APPROVED AS TO FORM

[Signature]

City Attorney

Date: 03.27.2013

APPROVED BY CITY COUNCIL

3-6-10 SC AB329

ATTEST:

[Signature]  
City Clerk

ACKNOWLEDGMENT

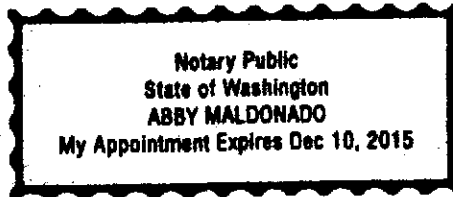
State of Washington )  
~~California~~ )  
County of King ) ss

On March 14, 2013 before me, Abby Maldonado, Notary Public, personally appeared William H. Goldberg who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ <sup>Washington</sup> that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature] (Seal)



ACKNOWLEDGMENT

State of California )  
 ) ss  
County of \_\_\_\_\_)

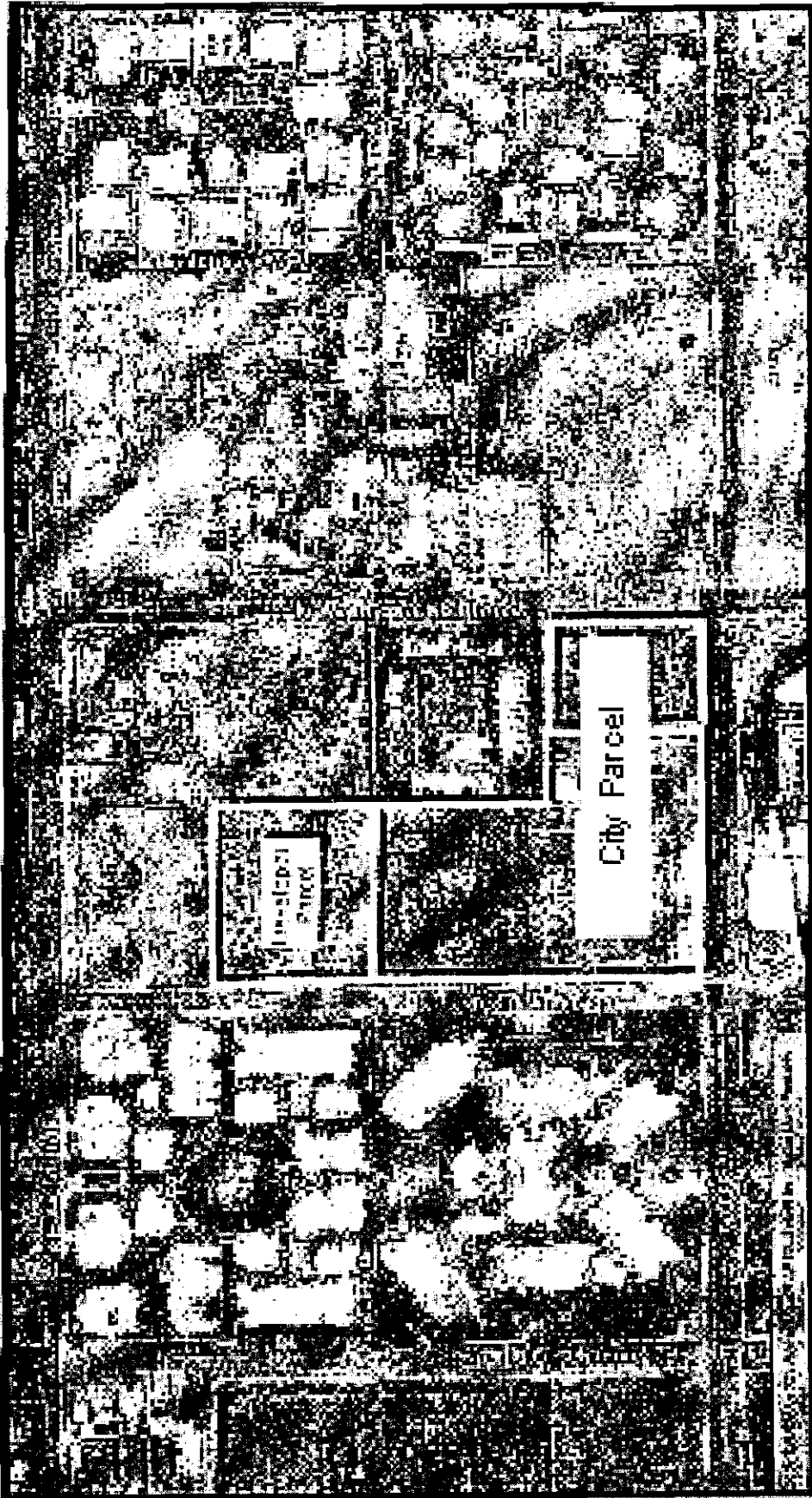
On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_ (Seal)





Attachment No. 1



Copyright © 2008 by Esri. All rights reserved. This material contains confidential information and is intended for use only by the user to whom it was provided. No part of this material may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Esri.

**ATTACHMENT NO. 2**

**LEGAL DESCRIPTION OF THE SITE**

Agency Parcel:

All that certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described as follows:

BLOCKS 103, 105 AND 106 IN SECTION 14, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICAL PLAT THEREOF.

Developer Parcel:

BLOCK 102 IN SECTION 14, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICAL PLAT THEREOF.

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

1. PRIVATE DEVELOPMENT

A. General

The Developer agrees that the Site shall be developed and improved in accordance with the provisions of this Agreement and the plans, drawings and related documents approved by the City. The Developer and its supervising architect, engineer and contractor shall work with the City staff to coordinate the overall design, architecture and color of the improvements of the Site.

B. Developer's Improvements

The Developer shall construct, or cause to be constructed, on the Site a "four star" Dolce Hotel of at least two hundred (200) rooms, no more than 150 additional residential units which may be fractionals, private residences, for rent residences, or condominiums and on-site parking which meets the requirements of the City. A "four star" hotel means a full service hotel comparable to other Dolce Hotels in operation as of the date of this Agreement. The hotel will contain at least ten thousand (10,000) square feet of "under roof" group meeting space.

C. Architecture and Design

The Developer's improvements shall be of high architectural quality, shall be well landscaped and shall be effectively and aesthetically designed. The Developer's plans submitted to the Agency shall describe in details the architectural character intended for the Developer's improvements.

D. Landscaping

Landscaping shall embellish all open spaces upon the Site to integrate the Developer's improvements with adjacent sites. Landscaping includes such materials as paving, trees, shrubs and other plant materials, landscape containers, plaza furniture, top soil preparation, automatic irrigation and landscape and pedestrian lighting. Landscaping shall carry out the objectives and principles of the City's desire to accomplish a high quality aesthetic environment.

E. Signs

All signs on the exterior of the buildings are of special concern to the City and must be approved by the City (which approval shall not be unreasonably withheld).

F. Screening

Trash areas shall be screened on at least three (3) sides and have movable doors or other devices to obscure such areas from view. All fire standpipes and such other fire related mechanical devices shall be screened. Rooftop equipment shall be reasonably hidden so as to mitigate views from principal elevations surrounding the development.

