

## **RESOLUTION NO. 2014-093**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK APPROVING PARCEL MAP 183 AND ACCEPTING OFFERS OF DEDICATION FOR PUBLIC RIGHT-OF-WAY, PUBLIC UTILITY EASEMENT, SIDEWALK EASEMENT, AND EMERGENCY VEHICLE ACCESS EASEMENT AND APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT, A REIMBURSEMENT AGREEMENT, AND LANDSCAPE MAINTENANCE AGREEMENTS**

**WHEREAS**, the Subdivision Committee of the City of Rohnert Park approved the Tentative Parcel Map for Parcel Map 183 on February 25, 2014 (Resolution No. 2014-01); and

**WHEREAS**, COBT, LLC/ CBI, LLC, Oregon Limited Liability Companies, (“Developer”) has submitted Parcel Map 183 (“Map”) for filing; and

**WHEREAS**, the map has been reviewed by the Deputy City Engineer and City Surveyor and has been determined to be technically accurate and in conformance with the Tentative Parcel Map; and

**WHEREAS**, the map includes an Offer of Dedication for public street right-of-way for Dowdell Avenue, Golf Course Drive West, and Redwood Drive, a Public Utility Easement, a Sidewalk Easement, and an Emergency Vehicle Access Easement; and

**WHEREAS**, the conditions of approval for the Tentative Parcel Map require construction of street improvements on Dowdell Avenue, Gold Course Drive West, and Redwood Drive, and Developer has executed an Improvement Agreement requiring installation of improvements within one year of the date of City Council approval of the Map; and

**WHEREAS**, Developer has posted two Irrevocable Letters of Credit, each in the amount of \$620,000, as security to guarantee the installation of the aforementioned improvements pursuant to the requirements of Rohnert Park Municipal Code 16.16.070; and

**WHEREAS**, the aforementioned improvements are included in the 2011 Update of the Public Facilities Financing Plan (“PFFP”), and the Developer is eligible for PFFP credits against PFFP fees due at time of building permits, and Developer has executed a Reimbursement Agreement providing fee credits in the amount \$734,654; and

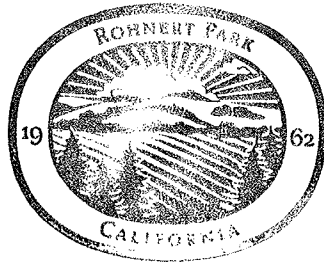
**WHEREAS**, Developer, who will retain ownership of Lot 1 within the map, has executed a Landscape Maintenance Agreement, providing for the ongoing maintenance of landscape improvements within the public right-of-way abutting the property by the property owner; and

**WHEREAS**, McDonald’s, Inc, future owner of Lot 2 within the map, has executed a Landscape Maintenance Agreement, providing for the ongoing maintenance of landscape improvements within the public right-of-way abutting the property by the property owner.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that it does hereby authorize and approve Parcel Map 183, which is attached hereto and incorporated by this reference as Exhibit A, and accepts, subject to improvement, the Offers of Dedication for Dowdell Avenue, Golf Course Drive West, and Redwood Drive, the Public Utility Easement, the Sidewalk Easement, and the Emergency Vehicle Access Easement.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to execute the Improvement Agreement, the Reimbursement Agreement, and the Landscape Maintenance Agreements, in substantially similar form to those agreements attached hereto and incorporated by this reference as Exhibits B, C and D, respectively, subject to minor modification by the City Manager or City Attorney .

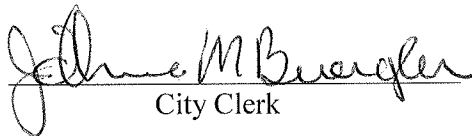
**DULY AND REGULARLY ADOPTED** this 22nd day of July, 2014.



