

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

THIS EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 2024 (“**Effective Date**”) by and between the City of Palm Desert, a California charter city (“**City**”) and Kam Sang Company, Inc., a California corporation (“**Developer**”). City and Developer are hereinafter referred to collectively as the “**Parties.**”

RECITALS

A. The City serves as the Successor Agency to the Redevelopment Agency of the City of Palm Desert, a public agency (“**SARDA**”), pursuant to the redevelopment dissolution statutes, being Division 24, Part 1.85 of Health and Safety Code, commencing with Section 34170.

B. SARDA is the owner of certain real property constituting approximately 34.11 acres, located within the City limits located north-easterly of the intersection of Desert Willow Drive and Market Place Drive, identified as Riverside County Assessor Parcel Numbers 620-450-012, 620-450-013, 620-450-014, 620-450-016, 620-450-017, 620-450-018, and 620-450-020, as more particularly described in Exhibit A attached hereto (the “**Property**”). The Property is vacant, unimproved land.

B. SARDA has fulfilled its obligations under the Surplus Land Act, and the City, based on subsequent outreach, selected Developer as the entity with which to enter into exclusive negotiations for development of the Property.

C. Developer has proposed to develop on the Property a W Branded Hotel & Residences comprised of 225 hotel rooms, 40 residential units for sale, three meal restaurant, specialty restaurant, full service spa and fitness center, and indoor and outdoor meeting spaces (the “**Project**”). Developer estimates total development, pre-construction and construction costs for this proposed project will be approximately One Hundred and Fifty Million Dollars (\$150,000,000.00).

D. The purpose of this Agreement is to establish the procedures and standards for the negotiation of a potential disposition and development agreement (“**DDA**”) that would address: (i) the disposition of the Property facilitated by the City, from SARDA to Developer, and (ii) Developer’s development of the Project on the Property. As more fully set forth below, this Agreement in itself does not obligate the City or the Developer to execute a DDA, or obligate SARDA to convey the Property, or any portion thereof, to Developer, nor does it grant Developer the right to develop the Project on the Property.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above, and all defined terms set forth in such Recitals and in the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as though set forth in full.

2. Good Faith Efforts to Negotiate. The Parties shall use their best efforts to negotiate a DDA that will describe the terms and conditions governing the conveyance of the Property by SARDA to Developer, or an Affiliate (as defined below) of Developer approved by SARDA and the City, and the development of the Project on the Property by an Affiliate of the Developer, approved by City. The Parties shall diligently and in good faith pursue such negotiations. This Agreement does not impose a binding obligation on SARDA to convey any portion of, or interest in, the Property to Developer, nor does it obligate City to grant any approvals or authorizations required for the Project (including the DDA). Without limiting the generality of the foregoing, Developer expressly acknowledges that any agreement(s) resulting from the negotiations contemplated hereby shall become effective only if the conveyance agreement is approved by the SARDA Board and the Countywide Oversight Board for the County of Riverside, and a development agreement is approved by the City Council following compliance with all applicable notice and hearing requirements of the City and compliance with all other applicable requirements of law, including without limitation the California Environmental Quality Act (“CEQA”). As used in this Agreement, an “Affiliate” of a person or entity shall mean an entity controlling, controlled by, or under common control with such person or entity, and shall include, but shall not be limited to a limited partnership in which the Developer is a member of a general partner of such limited partnership. The term “control” as used in the immediately preceding sentence shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the entity in question, whether through ownership, voting securities, contract, or otherwise.

3. Developer’s Exclusive Right to Negotiate with City. City agrees that it will not, during the Term of this Agreement (as defined below), directly or indirectly, through any officer, employee, agent, or otherwise, solicit, initiate or encourage the submission of bids, offers or proposals by any person or entity with respect to the acquisition of any interest in the Property or the development of the Property, and City shall not engage any broker, financial adviser or consultant to initiate or encourage proposals or offers from other parties with respect to the disposition or development of the Property or any portion thereof. Furthermore, City shall not, directly or indirectly, through any officer, employee, agent or otherwise, engage in negotiations concerning any such transaction with, or provide information to, any person other than Developer and its representatives with a view to engaging, or preparing to engage, that person with respect to the disposition or development of the Property or any portion thereof. The parties further agree and acknowledge that the City shall not facilitate the disposition or transfer of the Property to any third party during the Term.