G. Applicable Codes

The Developer's Improvements shall be constructed in accordance with the Uniform Building Code (with City modification) and the Municipal Code.

II. SITE CLEARANCE AND PREPARATION

The Developer shall perform, or cause to be performed, at its sole cost and expense, the following work:

A. On-site Demolition and Clearance

1. On the Site, demolish or salvage, clear, grub, and remove (as may be needed and called for in the approved plan) all on-site buildings, pavements, walks, curbs, gutters and other improvements; and
2. Remove, plug and/or crush in place utilities, such as storm sewers, sanitary sewers, water systems, electrical overhead and underground systems and telephone and gas systems located on the Site, as may be required following any necessary relocation of the utilities.

B. Compaction, Finish Grading and Site Work

The Developer shall compact, finish grade and do such site preparation as is necessary for the construction of the Developer's Improvements on the Site.

III. PUBLIC IMPROVEMENTS

The City shall perform, or cause to be performed the following work in connection with the development of the Site by the Developer. (None)

AMENDMENT NO. 1 TO  
PURCHASE AND SALE AGREEMENT  
(DOLCE)

THIS AMENDMENT NO. 1 TO PURCHASE AND SALE AGREEMENT ("Amendment") is made and entered into this 5th day of March, 2014, by and between the City of Palm Springs, a California charter city ("City") and CDI VENTURES, LLC, a California limited liability company (the "Developer").

**RECITALS**

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

B. Delays in certain performance obligations have occurred as a result of changes in state law and outside of the control of the Parties. This Amendment will modify the affected performance schedule in response to such delays. In addition, the Developer has reorganized as a new legal entity and the Parties agree that the new entity should be designated as the Developer under the terms of the Purchase and Sale Agreement with all of the rights and responsibilities of the Developer under the terms of the Purchase and Sale Agreement.

C. The Parties also acknowledge that the City requires additional time to construct replacement parking to serve the City's Convention Center and that demolition and construction activities on the City Property should not commence until September 1, 2014 at the earliest.

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

**AGREEMENT**

Section 1. The foregoing Recitals are true and correct.

Section 2. The City and Developer agree that Praetor Investments, LLC, a California limited liability company, is hereby acknowledged, designated, and identified as the successor, transferee, conveyee, and/or assignee of all rights, responsibilities, and obligations of Developer under the terms of the Purchase and Sale Agreement. Developer represents that Praetor Investments, LLC possesses the qualifications and financial responsibility necessary and adequate, consistent with the provisions of the Purchase and Sale Agreement to fulfill the obligations of Developer under the Purchase and Sale Agreement.

Section 3. Section 7 of the Purchase and Sale Agreement is amended to read:

7. *Purchase Date*: Property shall be purchased on the start of construction by Developer but no later than October 15, 2014. Escrow shall be opened no less than thirty (30) days before the anticipated Purchase Date.

Section 4. The reference to "Section 8" in the second line of the text in Section 8 of the Purchase and Sale Agreement is amended to read "Section 7."

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

16. *Benchmark Schedule*:

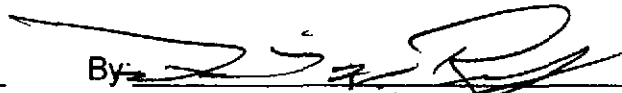

**Building Permits**: All construction plans and specifications for the Dolce shall be complete and Building Permits necessary for the construction of foundations and the building shell, including without limitation walls and roofs, shall be applied for and obtained prior to commencement of demolition of any portion of the City Property.

**Demolition and Commencement of Construction**: No Sooner than September 1, 2014, and No Later than October 15, 2014.

Section 6. Except as expressly provided above, all other terms and conditions of the Purchase and Sale Agreement shall remain unchanged and in full force and effect.

**CITY OF PALM SPRINGS**

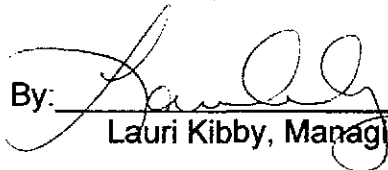
Date: 03/18/2014

By:   
David Ready, City Manager 

APPROVED BY CITY COUNCIL  
3.6.14 am AB329

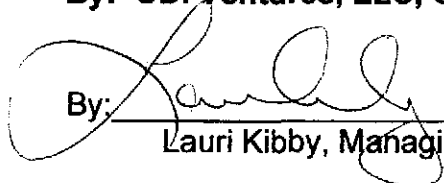
**DEVELOPER  
CDI Ventures, LLC**

Date: 3/13/14

By:   
Lauri Kibby, Managing Member


**Praetor Investments, LLC  
By: CDI Ventures, LLC, General Partner**

Date: 3/13/14

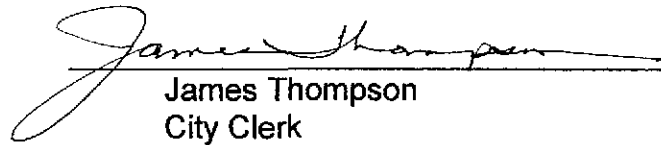
By:   
Lauri Kibby, Managing Member

**APPROVED AS TO FORM:**

By:

  
\_\_\_\_\_  
Douglas Holland  
City Attorney

**ATTEST:**

  
\_\_\_\_\_  
James Thompson  
City Clerk

## AMENDMENT NO. 2 TO PURCHASE AND SALE AGREEMENT (DOLCE)

THIS AMENDMENT NO. 2 TO PURCHASE AND SALE AGREEMENT ("Amendment") is made and entered into this 1<sup>st</sup> day of October, 2014, by and between the City of Palm Springs, a California charter city ("City") and Praetor Investments, LLC, a California limited liability company (the "Developer").

### RECITALS

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

B. Delays in certain performance obligations have occurred as a result of changes in state law and outside of the control of the Parties. This Amendment will modify the affected performance schedule in response to such delays. In addition, the Developer has reorganized as a new legal entity using the project name and the Parties agree that the new entity should be designated as the Developer under the terms of the Purchase and Sale Agreement with all of the rights and responsibilities of the Developer under the terms of the Purchase and Sale Agreement.

C. The Parties also acknowledge that the City requires additional time to construct replacement parking to serve the City's Convention Center and that demolition and construction activities on the City Property should not commence until March 1, 2015 at the earliest.

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

### AGREEMENT

Section 1. The foregoing Recitals are true and correct.

Section 2. The City and Developer agree that Selene Palm Springs, LLC, a California limited liability company, is hereby acknowledged, designated, and identified as the successor, transferee, conveyee, and/or assignee of all rights, responsibilities, and obligations of Developer under the terms of the Purchase and Sale Agreement. Developer represents that Selene Palm Springs, LLC possesses the qualifications and financial responsibility necessary and adequate, consistent with the provisions of the Purchase and Sale Agreement to fulfill the obligations of Developer under the Purchase and Sale Agreement.

Section 3. 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 April 15, 2015. Escrow shall be opened no less than thirty (30) days before the anticipated Purchase Date.

Section 4. Section 16 of the Purchase and Sale Agreement is amended to read:

16. Benchmark Schedule:

**Building Permits:** All construction plans and specifications for the Dolce shall be complete and Building Permits necessary for the construction of foundations and the building shell, including without limitation walls and roofs, shall be applied for and obtained prior to commencement of demolition of any portion of the City Property.