**CITY OF ROHNERT PARK**

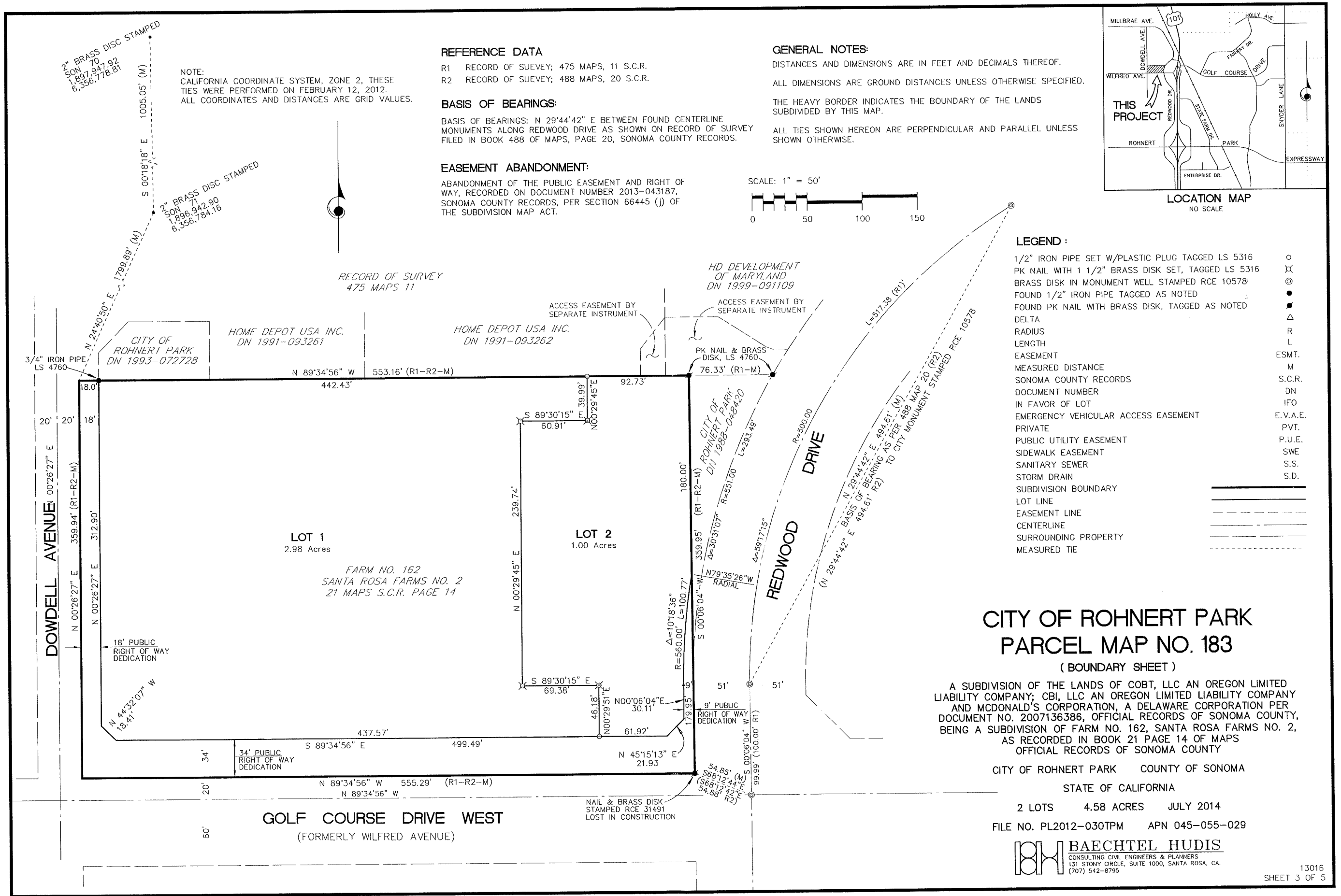
  
Mayor

**ATTEST:**

  
City Clerk

Attachments: Exhibit A, B, C, D(1) and D(2)

BELFORTE: AYE    MACKENZIE: ABSENT    STAFFORD: AYE    AHANOTU: AYE    CALLINAN: AYE  
AYES: (4)    NOES: (0)    ABSENT (1)    ABSTAIN (0)



## Exhibit B

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )

City of Rohnert Park )  
130 Avram Avenue )  
Rohnert Park, California 94928-2486 )  
Attention: City Clerk )

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(Space Above This Line for Recorder's Use Only)  
Exempt from recording fee per Gov. Code § 27383.