4. Term. The Term shall commence on the Effective Date, and shall terminate six (6) months thereafter, unless extended or earlier terminated as provided herein (the “**Term**”). The Term may be extended for up to a maximum of one hundred eighty (180) additional days upon the mutual written agreement of Developer and City’s City Manager if the City Manager determines in his sole and absolute discretion that the Parties have made substantial progress in their negotiations to merit such extension. The Parties may, with City Council approval, agree to additional extensions. If a DDA has not been executed by the City and Developer (or an entity related to Developer and reasonably approved by the City) by the expiration of the Term (as the Term may have been extended pursuant to this Section), then this Agreement shall terminate, and neither Party shall have any further rights or obligations under this Agreement except such rights and obligations that expressly survive termination. If a DDA is executed by the City and the Developer (or an Affiliate of Developer approved by the City), this Agreement shall thereupon terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

5. Good Faith Deposit. In consideration for this Agreement, Developer has, prior to City’s execution of this Agreement, provided to City a cash deposit in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) (the “**Good Faith Deposit**”). During the Term, City shall invest the Good Faith Deposit for purposes of earning interest thereon. If the Parties enter into a DDA, the Good Faith Deposit shall be disposed of as specified in the DDA. If this Agreement is terminated without execution of a DDA for any reason, then the Good Faith Deposit and any interest earned thereon, less any amounts expended to reimburse City for City Costs as provided in Section 6 below, shall be refunded promptly to Developer. If this Agreement is terminated as a result of an Event of Default, then the Good Faith Deposit and any interest earned thereon shall be disposed of as more fully provided in Section 12.4. If at any time prior to the Parties entering into a DDA, City Costs (as defined in Section 6) are incurred in an aggregate amount that equals or exceeds the amount of the original Good Faith Deposit, the Developer shall replenish the Good Faith Deposit with the amount necessary to cover the City Costs, and no further City Costs shall be expended until Developer provides City with a cash deposit to cover the amount of the City Costs. If Developer declines to provide such additional cash, within fifteen (15) business days of request therefore from the City, the City may elect to terminate this Agreement, and neither Party shall have any further rights or obligations under this Agreement except such rights and obligations that expressly survive termination.

6. Costs and Expenses. City shall be entitled to draw upon the Good Faith Deposit and apply such draws to reasonable expenses incurred by the City during the Term. The Good Faith Deposit may be used to cover costs that City incurs in connection with the proposed Project and negotiation with Developer regarding agreements for development of the Property. Expenses shall be limited to third party vendors including without limitation, expenses incurred for financial feasibility studies, design analyses, appraisals, environmental analyses, title examination, reasonable legal fees, and consulting fees (collectively, “**City Costs**”). City shall notify Developer monthly in writing of the amount drawn by City to pay City Costs. The notice shall include copies of all invoices paid and accounting details from the Good Faith Deposit.

7. Termination.

7.1 Termination by Mutual Agreement. This Agreement may be terminated at any time by the mutual written consent of the Parties. In the event of such termination, subject to Section 7.4, neither Party shall have any further rights against or liability to the other under this Agreement.

7.2 Termination by City for Cause. City shall have the right to terminate this Agreement upon City's good faith reasonable determination that Developer is not negotiating diligently and in good faith. City shall exercise such right by delivering not less than ten (10) business days' advance written notice to Developer describing the nature of Developer's default and the termination date. If Developer does not commence to cure the default and resume negotiations in good faith within such ten (10) business day period, as applicable, City may terminate this Agreement effective as of the termination date stated in the notice. In the event of termination by the City pursuant to this Section 7.2, subject to Section 7.4, neither Party shall have any further rights against or liability to the other under this Agreement.