**Demolition and Commencement of Construction:** No Sooner than March 1, 2015, and No Later than April 15, 2015.

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.

////

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates stated below.

**"CITY"**  
**City of Palm Springs**

Date: 10/23/2014

By: James Thompson Acting  
David H. Ready,  
City Manager

APPROVED BY CITY COUNCIL

10/01/2014 20

APPROVED AS TO FORM:

ATTEST:

A4529

By: Douglas C. Holland  
Douglas C. Holland,  
City Attorney

By: James Thompson, Cynthia A. Berardi  
~~DEPUTY~~ City Clerk

**"DEVELOPER"**

**PRAETOR INVESTMENTS, LLC**

Date: 10/23/14

By: Lauri Kibby  
Lauri Kibby  
Managing Member

ACCEPTED BY:

**SELENE PALM SPRINGS, LLC**

Date: 10/23/14

By: Lauri Kibby  
Lauri Kibby  
Managing Member

State of California )  
 )ss.  
County of Riverside )

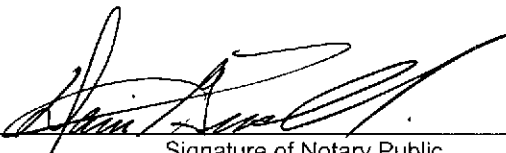
On OCTOBER 23, 2014 before me, Daria G. Lucarelli, Notary Public,  
Date Name and Title of Officer

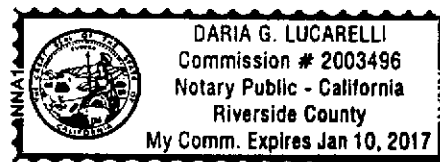
Personally appeared  
Lauri Kibby  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

  
Signature of Notary Public



AMENDMENT NO. 3 TO PURCHASE AND SALE AGREEMENT (SELENE)

THIS AMENDMENT NO. 3 TO PURCHASE AND SALE AGREEMENT ("Amendment") is made and entered into this 21<sup>st</sup> day of April, 2015, by and between the City of Palm Springs, a California charter city ("City") and Selene Palm Springs, LLC, a California limited liability company, the successor to Praetor Investments, LLC (the "Developer").

RECITALS

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

B. Delays in certain performance obligations have occurred as a result of changes in state law and outside of the control of the Parties. This Amendment will modify the affected performance schedule in response to such delays. In addition, in 2014 the Developer reorganized as a new legal entity using the project name and the Parties agreed that the new entity should be designated as the Developer under the terms of the Purchase and Sale Agreement with all of the rights and responsibilities of the Developer under the terms of the Purchase and Sale Agreement.

C. The Parties also acknowledge that the City requires additional time to construct replacement parking to serve the City's Convention Center and that the Developer shall give sufficient notice to City prior to demolition and construction activities on the City Property commencing.

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

AGREEMENT

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 January 15, 2016. Escrow shall be opened no less than thirty (30) days before the anticipated Purchase Date.

Section 4. Section 16 of the Purchase and Sale Agreement is amended to read:

16. Benchmark Schedule:

Financing. Developer secured the debt Letter of Commitment in March, 2015. Once a term sheet on the equity participation is finalized the Developer will proceed to closing. The loan will close within 45 days from the date Developer has secured the equity, anticipated to be mid-June, 2015. Once all of the financing is in place, the

Developer would then fast track the work required for the Phase I building permit and Final PD submittal. The Developer at that point shall provide notice to City that the debt and equity are in place and the project is financed and is proceeding toward Final PD and building permits.

Building Permits: The Final PD shall be approved and all construction plans and specifications for the Project shall be complete and Building Permits necessary for the construction of foundations and the building shell, including without limitation walls and roofs, shall be applied for and obtained prior to commencement of demolition of any portion of the City Property.

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.

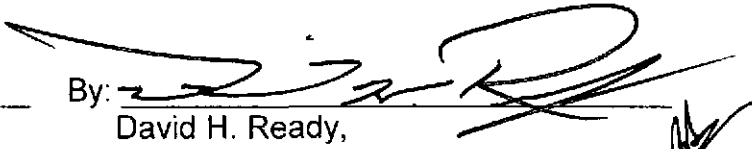
////

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates stated below.

**"CITY"**  
**City of Palm Springs**

Date: 04/27/2015

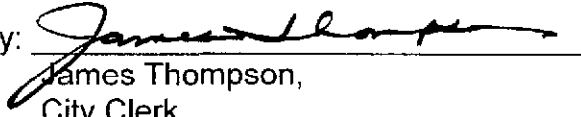
By:   
David H. Ready,  
City Manager

APPROVED BY CITY COUNCIL 

**APPROVED AS TO FORM:**

ATTEST: 4.15.15 JE AB329

By:   
Douglas C. Holland,  
City Attorney

By:   
James Thompson,  
City Clerk

**"DEVELOPER"**

**SELENE PALM SPRINGS, LLC**

Date: 4/20/15

By:   
Lauri Kibby  
CDI Ventures, LLC  
Managing Member

# CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Riverside }

On 4/20/2015 before me, Kimberly S. Floyd, Notary Public,  
(Here insert name and title of the officer)

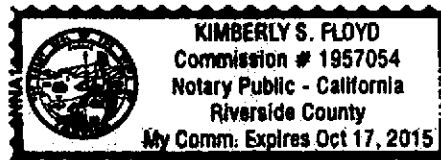
personally appeared Lauri Ribby  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Kimberly S. Floyd  
Notary Public Signature

(Notary Public Seal)



### ADDITIONAL OPTIONAL INFORMATION

**DESCRIPTION OF THE ATTACHED DOCUMENT**

Amendment No 3 to purchase - sale Agreement  
(Title or description of attached document)

Agreement  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

**CAPACITY CLAIMED BY THE SIGNER**

Individual (s)

Corporate Officer \_\_\_\_\_  
(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

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: (1) completed all pre-construction engineering and design, (2) has entered into binding and enforceable agreements with General Contractor and MEP and Structural contractors (consistent with industry practice), and (3) received permits, licenses, and entitlements from all government entities, including the City, 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. 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 (as its sole and exclusive remedy) 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

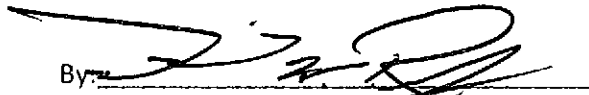
construction of Parking Facilities), or the fair market value of the City Property, including any improvements thereon, as determined through an appraisal of the City Property as of the date of Notice of Repurchase Option B performed by an appraiser hired by the City and the Developer, whichever amount 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

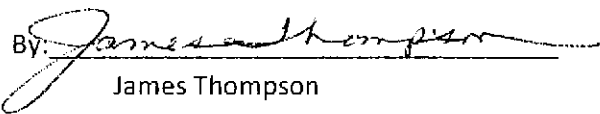
Date: 11/19/15

By:   
David H. Ready  
City Manager

APPROVED AS TO FORM

By:   
Douglas Holland  
City Attorney

ATTEST

By:   
James Thompson  
City Clerk

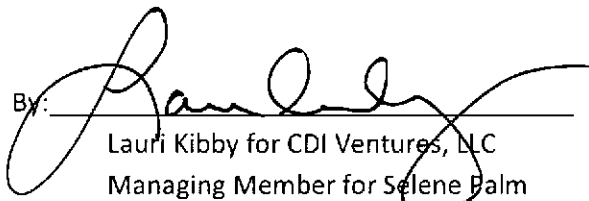
**APPROVED BY CITY COUNCIL**

11/04/2015 SE

A6329

Date: 11/19/15

Developer  
Selene Palm Springs, LLC

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

AMENDMENT NO. 5 TO PURCHASE AND SALE AGREEMENT (SELENE)

THIS AMENDMENT NO. 5 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 four 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. Escrow for the sale of the property has opened; however, the parties wish to extend the close of escrow one additional month.