### IMPROVEMENT AGREEMENT CITY OF ROHNERT PARK OXFORD SUITES AND MCDONALD'S PARCEL MAP

THIS IMPROVEMENT AGREEMENT (the "Agreement") is made and entered into on this 24th day of June, 2014 (the "Effective Date") by and between COBT, LLC/CBI, LLC ("Developer"), and the CITY OF ROHNERT PARK, a California municipal corporation ("City").

#### RECITALS

A. On February 25, 2014, the Subdivision Committee of the City of Rohnert Park adopted Resolution No. 2014-01, approving the tentative map for the Oxford Suites and McDonald's Parcel Map Subdivision, prepared by Baechtel-Hudis and dated June 26, 2012, 2014 (the "Tentative Map"), subject to certain conditions of approval (the "Conditions").

B. The Conditions require either (1) that certain improvements (the "Improvements") be constructed prior to approval of the final map, or (2) that Developer enter into an agreement with the City providing for the future construction of such Improvements.

C. Developer has applied to City for final map approval without having completed the required Improvements and therefore will enter into an agreement with the City providing for the future construction and installation of the Improvements, as required by Government Code section 66462(a)(1).

D. Developer has submitted plans, specifications and drawings for the street improvements prepared by Baechtel-Hudis, *Improvement Plans for Oxford Suites Project, OS Innco, Inc., 67 Golf Course Drive West, Rohnert Park, CA*, 11 Sheets (Sheets C1-C11) and approved by the Deputy City Engineer on June 4, 2014, joint trench plans prepared by Nor-Coast Utility Design, Inc., *Joint Trench Composite for Oxford Suites Hotel, Rohnert Park, CA*, 3 Sheets (Sheets 1-3) and approved by the Deputy City Engineer on June 4, 2014, streetlight plans prepared by JRA Electrical Engineers, Inc., *Rohnert Park Hotel Street Lighting*, 4 Sheets (Sheets E0.1-E1.2) and approved by the Deputy City Engineer on June 4, 2014, and landscaping plans prepared by Stantec Architecture, Inc., *Landscape Plans for McDonald's USA, LLC: COBT, LLC/CBI dba Oxford Suites*, 13 Sheets (Sheets L1.0 -L5.0) and approved by the Deputy City Engineer on June 4, 2014, (hereinafter collectively referred to as the "Improvement Plans"),

E. City and Developer desire to enter an agreement providing for the construction and installation of the Improvements in accordance with the Improvement Plans.

## *A G R E E M E N T*

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to guarantee completion of the Improvements and ensure satisfactory performance by Developer of Developer's obligations to satisfy the Conditions.

2. Property Subject to Agreement. The property which is the subject of this Agreement is located in the City of Rohnert Park, Sonoma County, California, and is described as Farm No. 162, Santa Rosa Farms No. 2as recorded in Book 21 Page 14 of Maps Official Records of Sonoma County (the "Property").

3. Duty to Install Improvements. Developer will construct, install and complete, or cause to be constructed, installed and completed, at the Developer's sole cost and expense, the Improvements, in accordance with the Improvement Plans (defined in Recital D. above) and to the satisfaction of the City Engineer, in his reasonable discretion. Developer will also supply all labor and materials therefor, all in strict accordance with the terms and conditions of this Agreement. The construction, installation and completion of the Improvements and all labor and materials furnished in connection therewith are hereinafter referred to collectively as the "Work."