7.3 Termination by Developer. Developer shall have the right to terminate this Agreement upon Developer's good faith reasonable determination that City is not negotiating diligently and in good faith. Developer shall exercise such right by delivering not less than ten (10) business days' advance written notice to City describing the nature of City's default and the termination date. If City does not commence to cure the default and resume negotiations in good faith within such ten (10) business day period, Developer may terminate this Agreement effective as of the termination date stated in the notice. In addition, Developer shall have the right to terminate this Agreement, effective upon ten (10) days' written notice to City, if Developer determines, in the exercise of Developer's sole discretion, that the results of Developer's investigation of the Property are unsatisfactory with respect to Developer's desired development activities or if Developer is unable to obtain other necessary approvals, rights or interests. In the event of termination by the Developer pursuant to this Section 7.3, subject to Section 7.4, neither Party shall have any further rights against or liability to the other under this Agreement. Notwithstanding anything to the contrary contained herein, in the event Developer chooses to terminate this Agreement as the result of an uncured material default by the City where the City has acted in bad faith, the Developer shall be entitled to seek reimbursement of the Good Faith Deposit and any additions made by Developer or its Affiliate to the Good Faith Deposit prior to the date of the termination of this Agreement.

7.4 Effect of Termination. Upon the expiration of the Term as such may be extended, or upon the earlier termination of this Agreement, without the Parties having successfully negotiated and executed a DDA, this Agreement shall forthwith be void, and there shall be no further liability or obligation on the part of either of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 9.1 (Studies), Section 9.2 (Access; Indemnity), Section 10 (Confidentiality), Section 12.4 (Liquidated Damages), and Section 14.7 (Indemnification) shall survive such termination. In no event shall either Party have the right to seek an award of damages as a result of the termination of this Agreement.

8. Compliance with CEQA. The Parties acknowledge that the Project description set forth in this Agreement is preliminary in nature and shall be described in further detail in the DDA to be negotiated during the Term. The Parties acknowledge that development of the Property for the Project will require the grant of discretionary land use entitlements subject to the City's normal review and approval process, that the Project must comply with CEQA, and that nothing in this Agreement is intended to or shall be interpreted as the grant of any approvals for development of the Project or the Property, or the modification or waiver of any City procedures or requirements. Without limiting the foregoing, the Parties acknowledge that the City retains discretion to (i) require modification of the Project as City may, in its discretion, determine to be reasonably necessary to comply with CEQA, (ii) select other feasible alternative and/or impose mitigation measures to avoid or minimize significant environmental impacts; (iii) balance the benefits of the Project against any significant environmental impacts prior to taking final action, if such impacts cannot otherwise be avoided; and/or (iv) determine not to proceed with the Project.

The Parties acknowledge that nothing in this Agreement shall be deemed a commitment by the City to facilitate SARDA to enter into an agreement for conveyance of any interest in the Property or for the development of the Project. In addition, the Parties acknowledge that the final form of any agreement governing the development of the Property may contain matters not covered in this Agreement, and the provisions herein are not intended to exclude or preclude any other issues that may arise during negotiations.

Developer acknowledges that the Project must be evaluated under CEQA, as required by the terms of the City's approval of the DDA. If City determines that CEQA compliance requires preparation of either a Mitigated Negative Declaration ("MND") or an Environmental Impact Report ("EIR") for the Project, then i) Developer will select the consultant for preparation of the MND/EIR, subject to the City's reasonable approval; and ii) Developer will pay City's costs for environmental review, including the cost of City's MND/EIR consultant. Developer's obligation to pay such costs shall be in addition to Developer's obligation to pay City expenses pursuant to Section 6.

Developer further acknowledges that SARDA owns the fee interest in the Property and the disposition of the Property is subject to the approval of the Countywide Oversight Board for the County of Riverside.