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 July 31, 2016. Escrow shall be opened no less than thirty (30) days before the anticipated Purchase date.

Section 3. 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 AS 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

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 AS 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. 6 TO PURCHASE AND SALE AGREEMENT (SELENE)

THIS AMENDMENT NO. 5 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 previously 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. Escrow for the sale of the property has opened; however, the parties wish to extend the close of escrow to the close of business on August 29, 2016.

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 August 29, 2016. Escrow shall be opened no less than thirty (30) days before the anticipated Purchase date.

Section 3. 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.

## 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.

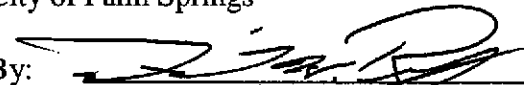
h. Attorneys' Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages, as provided herein, attorneys' fees and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

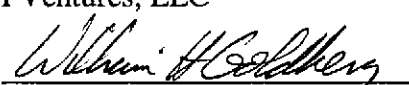
i. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart with each party's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

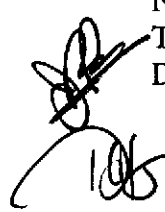
CDI Ventures, LLC

By:   
Name: David H. Dandy  
Title: CITY MANAGER  
Date: 4.4. 2013

By:   
Name: William H. Goldberg  
Title: Member  
Date: 3-27-13

APPROVED BY CITY COUNCIL

ATTEST:

  
3.6.2013 SC AB329

  
City Clerk

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: William H. Goldberg  
Name: William H. Goldberg  
Title: Member  
Date: 3-27-13

APPROVED AS TO FORM:

By: [Signature]  
Title: City Attorney

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

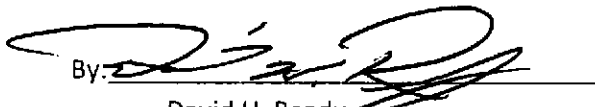
at least 350 public parking spaces within the Parking Facilities to replace existing public parking spaces on the City Property that will be lost as a result of the sale of the City property to the Developer and the construction of the Dolce Hotel Project. Prior to or upon the issuance of a building permit, 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.

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

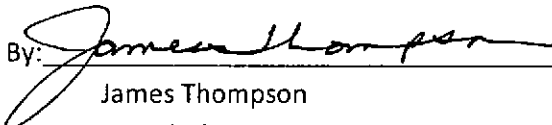
Date: 11/19/15

By:   
David H. Ready  
City Manager

APPROVED AND TO FORM

By:   
Douglas Holland  
City Attorney

ATTEST

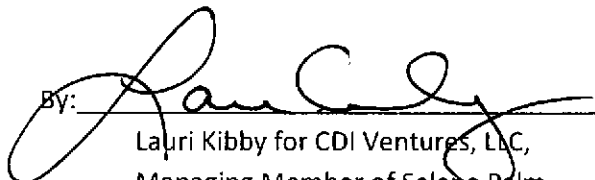
By:   
James Thompson  
City Clerk

**APPROVED BY CITY COUNCIL**

11/04/2015 S.E.  
A6329

Date: 11/19/15

Developer  
Selene Palm Springs, LLC

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

**LIBERTY**



**ESCROW INC.**

200 North Sunrise Way, Suite A Palm Springs, CA92262

(760) 322-2050 FAX: (760) 322-2157

**AMENDED SALE ESCROW INSTRUCTIONS**

Escrow No.: 26485-KC

Kristy J. Cordell  
Certified Senior Escrow Officer

Date: May 25, 2016

**THIS ESCROW HOLDER IS LIBERTY ESCROW INC. WHICH IS LICENSED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT LICENSE #9631777**

Notwithstanding the deposit specified in the PSA, the Buyer will hand LIBERTY ESCROW INC., on or before June 1, 2016, initial deposit in the amount of 500,000.00  
Prior to close of escrow, buyer will deposit an additional amount of \_\_\_\_\_ 1,500,000.00

**Total Consideration** \_\_\_\_\_ **\$2,000,000.00**

I/We will deliver to you any instruments which this escrow requires shall be executed by me, all of which you are instructed to use provided that on or before **(August 29, 2016)**, and when you are in a position to obtain a policy of title insurance through Orange Coast Title Company, with the usual title company's exceptions, with a liability of **\$2,000,000.00** (less value of personal property, if any) covering property:

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF

**PROPERTY ADDRESS:** 3 lots known as APN 508-034-012, 508-034-013 and 508-034-014, Palm Springs, CA

**SHOW TITLE VESTED IN:** Selene Palm Springs, LLC, a California Limited Liability Company

**FREE FROM ENCUMBRANCES EXCEPT:**

- (1) All General and special Taxes for the fiscal year 2014 and 2015, and/or supplemental taxes assessed pursuant to the provisions of Chapter 498, Statutes of 1983 of the State of California. (Change of Ownership will affect the taxes to be paid. A Supplemental Tax Bill will be issued and BUYER accepts all responsibility for all additional taxes due because of said reassessment. TAX BILLS ISSUED AFTER THE CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYERS AND SELLERS.)
- (2) Covenants, conditions, restrictions, reservations, rights, rights of way, and easements, and any oil, gas, or mineral reservations now of record, if any.

**INSTRUCTIONS:**

A. Buyer and Seller have entered into that certain "Purchase and Sale Agreement" as thereafter amended by four (4) amendments, ( the Agreement), which are attached hereto and made a part hereof. Liberty Escrow, Inc. has agreed to act as escrow agent in connection with same subject only to those items for which escrow offer is responsible, which are supplemented by these instructions.

B. The following are additional instructions to the above paragraph:

1. Pursuant to Developer's letter submitted to Owner on December 23, 2015 in compliance with Paragraph 36 of the Purchase and Sale Agreement, the Developer's bridge lender is Beech Tree Capital.

2. Grant Deed shall include the following deed restriction:

Buyer grants Seller the right to maintain, operate, and use the property as a parking lot, at no cost to Seller, until such time as the Buyer or Buyer's Successor commences construction as contemplated and defined in Amendment No. 4 to the Purchase and Sale Agreement between the Grantor and Grantee executed by the parties dated November 19, 2015. Upon the commencement of construction as defined herein, this deed restriction shall terminate.