City shall not be responsible or liable for the maintenance or care of the Improvements until City formally approves and accepts them in accordance with its policies and procedures. City shall exercise no control over the Improvements until approved and accepted. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Improvements. Developer shall maintain all the Improvements in a state of good repair until they are completed by Developer and approved and accepted by City. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. Prior to undertaking said maintenance work, City agrees to notify Developer in writing of the deficiencies and the actions required to be taken by the Developer to cure the deficiencies. Developer shall have thirty (30) days from the date of the notice within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then the Developer shall have twenty-four (24) hours to correct, remedy or cure the deficiency. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance.

4. Completion Date. Developer will complete the Work within one year of the Effective Date. All Work will be completed in a good and workmanlike manner in accordance with accepted design and construction practices. This completion date may be extended by the City in its sole and absolute discretion at the request of Developer, which request shall be accompanied by a written assurance acceptable to the City Attorney that the securities required by Section 15 shall remain enforceable throughout the term of the extension.

5. Estimated Cost of Work. The estimated cost of the Work is six hundred twenty thousand Dollars (\$620,000.00). Notwithstanding this estimate, Developer hereby acknowledges and agrees that (a) the actual costs to complete the Work may significantly exceed this estimate, (b) this estimate in no way limits Developer's financial obligation, and (c) that Developer is obligated to complete the Work at its own cost, expense, and liability.

6. Modifications to the Plans. Approval of this Agreement by City does not release Developer of its responsibility to correct mistakes, errors or omissions in the Improvement Plans. If, at any time, in the opinion of the City Engineer, in his reasonable discretion, the Improvement Plans are deemed inadequate in any respect Developer agrees to make such modifications, changes or revisions as necessary in order to complete the Work in a good and workmanlike manner in accordance with accepted design and construction standards.

7. Repairs. Developer agrees to repair or have repaired in a timely manner at its sole cost and expense all public roads, streets, or other public or private property damaged as a result of or incidental to the Work or in connection with the development of the Property or to pay to the property owner of any damaged road, street or property the full cost of such repair. In addition, Developer shall obtain the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer has paid the full cost of such repair in accordance with this Section 7. City shall be under no obligation whatsoever to accept the Work completed under this Agreement until such time as all repairs have been completed or have been paid for and written acceptances have been provided to the City Engineer, except as otherwise provided in section 12.1.

8. Foreman or Superintendent. Developer shall give personal attention to the Work. A competent foreman or superintendent, satisfactory to the City Engineer, in his reasonable discretion, with authority to act for and on behalf of Developer, shall be named in writing by Developer prior to commencement of the Work, shall be present on the Property during the performance of the Work and may not be changed without the advance notification to and satisfaction and concurrence of the City Engineer.

9. Examination of Work. All of the Work shall be performed to the satisfaction of the City Engineer, in his reasonable discretion. The City and its authorized agents shall, at all times during the performance of the Work, have free access to the Work and shall be allowed to examine the Work and all materials used and to be used in the Work.

10. City's Inspection, Administration and Testing Costs. Developer shall pay to City the actual cost for all inspection, administration and testing services furnished by City in connection with this Agreement, including those performed by consultants under contract with the City (the "City Costs"). City agrees not to double charge Developer (through the imposition of both a processing fee and a consultant charge) for any individual monitoring, inspection, testing or evaluation service. In addition, City agrees to limit its use of outside consultants to those reasonably necessary or desirable, as determined by the City Manager or his designee in his reasonable discretion, to accomplish the requisite inspection, administration and monitoring. The estimated cost for the inspection, administration and testing services is nine thousand, three hundred fifty five Dollars and fifty cents (\$9,355.50) (the "Estimated Cost"). Concurrently with the execution of this Agreement, Developer shall deposit an amount equal to the Estimated Cost with City for the payment of the City Costs. In the event that the Estimated Cost is insufficient to cover the actual City Costs incurred, Developer shall, upon notice in writing by the City Engineer, deposit such additional amount as may be required to pay the City Costs. Any amount of the Estimated Cost, initial deposit or additional amounts deposited remaining after payment of all City Costs will be returned to Developer. City may, at its discretion, deposit such funds in an interest-bearing account and retain any and all interest earned.