9. Developer's Studies; Right of Access; Deliverables.

9.1 Developer's Studies. During the Term of this Agreement, Developer may prepare, at Developer's sole expense, any studies, surveys, plans, specifications and reports ("**Developer's Studies**") Developer deems necessary or desirable in Developer's sole discretion, to determine the suitability of the Property for the Project. Such studies may include, without limitation, title investigation, relocation analyses, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses, and design studies. Developer shall provide to City without representation or warranty, copies of all reports, test results, studies, analyses, cost estimates, and documents prepared by third-party consultants for or commissioned by Developer with respect to the Project or the Property within ten (10) business days following

their completion; provided however, Developer shall not be obligated to provide proprietary or financial information. Developer agrees to include in all contracts for the preparation of any of Developer's Studies a provision that will permit City to have the right to use and rely upon each study and report. Developer's obligation to provide reports and studies pursuant to this Section 9.1 shall survive the expiration or earlier termination of this Agreement. The City shall promptly deliver to Developer, upon Developer's request, existing written information and plans regarding the Property in the City's possession or immediate control.

9.2 Right of Access. City will use best efforts to procure from SARDA, concurrent with the execution of this Agreement, sufficient rights for Developer, including its employees, agents, assigns and contractors, to reasonably access the Property for the purposes of inspection, environmental assessments, soils testing, and similar work. Developer shall be responsible for obtaining any additional rights of access to the Property from third parties that may be necessary to prepare Developer's Studies. SARDA may impose reasonable limitations on access to the Property, and may require Developer to provide SARDA with proof of insurance in compliance with SARDA's requirements prior to performance of studies on the Property. SARDA's advance written approval shall be required for any invasive testing. Developer agrees that unless SARDA agrees otherwise in writing, Developer shall repair, restore, and return the Property and all improvements located thereon to their condition immediately prior to any such testing at Developer's sole cost and expense, excluding ordinary wear and tear or damage or destruction by acts of God. Developer shall at all times keep the Property free and clear of all liens and encumbrances related to Developer's inspection activities on the Property or otherwise within Developer's control.

Developer shall indemnify, defend, and hold SARDA and the City and their respective elected and appointed officers, officials, employees, consultants, agents and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including without limitation reasonably attorney's fees and of litigation) (all of the foregoing, collectively "**Claims**") arising out of Developer's and Developer's agents, employees, consultants, representatives and contractor's entry on the Property or otherwise arising out of the exercise of this right of access granted to Developer hereunder, provided that Developer shall have no obligation related to Claims resulting from the Indemnitees' gross negligence or willful misconduct, or Developer's mere discovery of information regarding the Property, or a pre-existing condition on the Property, as long as none of Developer's or Developer's agents, employees, consultants, representatives and contractor's actions or omissions cause an exacerbation of such pre-existing condition. Developer's defense and indemnity obligations pursuant to this Section 9.2 shall survive the expiration or earlier termination of this Agreement.

9.3 Deliverables. Developer shall provide to City the deliverables identified in Exhibit B, attached hereto and incorporated herein by reference, consistent with the schedule set forth in Exhibit B, unless such other dates are agreed to in writing by Developer and City Manager.

10. Confidentiality of Information. While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, Developer acknowledges that City will need sufficient, detailed information about the proposed Project to make informed decisions about the content and approval of the DDA. City will work with Developer to maintain the confidentiality of proprietary information subject to the requirements imposed on City by the Public Records Act (Government Code Section 6250 *et seq.*). Developer acknowledges that City may share information provided by Developer of a financial and potential proprietary nature with third party consultants who have been contractually engaged to advise City concerning matters related to this Agreement and/or the DDA and to City Council members as part of the negotiation and decision making process. If this Agreement is terminated without the execution of a DDA, City shall return to Developer any confidential information submitted by Developer under this Agreement. If any litigation is filed seeking to make public any information Developer submitted to City in confidence, City and Developer shall cooperate in defending the litigation if Developer elects not to make public the information in question. Developer shall pay City's reasonable costs of defending such litigation if Developer elects not to make public the information in question and shall indemnify City against all costs and reasonable attorneys' fees awarded to the plaintiff in any such litigation.

11. Execution of Definitive Agreement. The City shall have no legal obligation to grant any approvals or authorizations for the Project prior to City Council approval of the Project and related agreements following compliance with CEQA and all other applicable requirements of law.