3. Grant Deed shall include the following deed restriction:

Buyer shall install on the property public parking together with rights of access, ingress, and

(CONTINUED)

Seller's Initials: \_\_\_\_\_ / \_\_\_\_\_

Buyer's Initials: \_\_\_\_\_ / \_\_\_\_\_

Page 3 of 6: Additional instructions made a part of previous pages as fully incorporated therein. egress over appropriate areas of the property for the purpose of using such parking spaces for use of the general public in perpetuity. Buyer's obligations, which accrue solely to the named Buyer, or an assignee of the Buyer approved by the Seller (whose approval shall not be unreasonably withheld), under this restriction, shall be deemed fully satisfied through Buyer's or Buyer's approved assignee's performance of its obligations pursuant to the Services Agreement, as amended, between the Buyer and the Seller. Upon completion of, and issuance of an occupancy permit for, a parking structure pursuant to the Services Agreement, this restriction shall terminate. Any other successor of Buyer in the property, including without limitation any successor following a default of Buyer under the Purchase and Sale Agreement or the Services Agreement, shall pay to the City the amount of Two Million, Six Hundred and Seventy Five Thousand Dollars (\$2,675,000.00), prior to the issuance of a building permit on the property, and such amount shall be increased annually by increases in the consumer price index for all urban consumers for the Los Angeles-Riverside-Orange County Standard Metropolitan Statistical Area as reported by the United States Bureau of Labor Statistics, or any successor to such index.

- C. Buyer and Seller authorize and instruct Escrow Holder to accept and act on signature(s) throughout this escrow in the form of photo copies, e-mail or faxes, as defined in this Escrow as though they were original signature(s), to open escrow and for other purposes.
- D. **ASSEMBLY BILL 512: "GOOD FUNDS LAWS"**. AB 512 enacts a new Section 12413.1 to the State of California Insurance Code that regulates real estate escrow disbursements by title insurance companies, controlled escrows and underwritten title companies. The Bill requires that checks be deposited by the title company prior to escrow disbursement.

**THE NEW LAW ESTABLISHED A THREE-TIER SYSTEM TO DETERMINE WHEN DISBURSEMENT MAY OCCUR.**

- 1) Cash and "Wired Funds" may be disbursed on the same day as deposited.
- 2) Teller's checks, cashier's checks and certified checks may be disbursed on the first business day following the day of deposit. (A teller's check is defined as a check drawn by an insured financial institution against another insured financial institution.)
- 3) Personal checks, corporate checks and drafts received from title companies (including escrow trust checks) may be disbursed on the day when the item must be made available for withdrawal by depositors under Regulation CC adopted by the Federal Reserve Board of Governors. Until September 1, 1990, the hold period on these items is three (3) business days following the date of deposit of local checks and seven (7) business days following the date of deposit of non-local checks; after September 1, 1990, these hold periods will be reduced to two(2) business days following the date of deposit for local checks and five (5) business days following date of deposit for non-local checks.

Please prepare for delayed disbursement of funds to all recipients at the close of escrow.

All parties are aware that **NO** interest will be paid to recipients of funds from Liberty Escrow Inc. as a result of this delay as outlined under Senate Bill 1550.

**NO ESCROW WILL RECORD UNTIL THE ABOVE REQUIREMENTS HAVE BEEN MET. NO EXCEPTIONS!!**

- E. **CLOSING FUNDS:** Each party acknowledges that the close of escrow is conditioned on check clearances. Funds to close must be in the form of a Cashier's Check drawn on a bank with clearing house in the State of California OR be wire transfer to Liberty Escrow Inc. Trust Account two (2) days prior to recording of documents. **ALL FINAL FUNDS IN EXCESS OF \$100,000.00 MUST BE WIRE TRANSFERRED.**

**If you wish to wire transfer US funds to Liberty Escrow Inc., please use the following format:**

**WIRE TRANSFER INSTRUCTIONS  
LIBERTY ESCROW INC.**

Receiving Bank:	OPUS BANK Specialty Deposits 19900 MacArthur Blvd., 12th Floor Irvine, CA 92612
Bank Routing Number:	122239270
Account Name:	Liberty Escrow Inc.
Account Number:	10932929
Reference:	Escrow No. 26485-KC Attn: Kristy J. Cordell

**THE WIRE TEXT MUST BE EXACTLY AS INDICATED ABOVE. ANY EXTRANEIOUS INFORMATION MAY CAUSE UNNECESSARY DELAYS IN CONFIRMING THE RECEIPT OF FUNDS.**

- F. **PRORATIONS:** Prorate as of Close of Escrow  
Real Property taxes based on latest tax bill or on amount furnished by title company.

\*\*\*\*\*

(CONTINUED)

Seller's Initials: \_\_\_\_\_ / \_\_\_\_\_

Buyer's Initials: \_\_\_\_\_ / \_\_\_\_\_

Page 4 of 6: Additional instructions made a part of previous pages as fully incorporated therein.