the City Attorney. The security shall be conditioned upon the faithful performance of this Agreement with respect to the Work and shall be released by the City effective upon the date of recordation of the notice of acceptance of the improvements as described in Section 12.2 and Developer's delivery of the Warranty Security described in Section 15.3.

15.2 Labor and Materials Security. Developer shall furnish and deliver labor and materials security in the amount of six hundred and twenty thousand Dollars (\$620,000.00), concurrently with the execution of this Agreement, which security must meet the requirements of Government Code Section 66499.2, if applicable, and Rohnert Park Municipal Code Section 16.16.070 and be acceptable to the City Attorney. The security shall secure payment to the contractor(s) and subcontractor(s) performing the Work and to all persons furnishing labor, materials or equipment to them. The City shall retain each security until both (i) the City accepts the Work in accordance with Section 12 above and (ii) the statute of limitations to file an action under Civil Code section 3114 *et seq.* has expired. After said date, the security may be reduced by the City Engineer to an amount not less than the total amount claimed by all claimants for whom claims of lien have been recorded and notice given in writing to the City Council. The balance of the security shall be retained until the final settlement of all such claims and obligations. If no such claims have been recorded, the security shall be released in full by the City Engineer.

15.3. Warranty Security. Developer shall furnish and deliver warranty security in the amount specified in section 16.16.070 c. of the Rohnert Park Municipal Code. The amount of ninety three thousand five hundred Dollars (\$93,500.00) shall be provided upon acceptance of the Improvements and prior to release of the Performance Security. The security shall be in a form acceptable to the City Attorney and shall guarantee and warranty the Work for a period of one (1) year following the date of recordation of the notice of acceptance of the improvements against any defective work or labor done, or defective materials furnished.

16. Additional Security. If either upon execution of this Agreement or during the course of performance the City considers that it is necessary to have Developer post additional security, the City may require either a cash deposit or a surety bond guaranteeing performance in a form and signed by sureties satisfactory to it. The condition of the security shall be that if Developer fails to perform its obligation under this Agreement, the City may in the case of a cash bond act for it using the proceeds or in the case of a surety bond require the sureties to perform the obligations of the Agreement.

17. No Waiver by City. Inspecting of the work and/or materials, or approval of work and/or materials, or a statement by an officer, agent or employee of the City indicating the work complies with this Agreement, or acceptance of all or any portion of the work and/or materials, or payments thereof, or any combination of all of these acts shall not relieve Developer or its obligation to fulfill this Agreement; nor is the City by these acts prohibited from bringing an action for damages arising from the failure to comply with this Agreement.

18. Warranty Period; Repair and Reconstruction. Without limiting the foregoing, Developer expressly warrants and guarantees all work performed under this Agreement and all materials used in the Work for a period of one (1) year after the date of recordation of the notice of acceptance of the improvements in accordance with Section 12. If, within this one (1) year period, any Improvement or part of any Improvement installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this Agreement, fails to fulfill any of the requirements of the Improvement Plans or this Agreement, Developer shall, without delay and without cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Work or Improvement to the satisfaction of the City Engineer. Should Developer fail to act promptly, by failing to repair, replace or reconstruct work

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thirty (30) days after notification by City, or in accordance with this requirement, or should the exigencies of the situation require repairs, replacements or reconstruction to be made before Developer can be notified, City may, at its option, make the necessary repairs, replacements or perform the necessary reconstruction and Developer shall pay to the City upon demand the actual cost of such repairs, replacements or reconstruction.