12. Defaults and Remedies.

12.1 Default. In the event either Party breaches its obligations 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 required action to cure the default. If a default remains uncured ten (10) days for monetary defaults and twenty (20) days for nonmonetary defaults (subject to such longer period as may be reasonably necessary so long as the defaulting party has commenced a cure within such twenty (20) day period and is diligently prosecuting such cure to completion) after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in Subsections 12.2, 12.3, and 12.4 below, as applicable.

12.2 Remedies for City Default. In the event of an uncured default by City hereunder, Developer's sole remedy shall be to terminate this Agreement and to seek reimbursement in accordance with Section 7.3. Upon such termination, Developer shall be entitled to repayment of the remaining Good Faith Deposit and any interest earned thereon, as further provided in Section 5 and, neither Party shall have any further right, remedy or obligation under this Agreement; provided however, any obligation under a specific provision of this Agreement for a Party to pay or reimburse the other Party for a cost or to provide indemnity and defense shall survive such termination. Except as expressly provided herein, neither Party shall have any liability to the other for damages or otherwise for any default, nor shall either Party have any other claims with respect to performance under this Agreement. Each Party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

12.3 Remedies for Developer Default. In the event of an uncured default by Developer, City's sole remedy shall be to terminate this Agreement and to retain the Good Faith Deposit and any interest earned thereon as further set forth in Subsection 12.4 below. Following such termination, neither Party shall have any right, remedy or obligation under this Agreement; provided however, any obligation under a specific provision of this Agreement for a Party to pay or reimburse the other Party for a cost or to provide indemnity and defense shall survive such termination.

12.4 Liquidated Damages. IN THE EVENT OF TERMINATION DUE TO DEVELOPER'S DEFAULT AS DESCRIBED IN THIS SECTION 12 ABOVE, SUBJECT TO ALL APPLICABLE NOTICE AND CURE PERIODS, THE GOOD FAITH DEPOSIT (OR, AS APPLICABLE, SUCH PORTION THEREOF WHICH HAS NOT BE DRAWN AGAINST BY THE CITY FOR CITY COSTS) MAY BE RETAINED BY CITY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. THE PARTIES AGREE THAT THE DAMAGES SUFFERED BY CITY BY REASON OF A DEVELOPER DEFAULT WOULD BE UNCERTAIN AND THAT SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION THAT ANOTHER DEVELOPER WOULD PAY FOR THE PROPERTY; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE PROPERTY AND OF IDENTIFYING OTHER INTERESTED PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES TO THE COMMUNITY; AND THE FAILURE OF CITY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO CITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO CITY, 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 GOOD FAITH DEPOSIT HELD BY CITY AT THE TIME OF THE DEFAULT OF DEVELOPER, AND THE AMOUNT OF SUCH GOOD FAITH DEPOSIT SHALL BE PAID TO CITY 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, CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW. DEVELOPER AND CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

Developer:_____

13. City Rights Following Expiration or Termination. Following expiration or termination of this Agreement, unless a DDA is executed by the Parties, City shall have the absolute right to pursue facilitation of the disposition and development of the Property in any manner and with any party or parties it deems appropriate; provided, however, nothing herein shall be deemed to preclude or disqualify Developer from responding to future requests for qualifications and/or proposals, if any, that City may publicly issue to qualified firms with respect to development of the Property.

14. Miscellaneous.

14.1 Assignment. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer. Accordingly, except as provided below, Developer may not assign its rights under this Agreement to any other person or entity, without the prior written approval of City. Any purported voluntary or involuntary assignment of Developer's exclusive negotiation rights without such City written approval shall be null and void. Notwithstanding the foregoing, Developer may assign its rights under this Agreement to a limited liability company or partnership in which Developer or an affiliated entity: (a) is a managing member or general partner; (b) is responsible for managing the day-to-day entitlement and development activities of such entity; and (c) has a controlling interest in such entity, or to a tax credit partnership formed for the Project.