ADDITIONAL ESCROW INSTRUCTIONS AND CONDITIONS

1. You are instructed to deposit all funds received by you with any state or national bank, state or federal savings bank, or state of federal savings and loan association, in trust account in the name of escrow holder, without any liability for payment of interest. The funds may be withdrawn by you and disbursed according to the instructions of the parties. All deposits made by personal check, cashier's check, certified check or deposit other than cash or wire transfer are subject to clearance and payment by financial institution on which drawn. All disbursements are to be made by check or escrow holder from the trust account. Neither you nor any of your employees will identify any payee or guarantee signatures of any person or entity at any financial institution. Funds deposited into escrow in the form of a check, draft, or similar instrument will be identified as collected funds when the escrow holder's financial institution confirms that the funds are available for disbursement.
2. Your duty is to act as escrow holder only and does not commence and escrow shall not be deemed opened until mutual escrow instructions signed by all parties are received by you. Until mutually executed escrow instructions are received, either party may unilaterally revoke these instructions by written request delivered to you and may withdraw any funds, instruments, documents or items previously handed to you.
3. All prorations and adjustments are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing by all parties. For proration purposes, the Buyer will have ownership of the real property which is the subject of this escrow for the entire day, regardless of the hour of recording. The "close of escrow" with reference to prorations, adjustments and all purposes in this escrow shall be the day the instruments of conveyance are recorded or filed with the county recorder.
4. Any funds disbursed during or on the close of escrow will be issued jointly to the parties designated as payees unless you are instructed otherwise in writing by all designated payees. The funds representing loan and/or sale proceeds will be disbursed jointly to all persons who were the record owners of the real property which is the subject of the escrow. All disbursements of funds and/or delivery of other documents or instruments concerning this escrow will be mailed to the entitled parties by regular first-class mail, postage prepaid, at their respective addresses shown on file. However, at your discretion, you may send funds and/or other instruments or documents by certified or registered mail, federal express, messenger or facsimile machine, in which case the party for whom the delivery was made agrees to pay the costs. The provisions of this paragraph include, but are not limited to, request for demand statements, requests for beneficiary statements, request for homeowners' association statements or any other requests as you may deem necessary for the timely closing of this escrow. You are to instruct the county recorder to mail recorded documents to the entitled parties at their respective addresses. You are to instruct the title company to mail the title policy(s) to the Lender(s) or Buyer(s) as appropriate.
5. In addition to other costs and charges set forth in escrow instructions, Seller agrees to pay on demand, whether or not this escrow closes, all expenses and charges incurred by you on Seller's behalf, including, but not limited to, charges for preliminary title reports, title commitments, policies of title insurance, beneficiary statements, beneficiary demands, offset statements, documentary transfer tax stamps, preparation of, notarizing and recording of documents necessary in Seller's behalf, one-half (1/2) of sub-escrow fee, Seller's escrow fee and other costs as charged. In addition to the other costs and charges set forth in these escrow instructions, Buyer agrees to pay on demand, whether or not this escrow closes, all expenses and charges incurred by you on Buyer's behalf, including, but not limited to, recording fees, preparation of notarizing and recording trust deed(s) and other documents on Buyer's behalf, new loan charges, existing loan assumption transfer fees, one-half (1/2) of sub-escrow fees, Lender's policy of title insurance, fire insurance premiums, Buyer's escrow fee and other costs as charged.
6. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY CONTAINED IN THESE ESCROW INSTRUCTIONS OR SUPPLEMENTS OR AMENDMENTS, ESCROW HOLDER SHALL NOT BE RESPONSIBLE FOR THE SUFFICIENCY, VALIDITY OR CORRECTNESS OF ANY SIGNATURE OF ANY PRINCIPAL TO THIS ESCROW OR ANY THIRD PARTY TO THIS ESCROW, NOR FOR THE SUFFICIENCY OR CORRECTNESS AS TO FORM, MANNER OF EXECUTION OR VALIDITY OF ANY DOCUMENTS DEPOSITED IN THIS ESCROW, NOR AS TO THE IDENTITY, AUTHORITY, OR RIGHT OF ANY PERSONS EXECUTING THE SAME, EITHER AS TO DOCUMENTS OF RECORD OR THOSE HANDLED IN THIS ESCROW. SHOULD THE PARTIES DESIRE THAT YOU VERIFY THE SIGNATURES ON INSTRUCTIONS RECEIVED BY YOU, THE PARTY(IES) WITHOUT FURTHER INSTRUCTIONS AUTHORIZED THE PAYMENT OF AN ESCROW FEE COMPUTED AT TWO TIMES YOUR REGULAR ESCROW FEE AND WILL DELIVER SEPARATE WRITTEN ESCROW INSTRUCTIONS SPECIFICALLY INSTRUCTING YOU TO DO SO.
7. You shall not be responsible for the following: (1) the sufficiency or correctness as to form, manner of execution or validity of any documents deposited in this escrow; (2) the identity, authority, or right of any person executing the same, either as to documents of record of those handled in this escrow; or (3) the failure of any party to comply with any of the provisions of any agreement, contract or other instrument filed or deposited in this escrow or referred to in these escrow instructions. Your duties shall be limited to the safekeeping of money and documents received by you as escrow holder and for the disposition in compliance with the written instructions accepted by you in this escrow. You shall not be required to take any action regarding the collection, maturity, or apparent outlaw of any obligations deposited with you unless otherwise instructed in writing.
8. You are not to be held responsible in any way whatsoever for any personal property tax which may be assessed against any former or present owner of the subject property described in these escrow instructions, nor for the corporation or license tax of any corporation as a former or present owner.
9. If it is necessary, proper or convenient for the consummation of this escrow, you are authorized to deposit or have deposited funds or documents, or both, handed you under these escrow instructions with any duly authorized sub-escrow agent, including, but not limited to, any bank, trust company, title insurance company, title company, savings and loan association, or licensed escrow agent, subject to your order at or before close of escrow in connection with closing this escrow. Any such deposit shall be deemed a deposit under the meaning of these escrow instructions.
10. The parties to this escrow have satisfied themselves outside of escrow that the transaction covered by this escrow is not in violation of the Subdivision Map Act or any law regulating land division, zoning ordinances or building restrictions which may affect the land or improvements that are the subject of this escrow. You, as escrow holder, are relieved of all responsibility and liability in connection with such laws, ordinances, restrictions or regulations and are not to be concerned with any of their enforcement.
11. If any form of Purchase Agreement or amendment or supplement (collectively "Purchase Agreement") is deposited in this escrow, it is understood that such document shall be effective only as between the parties signing the Purchase Agreement. You, as escrow holder, are not to be concerned with the terms of any Purchase Agreement and are relieved of all responsibility and liability for the enforcement of its terms. Your only duty is to comply with the instructions set forth in the escrow instructions. You are not

(CONTINUED)

Seller's Initials: \_\_\_\_\_/\_\_\_\_\_

Buyer's Initials: \_\_\_\_\_/\_\_\_\_\_

Page 5 of 6: Additional instructions made a part of previous pages as fully incorporated therein.

responsible for interpreting or acting on any provision of any Purchase Agreement on which these escrow instructions may be based and you shall not rely on any knowledge or understanding you may have of any such Purchase Agreement in ascertaining or performing your duties as escrow holder. In connection with any loan transaction, you are authorized to deliver a copy of any Purchase Agreement, supplement or amendment and a copy of all escrow instructions, supplements or amendments to the Lender.

12. You are not to be concerned with the giving of any disclosures required by federal or state law, including, but not limited to, Real Estate Settlement Procedures Act, Regulation Z - Truth-In-Lending, condition of the subject property or other warnings, or any other warranties, express or implied.

13. Except as set forth in Paragraph 14 below, you shall not be responsible and you are released from and shall have no liability, obligation or responsibility with respect to withholding of funds under §1445 of the Internal Revenue Code of 1954, as amended, commonly know as the Foreign Investment in Real Property Tax Act ("FIRPTA") or the California FIRPTA under §18805, et seq. of the California Revenue & Taxation Code ("CAL-FIRPTA"). Advice about FIRPTA or CAL-FIRPTA its requirements, a determination whether the Seller/transferor is a foreign person, as defined, or obtaining a non-foreign affidavit or exemption from withholding or other information concerning compliance or non-compliance will not be given to the parties by the escrow holder. The parties are advised to seek independent legal, financial and tax counsel from their respective legal, financial and tax advisors.

14. The parties are aware that California law effective January 1, 1991 requires you to withhold a sum equal to 3 1/3% of the sale price under certain conditions where Seller does not reside in the State of California or funds are transmitted outside of California. The parties agree to prepare and deposit such other and further documents or instruments as are necessary for you to comply with this instruction and California state law. The parties herewith acknowledge receipt of the Notification of the California Franchise Tax Board embodying the California state law commonly known as CAL-FIRPTA as stated in California Revenue and Taxation Code §§18805 and 26131.

15. You are authorized to deliver copies of all escrow instructions, supplements and amendments, estimated and final closing statements, preliminary title reports, and notices of cancellation, if any, to the real estate broker(s), real estate sales agent(s), Lender(s), Lender's agent(s) and/or attorneys(s) for the parties, upon the parties' oral or written request. You shall not incur any liability to the parties for delivery of the copies.

16. You shall make no physical inspection of the real property or personal property described in any instrument deposited in or which is the subject of this escrow. You have made no representations or warranties concerning any such real property or personal property and are not to be concerned with nor liable for the conditions of real property or personal property.