19. Erosion Control. Pursuant to Rohnert Park Municipal Code Chapter 15.52, Developer shall be responsible for the control of erosion on the Property and shall prevent its entry into the storm drainage system.

20. Developer Not Agent of City. Neither Developer nor Developer's contractors, subcontractors, agents, officers, or employees are agents, partners, joint venturers or employees of City and the Developer's relationship to the City, if any, arising herefrom is strictly that of an independent contractor. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Further, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

21. Indemnification. Developer agrees to indemnify, defend and hold the City, its elective and appointed boards, commissions, officers, agents, employees and consultants, harmless from and against any and all claims, liabilities, losses, damages or injuries of any kind (collectively, "Claims") arising out of Developer's, or Developer's contractors', subcontractors', agents' or employees', acts, omissions, or operations under this Agreement, including, but not limited to, the performance of the Work, whether such acts, omissions, or operations are by Developer or any of Developer's contractors, subcontractors, agents or employees, except to the extent such Claims are caused by the sole negligence or willful misconduct of the City. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them.

The aforementioned indemnity shall apply regardless of whether or not City has prepared, supplied or approved plans and/or specifications for the Work or Improvements and regardless of whether any insurance required under this Agreement is applicable to any Claims. The City does not and shall not waive any of its rights under this indemnity provision because of its acceptance of the bonds or insurance required under the provisions of this Agreement. Developer's obligation to indemnify City shall survive the expiration or termination of this Agreement.

22. Insurance. Developer shall maintain Commercial General Liability Insurance protecting the City from incidents as to bodily injury liability and property damage liability that may occur as a result of the Work and additional repairs. Developer shall provide certificate(s) of insurance and endorsements to City before any Work commences. The insurance policy shall contain, or be endorsed to contain, the following provisions:

- (1) The City, its officers, elected officials, employees, consultants, agents and volunteers are to be covered as additional insured's as respects to liability arising out of activities performed by or on behalf of Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, elected officials, employees, consultants, agents and volunteers.
- (2) The amounts of public liability and property damage coverage shall not be less than \$3,000,000 (Three Million Dollars) per occurrence for bodily injury, personal injury and property damage.

- (3) The insurance shall be maintained in full force until the work has been completed to the satisfaction of the City Engineer.
- (4) The insurance policy shall provide for 30 days notice of cancellation to the City. The policy shall not be cancelled earlier than nor the amount of coverage be reduced earlier than 30 days after the City receives notice from the insurer of the intent of cancellation or reduction.
- (5) Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, elected officials, employees, consultants, agents and volunteers.
- (6) Developer's insurance coverage shall be primary insurance as respects the City, its officers, elected officials, employees, consultants, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, elected officials, employees, consultants, agents and volunteers shall be in excess of Developer's insurance and shall not contribute to it.
- (7) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.
- (8) Developer and Developer's insurance company agree to waive all rights of subrogation against City, its officers, elected officials, employees, agents and volunteers for losses paid under Developer's workers' compensation insurance policy which arise from the work performed by Developer.

In the event that Developer's insurance is cancelled, Developer shall provide replacement coverage or all work must cease as of the cancellation date until replacement insurance coverage is provided.

23. Workers' Compensation Insurance. Developer shall provide, or cause to be provided, Workers' Compensation insurance as required by law, and shall cause its contractors and their subcontractors, agents and representatives to also maintain Workers' Compensation insurance as required by law. No Work shall commence until such Workers' Compensation insurance is obtained and in full force and effect.

24. Compliance with Laws. Developer shall fully comply with all federal, state and local laws, ordinances and regulations in the performance of this Agreement. Developer shall, at its own cost and expense, obtain all necessary permits and licenses for the Work, give all necessary notices, pay all fees and taxes required by law and make any and all deposits legally required by those public utilities that will serve the development on the Property. Copies and/or proof of payment of said permits, licenses, notices, fee and tax payments and deposits shall be furnished to the City Engineer upon request.