14.2 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service. In addition, notice may be provided by electronic transmission (email), as long as notice is also sent via (i), (ii) or (iii) above. If notice is sent via electronic transmission (email), notice shall be deemed delivered upon transmittal. Any notice given by email shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City:

City of Palm Desert
Attn: Eric Ceja, Economic Development Director
73510 Fred Waring Drive
Palm Desert, California 92260
Telephone: (760) 776-6384
Email: eceja@palmdesert.gov

With copy to:

Robert F. Messinger, Esq.
18300 Von Karman Avenue, Suite 650
Irvine, California 92612
Telephone: (949) 265-3413
Email: RMessinger@bwslaw.com

Developer:

Kam Sang Company, Inc.
411 E. Huntington Drive, Suite 305
Arcadia, CA 91006
Attention: Tiffany Lam, CEO
Telephone: (626) 446-2988
Email: tlam@kamsangco.com

14.3 No Commissions. Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission in connection with the transaction contemplated by this Agreement. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement or any resulting DDA, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Paragraph shall survive termination of this Agreement.

14.4 Relationship of the Parties. The Parties agree that nothing in this Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

14.5 Authority; Disclosure. Developer warrants that none of its principals, officers, partners, joint venturers, employees, associates, or affiliates who have any economic interest in this Agreement or the contemplated development of the Property or the Project, have a familial, financial, or other material relationship with any elected or appointed official or employee of the City. Each person executing this Agreement on behalf of Developer does hereby covenant and warrant that (a) Developer is created and validly existing under the laws of California, (b) Developer has and is duly qualified to do business in California, (c) Developer has full corporate power and authority to enter into this Agreement and to perform all of Developer's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Developer is duly and validly authorized to do so. Each person executing this Agreement on behalf of City does hereby covenant and warrant that (a) City has full power and authority to enter into this Agreement and to perform all of City's obligations hereunder, and (b) each person (and all of the persons if more than one signs) signing this Agreement on behalf of City is duly and validly authorized to do so.

14.6 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from this Agreement. This Section shall survive the expiration of termination of this Agreement.

14.7 Indemnification. Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the Indemnitees (defined in Section 9) from and against all Claims (defined in Section 9) arising out of or in connection with the actions of Developer or Developer's agents, employees, officers, representatives, contractors or consultants pursuant to, and during the Term of this Agreement;

provided however, Developer shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee. This Section shall survive the expiration or earlier termination of this Agreement.

14.8 Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

14.9 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings, oral or written, between the Parties with respect to such subject matter.

14.10 Amendments. This Agreement may be amended only by a written instrument executed by the Parties or their permitted successors in interest.

14.11 Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns; provided however, that except as expressly permitted by this Agreement, neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

14.12 Captions; Interpretation. This Agreement shall be interpreted as though prepared jointly by the Parties. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms.

14.13 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of laws principles. Venue for any action under this Agreement shall be in Los Angeles County, California.

14.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[document continues on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF PALM DESERT, a California charter city

By: _____
L. Todd Hileman
City Manager

Attest: _____
Anthony J. Mejia
City Clerk

Reviewed By: _____
Eric Ceja
Economic Development Director

APPROVED AS TO FORM:

By: _____
Robert F. Messinger
Burke, Williams & Sorensen, LLP
Special Counsel

[signatures continue on following page]

DEVELOPER:

KAM SANG COMPANY, INC.,
a California corporation

By: _____
Tiffany Lam, Chief Executive Officer

Exhibit A

PROPERTY

(Attach legal description)

Exhibit B

Developer Deliverables/Schedule of Performance

Written Status Reports	Every three months, on the 10 th day of the month, commencing on the first full month after the Effective Date
Preliminary Financing Plan	Within three hundred sixty-five (365) days after the Effective Date
Parties negotiate form of Term Sheet for purposes of negotiating DDA	Within one hundred eighty (180) days after the Effective Date
Conceptual Plans for entire Site	Within one hundred eighty (180) days after the Effective Date
Final Financing Plan with anticipated Debt and Equity Financing	Within five hundred forty-five (545) days after the Effective Date
Initial draft DDA	Within three hundred sixty (360) days after the Effective Date