17. The parties authorize the recordation of any instrument delivered through this escrow if necessary or proper for the issuance of the required policy of title insurance or for the closing of this escrow. Funds, instructions or instruments received in this escrow may be delivered to, or deposited with any title insurance company of title company to comply with the terms and conditions of this escrow.

18. You are authorized to deduct from Seller's net proceeds or Buyer's net proceeds any amount which either Seller or Buyer may owe you in any other matter or transaction. You are authorized to charge and the parties agree to pay additional escrow fees for extraordinary services not within the range of customary escrow processing, including, but not limited to, the verification of signatories to escrow instructions.

19. You are to use your usual document forms or the usual forms of any title insurance company or title company and in our instructions insert dates and terms on the instruments if incomplete when executed.

20. If the date by which Buyer's or Seller's performances are due shall be other than your regular business day, such performances shall be due on your next succeeding business day.

21. You shall conduct no lien or title search of personal property regarding the sale or transfer of any personal property through this escrow. Should the party(ies) desire that you conduct a lien or title search of personal property, the party(ies) requesting the same shall deliver separate and specific written escrow instructions to you along with an agreement to pay your additional escrow fees.

22. You shall not be responsible in any way whatsoever nor are you to be concerned with any question of usury in any loan or encumbrance, whether new or of record, which may arise during the processing of this escrow.

23. The parties agree to deliver to you all documents, instruments, escrow instructions and funds required to process and close this escrow in accordance with its terms.

24. You are instructed to provide title to the subject real property in the condition identified in the escrow instructions by the parties. You are not responsible for the contents or accuracy of any beneficiary demands and/or beneficiary statements delivered to you by the existing lienholder. You are not required to submit any such beneficiary statement and/or beneficiary demand to the parties for approval before the close of escrow unless expressly instructed to do so in writing. Should the party(ies) desire to pre-approve any such beneficiary statement and/or beneficiary demand, the party(ies) requesting the same shall deliver separate and specific written escrow instructions to you.

25. You are not to be responsible in any way whatsoever nor to be concerned with the terms of any new loan or the content of any loan documents obtained by any party in connection with this escrow except to order such loan documents into the escrow file, transmit the loan documents to Buyer for execution and transmit the executed loan documents to Lender. The parties understand and agree that you are not involved nor concerned with the approval and/or processing of any loan or the contents and effect of loan documents prepared by a Lender.

26. The parties agree to complete and deliver to you a Statement of Information as required by the title insurance company or title company.

27. The Federal Tax Reform Act of 1986, as amended, and the California Revenue & Taxation Code, require certain transactions to be reported to the Internal Revenue Service and the California State Franchise Tax Board. In those transactions Seller will furnish a correct tax identification number to you so you can report this transaction as required by law. Seller understands that Seller may be subject to civil or criminal penalties for failure to do so.

28. The parties expressly indemnify and hold you harmless against third-party claims for any fees, costs or expenses where you have acted in good faith, with reasonable care and prudence and/or in compliance with these escrow instructions.

(CONTINUED)

Seller's Initials: \_\_\_\_\_ / \_\_\_\_\_

Buyer's Initials: \_\_\_\_\_ / \_\_\_\_\_



Page 6 of 6: Additional instructions made a part of previous pages as fully incorporated therein.

29. The parties agree that you have the responsibilities of an escrow holder only and there are no other legal relationships established in the terms and conditions of the escrow instructions. In connection with this escrow: (1) you shall have no duty or responsibility of notifying any of the parties to this escrow of any sale, resale, loan, exchange or other transaction involving any of the subject real property or personal property; (2) you shall have no responsibility or duty to disclose any benefit, including, but not limited to financial gain, realized by any person, firm or corporation involving any of the subject real property or personal property; and (3) you shall have no responsibility or duty to disclose any profit realized by any person, firm or corporation including, but not limited to, any real estate broker, real estate sales agent and/or a party to any other escrow, in connection therewith, although such other transaction may be handled by you in this escrow or in another escrow transaction. If, however, you are instructed in writing by any party, Lender or other entitled person to disclose any sale, resale, loan, exchange or other transaction involving any of the subject real property or personal property or any profit realized by any person, firm or corporation to any party to this escrow, you shall do so without incurring any liability to any party. You shall not be liable for any of your acts or omissions done in good faith nor for any claims, demands, losses or damages made or suffered by any party to this escrow, excepting such as may arise through or be caused by you willful neglect or gross misconduct.

30. Buyer acknowledges that pursuant to the California Revenue & Taxation Code a Change of Ownership form is required by the county recorder to be completed and affixed to any documents submitted for recording which evidence a conveyance of title. The Change of Ownership form shall be furnished to Buyer by you for Buyer's completion and execution. Buyer is aware that if Buyer does not complete the form in full, sign and return it to you before closing, a penalty will be assessed by the county recorder. If the Change of Ownership form is not filed after the close of escrow within the time limits set forth by the county recorder, severe additional penalties will be assessed against the Buyer. FOR INFORMATION AND ASSISTANCE IN COMPLETING THE CHANGE OF OWNERSHIP FORM, BUYER MAY CONTACT THE COUNTY RECORDER AND ASSESSORS OFFICES IN THE COUNTY IN WHICH THE SUBJECT PROPERTY IS LOCATED.

31. Notwithstanding any other provisions in these escrow instructions and in addition to other fees and cost to which you may be entitled, the parties, jointly and severally, agree that if this escrow is not consummated within ninety (90) days of the date set for closing, you are instructed to, and without further instructions, withhold your escrow hold open fee of \$50.00 per month from the funds on deposit with you regardless of who deposited such funds. The parties, jointly and severally, further agree that if you, for any reason, required to hold funds after close of escrow, you are instructed to, and without further instructions, withhold an escrow fee of \$50.00 per month from the funds on deposit with you regardless of who deposited such funds. The parties irrevocably instruct you to automatically cancel this file without further instructions when all funds on deposit have been disbursed.

32. Your escrow holder agency shall terminate six (6) months following date last set for close of escrow and shall be subject to earlier termination by receipt by you of mutually executed cancellation instructions. If this escrow was not closed or cancelled within the described six (6) month period, you shall have no further obligation as escrow holder except to disburse funds and documents pursuant to written escrow instructions and to interplead or otherwise dispose of funds and documents in accordance with a validly issued and validly served order from a court of competent jurisdiction. If the conditions of this escrow have not been complied with at the expiration date in these escrow instructions, you are instructed to complete the conditions at the earliest possible date, unless Buyer or Seller have made written demand upon you for the return of the funds and/or instruments deposited by Buyer or Seller and/or for cancellation of this escrow. Should demands be made upon you, you may withhold and stop all further proceedings in this escrow without liability for interest on funds held or for damages until mutual cancellation instructions signed by all parties shall have been deposited with you. The parties, jointly and severally, agree that if this escrow cancels or is otherwise terminated and not closed, the parties shall pay for any cost and expenses which you have incurred or have become obligated for under these escrow instructions, including, but not limited to, attorneys' fees, arbitration fees and costs and reasonable escrow fees for the services rendered by you, the parties agree that such cost and expenses shall be paid and deposited in escrow before any cancellation or other termination of this escrow is effective. The parties agree that said charges for expenses, costs, and fees may be apportioned between Buyer and Seller in a manner which, in your sole discretion, you consider equitable, and that your decision will be binding and conclusive upon the parties. Upon receipt of mutual cancellation instructions of a final order or judgement of a court of competent jurisdiction with accompanying writs of execution, levies or garnishments, you are instructed to disburse the escrow funds and instruments in accordance with such cancellation instructions, order or judgment and accompanying writ and this escrow shall, without further notice, be considered terminated and cancelled.

