

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the “Agreement”) is made and entered into as of _____, 2016 (the “Date of Agreement”), by and between the **CITY OF GARDEN GROVE**, a municipal corporation (“City”) and _____, a _____ (the “Developer”) (the Developer and the City are collectively referred to herein as the “Parties”).

RECITALS

The following recitals are a substantive part of this Agreement.

- A. City is a municipal corporation.
- B. Developer is an experienced developer, owner, manager and operator of hotels and commercial facilities.
- C. Palm Court Lodging, LLC, a California limited liability company (“Palm Court”) and the Garden Grove Agency for Community Development (“Former Agency”) entered into that certain Disposition and Development Agreement by and between the Garden Grove Agency for Community Development (“Former Agency”) and Palm Court dated as of June 26, 2001 (the “Original DDA”). Under the Original DDA, Palm Court was to acquire land from the Former Agency and develop two hotels. Although one hotel was built (the “First Hotel”), the disposition of land for and development of a second hotel (the “Second Hotel”) as provided for under the Original DDA has not occurred. Developer is the assignee of Palm Court with regard to the acquisition of land and development of the Second Hotel under the Original DDA.
- D. Developer has proposed the development, opening, and operation of a AAA Four Diamond hotel and resort (the “Project”) on the property which is the subject matter of the Original DDA (the “Successor Agency Property”) and additional land owned by third parties adjacent to the Successor Agency Property (the “Third Party Property”). The Successor Agency Property and the Third Party Property is collectively referred to herein as the “Site” as shown on the map attached hereto as Exhibit “A.”
- E. Developer has requested that the City enter into this Agreement in order to facilitate the ability of the Developer to explore the viability of its development concept, to develop a detailed methodology and sequence of events for the acquisition of the Third Party Property, as well as to prepare and refine a proposal for the financing of the Project.
- F. The Parties have previously prepared an undated document entitled “Deal Point Memorandum” (the “Memorandum”), attached hereto as Exhibit “B”, which addresses certain topics anticipated to be addressed in an agreement between the City and the Developer (the “City DDA”). While the Parties intend to negotiate substantially on the fundamental basis set forth in the Memorandum, the Memorandum has not been approved by and does not bind City and neither party has made any determination as to whether the development is feasible or practicable; it is therefore anticipated that negotiations will adapt to the circumstances that present themselves from time to time during the Negotiation Period.

G. The foregoing Recitals constitute a substantive part of this Agreement.

H. This Agreement is in the vital and best interests of the City and the health, safety and welfare of its residents, and in accordance with public purposes of applicable state and local laws and requirements.

I. The Parties intend that during and for the period of negotiations set forth herein (the “Negotiation Period”) each will perform certain actions and responsibilities under this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **Exclusive Agreement to Negotiate.**

a. Required Actions.

(1) Developer hereby agrees to pay the costs incurred in connection with the acquisition of the Third Party Property, the relocation of occupants of the Site and/or environmental review relating to the Project. Developer shall have the absolute right to approve all costs prior to the acquisition of any Third Party Property, or prior to the engagement of any consultant related to the relocation of the occupants of the Site, or related to any environmental review related to the project. To this end, the Developer shall, deliver to the city the amount of One Hundred Thousand Dollars (\$100,000.00) (“Initial Deposit”), once the Developer is reasonably satisfied that the Project will proceed. Thereafter, if the expenses incurred in connection with the acquisition of the Third Party Property, the relocation of occupants of the Site and/or the environmental review of the Project exceed the cumulative amounts previously delivered to City by Developer, City shall notify Developer and Developer shall promptly deliver additional moneys in the amount of Fifty Thousand Dollars (\$50,000.00) (“Additional Deposit”) to pay such costs. If, after the Additional Deposit is made, the parties believe that the costs described above will exceed the Initial Deposit plus the Additional Deposit, then Developer may either (i) advance additional funds, as necessary, or (ii) terminate this Agreement. In the case of termination, neither party shall have any rights or obligations hereunder.