33. The parties shall cooperate with you in carrying out the escrow instruction they deposit with you and completing this escrow. The parties shall deposit into escrow, upon request, any additional funds, instruments, documents, instructions, authorizations, or other items that are reasonably necessary to enable you to comply with demands made on you by third parties, to secure policies of title insurance, or to otherwise carry out the terms of their instructions and close this escrow. If conflicting demands or notices are made or served upon you or any controversy arises between the parties or with any third person arising out of or relating to this escrow, you shall have the absolute right to withhold and stop all further proceedings in, and in performance of, this escrow until you receive written notification satisfactory to you of the settlement of the controversy by written agreement of the parties, or by the final order or judgement of a court of competent jurisdiction. All of the parties to this escrow, jointly and severally, promise to pay promptly on demand, as well as to indemnify you and to hold you harmless from and against all administrative governmental investigation, audit and legal fees, litigation and interpleader costs, damages, judgments, attorneys' fees, arbitration costs and fees, expenses, obligations and liabilities of every kind (collectively "costs") which in good faith you may incur or suffer in connection with or arising out of this escrow, whether said costs arise during the performance of or subsequent to this escrow, directly or indirectly, and whether at trial, on appeal, in administrative action, or in an arbitration. You are given a lien upon all the rights, titles and interests of the parties and all escrow papers and other property and monies deposited into this escrow to protect your rights and to indemnify and reimburse you. If the parties do not pay any fees, costs or expenses due you under the escrow instructions or do not pay for costs and attorneys' fees incurred in any litigation, administrative action and/or arbitration, on demand, they each agree to pay a reasonable fee for any attorney services which may be required to collect such fees or expenses, whether attorneys' fees are incurred before trial, at trial, on appeal or in arbitration.

34. ALL NOTICES, DEMANDS AND INSTRUCTIONS MUST BE IN WRITING. No notice, demand, instruction, amendment, supplement or modification of these escrow instructions shall be of any effect in this escrow until delivered in writing to you and mutually executed by all parties. AS SET FORTH ABOVE, YOU HAVE NO DUTY TO AND SHALL NOT VERIFY THE SIGNATURES OF ANY PARTIES OF NON-PARTIES UNLESS FURTHER WRITTEN ESCROW INSTRUCTIONS TO DO SO ARE RECEIVED AND THE ADDITIONAL ESCROW FEES ARE DEPOSITED. Any purported oral instruction, amendment, supplement, modification, notice or demand deposited with you by the parties or either of them shall be ineffective and invalid. You are to be concerned only with the directives expressly set forth in the escrow instructions, supplements and amendments thereto, and are not to be concerned with nor liable for items designated as "memorandum items" in the escrow instructions.

35. These escrow instructions may be executed in counterparts, each of which shall be deemed an original regardless of the date

(CONTINUED)

Seller's Initials: \_\_\_\_\_/\_\_\_\_\_

Buyer's Initials: \_\_\_\_\_/\_\_\_\_\_

Page 6 of 6: Additional instructions made a part of previous pages as fully incorporated therein.

of its execution and delivery. All such counterparts together shall constitute the same document.

36. If any check submitted to you is dishonored upon presentment for payment, you are authorized to notify all parties to the within escrow, their respective real estate broker(s) and real estate agent(s) and any other person or entity you deem in your sole discretion necessary to notify.

37. You are authorized to accept oral instructions from the parties' real estate broker(s), real estate agent(s), Lender(s) or Lender's agent(s) concerning the preparation of escrow instructions, amendments or supplements. However, you are not to act upon any instructions so delivered until you have received the same in writing signed by all parties to this escrow.

38. In these escrow instructions, whether the context so requires, the masculine gender includes the feminine and/or neuter and the singular number includes the plural.

39. The parties acknowledge and understand that you, as escrow holder, are not authorized to practice the law nor do you give financial advice. The parties are advised to seek legal and financial counsel and advice concerning the effect of these escrow instructions. The parties acknowledge that no representations are made by you above the legal sufficiency, legal consequences, financial effects or tax consequences of the within escrow transaction.

40. You are authorized to destroy or otherwise dispose of any and all documents, papers, escrow instructions, correspondence and records or other material constituting or pertaining to this escrow at any time after five (5) years from the date of: (1) the close of escrow; (2) the date of cancellation; or (3) the date of the last activity without liability and without further notice to the parties.

41. The parties agree to release you from any and all liability of any kind or nature and to indemnify you from any loss, damages, claims, judgments or costs of any kind or nature resulting from or related to the release or discharge of hazardous or toxic wastes on the subject property whether it occurred in the past or present or may occur in the future which release or discharge is in violation of law, in excess of any state and federal standards, permit requirements and/or disclosure requirements existing at this time or which may exist at a future time. The parties represent that they made their own assessment of the condition of the subject property and have not relied on any of your representations in making the assessment. The parties are advised to seek independent legal and technical environmental expert advice in assessing the risks associated with potential hazardous or toxic wastes.

42. You are instructed to take notice of all information received by you on your company's facsimile machine. To close this escrow we each agree to provide you with executed original documents when, in your sole discretion, you request their delivery to you.

43. The parties signatures on all escrow instructions and instruments pertaining to the within escrow indicates their unconditional acceptance and approval of same and you are entitled to rely on the parties execution.

We jointly and severally, acknowledge receipt of a complete copy of the within escrow instructions and by our signatures set forth below, acknowledge that we have read and understand and agree to the same in their entirety.

ALL PARTIES TO THIS ESCROW ACKNOWLEDGE THAT LIBERTY ESCROW INC. DOES NOT PROVIDE LEGAL ADVICE NOR HAS IT MADE ANY INVESTIGATION, REPRESENTATIONS OR ASSURANCES WHATSOEVER REGARDING THE LEGAL ASPECTS OR COMPLIANCE OF THIS TRANSACTION WITH ANY TAX, SECURITIES OR ANY OTHER STATE OR FEDERAL LAWS. IT IS RECOMMENDED THAT THE PARTIES OBTAIN INDEPENDENT LEGAL COUNSEL AS TO SUCH MATTERS.

**SELLERS:**

City of Palm Springs, a chartered city organized under the laws of the State of California

BY: \_\_\_\_\_  
David H. Ready, City Manager

**BUYERS:**

Selene Palm Springs, LLC, a California Limited Liability Company

By: CDI Ventures, LLC

By: \_\_\_\_\_  
Lauri Kibby, managing member

BY: Kaiser Capital, LLC

By: \_\_\_\_\_  
Abdul Q. Lalani, managing member

**CURRENT ADDRESS:**

3200 E. Tahquitz Canyon Way, Palm Spirngs, CA  
92262

Telephone: \_\_\_\_\_

**CURRENT ADDRESS:**

\_\_\_\_\_

Telephone: \_\_\_\_\_