(2) Within ninety (90) days from the Date of Agreement, Developer shall submit to the City a “Preliminary Development Concept Package” which shall include:

(a) a development proposal generally describing the Project proposed to be constructed, including all development activities proposed to be undertaken (the “Proposed Development”), which Proposed Development shall include a hotel of approximately six-hundred (600) rooms, between 15,000 square feet and 30,000 square feet of meeting space, resort-style pool, spa and restaurant amenities] and which hotel shall be a hotel recognized and designated by the American Automobile Association as a AAA Four Diamond Hotel (“Conforming Hotel”);

(b) a site plan and elevations for the Conforming Hotel;

(c) a plan [which may be the plan prepared by the City’s acquisition and relocation consultant] with respect to the acquisition of the Third Party Property and the relocation of its occupants;

(d) a statement describing the proposed method of financing, including construction and permanent financing and, if applicable, proposed credit enhancement;

(e) a list of entities prepared to be involved in the development as well as the operation of the Conforming Hotel, their respective roles, and financial references for such entities;

(f) a construction and operating pro forma which identifies all sources and uses of funds including without limitation design of the Conforming Hotel and supporting infrastructure; and

(g) a proposed timeline;

After receipt of the complete Preliminary Development Concept Package, City will review the Preliminary Development Concept Package. Subject to such review, City will provide input to Developer concerning the Preliminary Development Concept Package. If City determines that the Preliminary Development Concept Package as originally submitted is not suitable to the needs and desires of City, City shall so inform Developer. Upon receipt of such information, Developer shall, within ninety (90) days of receipt of such notice, submit a revised Preliminary Development Concept Package or inform City in writing that it agrees that this Agreement shall be terminated.

If City determines that a Preliminary Development Concept Package is appropriate, Developer shall proceed with preparation of a “Draft Final Development Concept Package,” as described below.

(3) Within ninety (90) days from the approval by City of a Preliminary Development Concept Package, Developer shall submit to the City a “Draft Final Development Concept Package,” consisting of the following:

(a) updated information, current as of the date of submittal of the Final Development Concept Package, as to each and every item set forth under the heading “Preliminary Development Concept Package” and addressing such other and additional matters as may arise during negotiations;

(b) proposed final identification of sources of financing, with a description of the terms and conditions of such financing;

(c) a highly detailed proposed scope of development including minimum and appropriate square footages of buildings, a detailed parking and access plan, a reasonably detailed landscape plan, and a proposed financing plan;

(d) an updated timeline; and

(e) a detailed construction schedule of development.

After receipt of the complete Draft Final Development Concept Package, City will review the Draft Final Development Concept Package. Subject to such review, City will provide input to Developer concerning the Draft Final Development Concept Package. If City determines that the Draft Final Development Concept Package as originally submitted is not suitable to the needs and

desires of City, City shall so inform Developer. Upon receipt of such information, Developer shall, within ninety (90) days of receipt of such notice, submit a revised Draft Final Development Concept Package or inform City in writing that it agrees that this Agreement shall be terminated.

If City determines that a Draft Final Development Concept Package is appropriate, it shall be referred to as the “Final Development Concept Package” and the parties will proceed with the negotiation of a disposition and development agreement or similar agreement. The Parties acknowledge that the inclusion of the Successor Agency Property would require implementation of the Original DDA, without amendment, which implementation may require approvals by the Oversight Board to the Successor Agency (the “Oversight Board”) and possibly review by the California Department of Finance (“DOF”). The Parties further acknowledge that no contact has been made with the owners of the Third Party Property, the availability of or price for the Third Party Property has not been determined, and the cost of relocation or associated costs has not been determined.

(4) The Developer shall bear the cost for its performance under this Agreement, including without limitation costs incurred by the City with respect to the plans for acquisition of the Third Party Property, and relocation planning and implementation and the environmental review of the Conforming Hotel.

(5) During the term of this Agreement, the City will negotiate exclusively with Developer concerning the development of a Conforming Hotel on the Site.

b. Term. The term of the negotiation period commence as of the Date of Agreement and shall continue until the earlier to occur of (i) the execution by the parties of the City DDA, or (ii) to the first (1st) anniversary of the Date of Agreement (the “Term of the Negotiation Period”) at which time this Agreement shall automatically terminate unless sooner terminated pursuant to Section 10 or extended by the parties, each acting at its sole and absolute discretion.

c. Agreement to Negotiate. The City (by and through its staff and consultants) and Developer agree that for the term of the Negotiation Period (whether said period expires or is earlier terminated by the provisions herein) each party shall negotiate diligently and in good faith to carry out its obligations under this Agreement with the goal of coming to agreement on a City DDA. The Developer expressly agrees and acknowledges that its rights pursuant to this Agreement are subject to and based upon compliance by the Developer with this Agreement (including without limitation the making of all submittals required pursuant to this Agreement, in conformity with this Agreement).

d. Supplemental Progress Reports. In addition to the information required in Section 1 above, for so long as this Agreement remains in effect Developer agrees to make [weekly] oral progress reports and [monthly] written reports to the City Manager or his designee advising the City on all matters and all studies being made.

2. No Predetermination of City Discretion; No Assurances as to Actions of Other Entities. The Parties agree and acknowledge that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of the City’s discretion. The Developer acknowledges in this regard that the feasibility of the Developer’s proposal has not been determined nor has the City completed necessary environmental review or governmental processes necessary for processing of plans for development or use of the Site. Further, nothing in this Agreement in any

respect does or shall be construed to affect or prejudice the City's discretion to consider, negotiate, or undertake the acquisition and/or development of any portion of the Site, or shall affect the City's compliance with the laws, rules, and regulations governing land uses, environmental review, or disposition of the Site. In addition, no assurances are made by City hereunder concerning any actions by the Successor Agency, Oversight Board, DOF or any private party.

3. **Environmental and Other Requirements.** Certain state and local environmental requirements (including, but without limitation, the California Environmental Quality Act of 1970, Public Resources Code Section 21000, et seq.) may be applicable to proposed development. Pursuant to such requirements, certain environmental documents may be required to be prepared and certified for any proposed development. The City, by this Agreement, undertakes no obligation to pay any costs associated with such environmental documents.

4. **Costs and Expenses.** Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with the performance of its obligations under this Agreement.

5. **No Change in Developer or its Constituent Members.** The Developer shall within thirty (30) days of this Agreement make full disclosure to the City of all pertinent information concerning the Developer, including any joint venture partners. The qualifications of the Developer are of particular interest to the City. Consequently, no person or entity, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign all or any part of this Agreement without the prior written approval of the City, which approval the City may grant, withhold, condition, or deny at its sole and absolute discretion. Any other purported transfer, voluntarily or by operation of law, shall be absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

6. **Lead Negotiators.** _____, _____ and _____ shall be the lead negotiators for the City with respect to the subject matter of this Agreement. _____ and _____ shall be lead negotiators for Developer with respect to the subject matter of this Agreement.

7. **Address for Notices.** Any notices pursuant to this Agreement shall be in writing and sent (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the following addresses:

To City: City of Garden Grove
Attention: Scott C. Stiles, City Manager
11222 Acacia Parkway
Garden Grove, California 92842

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.

To Developer: Kam Sang
411 E. Huntington Drive #305
Arcadia, California 91006
Attn: [Phil Wolfgramm]

8. **Default.** Failure by either party to perform one or more of its duties as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the action required to cure the default.

9. **Remedies for Breach of Agreement.** In the event of an uncured default under this Agreement, the sole remedy of the nondefaulting party shall be to terminate this Agreement. Following such termination, neither party shall have any further rights, remedies or obligations under this Agreement. Neither party shall have any liability to the other for monetary damages or specific performance for the breach of this Agreement, or failure to reach agreement on a City DDA as to the Site, and each party hereby waives and releases any such rights or claims it may otherwise have at law or at equity. Furthermore, the Developer knowingly agrees that it shall have no right to specific performance for conveyance of, nor to claim any right of title or interest in the Property or any portion thereof.

10. **Termination.** This Agreement shall: (i) automatically terminate upon the expiration of the Term of the Negotiation Period or earlier as set forth in Section 1.b above, or (ii) terminate prior to the time(s) set forth in Section 1.b above in the event the Developer shall fail to perform its obligations hereunder to the reasonable satisfaction of the City Manager; provided that prior to termination under (ii) of this Section 10, the City shall provide the Developer with notice of any such failure(s) and thirty (30) days in which to cure. In addition, the parties agree that if either party shall determine that it is infeasible to proceed in the manner provided under the Preliminary Development Concept Package or the Draft Final Development Concept Package or if the development of the Site, consistent with such Preliminary Development Concept Package or Draft Final Development Concept Package, does not appear to either party to be economically sound and feasible, either party may, upon ten (10) days' written notice to the other party, terminate this Agreement. Upon termination of this Agreement, whether upon expiration of the Negotiation Period or otherwise, both Parties knowingly agree that neither Party shall have any further rights or remedies to the other and the Developer shall have no rights in or with respect to the Site.

11. **Time of Essence.** Time is of the essence of every portion of this Agreement in which time is a material part. During the Negotiation Period the time periods set forth in this Agreement for the performance obligations hereunder shall apply and commence upon a complete submittal of the applicable information or occurrence of an applicable event. In no event shall an incomplete submittal by the Developer trigger any of the City's obligations of review, approval and/or performance hereunder; provided, however that the City shall notify the Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for the City's action on the particular item in question. Further, the time periods set forth herein are outside dates of performance. In the event a party completes a performance item earlier than the time required hereunder, the time for the next performance obligation of a party shall commence. Thus, the parties agree that the requirements hereunder may occur and be completed in a shorter time frame than set forth herein.

12. **Real Estate Commissions.** The City shall not be liable for any real estate commission or brokerage fees which may arise with respect to this Agreement or the Site.

13. **Developer Not an Agent.** The Developer is not an agent of the City.

14. **Press Releases.** The Developer agrees to discuss any press releases with the City Manager or his designee prior to disclosure or publication in order to assure accuracy and consistency of the information.

15. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

16. **Agreement Does Not Constitute Development Approval.** The City reserves final discretion and approval as to any sublease or development and all proceedings and decisions in connection therewith. This Agreement shall not be construed as a grant of development rights or land use entitlements to construct the proposed development or any other project. All design, architectural, and building plans for the Proposed Development shall be subject to the review and approval of the City and such governmental entities properly exercising authority with respect thereto. By its execution of this Agreement, the City is not committing itself to or agreeing to undertake the disposition of the Site to the Developer, or any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof.

17. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.

18. **Implementation of Agreement.** The City shall maintain authority to implement this Agreement through the City Manager (or his or her duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or concept of the proposed development, or add to the costs or risks incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All other materials and/or substantive interpretations, waivers, or amendments shall require the collective consideration, action and written consent of the governing board of the City.

19. **No Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement.

20. **Waiver of Damages.** Each party hereby waives any claim for monetary damages for breach or default hereunder.

NOW THEREFORE, the Parties have executed this Negotiation Agreement as of the date and year first set forth above.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

By: _____
City Manager

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth PC
Special Counsel to City

DEVELOPER:

_____, a _____

By: _____

Its: _____

EXHIBIT "A"

MAP OF THE SITE

[to come]

EXHIBIT “B”

MEMORANDUM

[to come]