25. Encroachment Permits. Developer shall obtain, at its sole cost and expense, any encroachment permits required by the City in order to perform the Work.

26. Payments. Developer agrees that it will pay, when due, all those furnishing labor or materials in connection with the Work. Developer further agrees that pursuant to Government Code section 66499.7, the Labor and Materials Bond provided by Developer in accordance with Section 15.2 of this Agreement shall not be released if any mechanics liens or stop notices are outstanding, unless said liens are released by bond in compliance with Civil Code section 3143.

27. Notice of Breach and Default. The occurrence of any of the following constitutes a breach and default of this Agreement:

- (1) Developer refuses or fails to complete the Work within the time set forth herein or abandons the Work.
- (2) Developer assigns the Agreement without the prior written consent of City.
- (3) Developer is adjudged bankrupt or makes a general assignment for the benefit of creditors, or a receiver is appointed in the event of Developer's insolvency.
- (4) Developer or Developer's contractors, subcontractors, agents or employees, fail to comply with any terms or conditions of this Agreement.
- (5) Any delay in the construction of any portion of the Work or repairs, which in the reasonable opinion of the City Engineer, endangers public or private property.

The City may serve written notice of breach and default upon Developer and the financial institution holding the security.

28. Breach of Agreement; Performance by City. If the City gives Developer notice, under Section 27, of breach and default of this Agreement, the City may proceed to complete the Work by contract or other method the City considers advisable, at the sole expense of Developer. Developer, immediately upon demand, shall pay the costs and charges related to the Work and any subsequent repairs. City, without liability for doing so, may take possession of and utilize in completing the Work and repairs, if any, such materials and other property belonging to Developer as may be on or about the Property and necessary for completion of the work. In the event of default, the financial institution holding the security shall be liable to City to pay the face amount of the bonds, as specified under Section 15.

29. Remedies. City may bring legal action to compel performance of this Agreement and recover the costs of completing the Work and/or repairs, if any, including City's administrative and legal costs. Developer agrees that if legal action is brought by City under this section of the Agreement, Developer shall pay all of the costs of suit, reasonable attorney fees, arbitration costs and such other costs as may be determined by the court or arbitrator. No failure on the part of City to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that City may have hereunder.

30. Final Drawings. Upon completion of the Work and prior to final acceptance, Developer shall deliver to City a set of "as-built" drawings. These drawings shall be in a form acceptable to the City Engineer, shall be certified as being "as-built" and shall reflect the Work as actually constructed, with any and all changes incorporated therein. Said drawings shall be signed and sealed as accurate by the engineer of record.

31. Attorney Fees. Should any legal action or arbitration be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be

entitled to all costs of suit, reasonable attorney fees, arbitration costs and such other costs as may be determined by the court or arbitrator.

32. Notices. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if: (a) personally delivered; or (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Developer indicated below, provided that a receipt for delivery is provided; or (c) if dispatched by first class mail, postage prepaid, to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this section.

City: City of Rohnert Park  
130 Avram Avenue  
Rohnert Park, CA 94928  
Attn: City Manager

with a copy to: City of Rohnert Park  
130 Avram Avenue  
Rohnert Park, CA 94928  
Attn: City Attorney

Developer: COBT, LLC/CBI, LLC  
475 NE Bellevue Drive, Suite 210  
Bend, OR 97701  
Attn: Mr. Curt Baney

with a copy to: Ball Janik, LLP  
15 SW Colorado Avenue, Suite K  
Bend, OR 97702  
Attn: Ms. Laura Cooper

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

33. Transfers; Assignments. Developer may assign its obligations under this Agreement to successor owner(s) of the Site with the prior written approval of the City. In connection with any such assignment, Developer and its assignee shall execute and deliver to City a written assignment and assumption agreement in a form acceptable to the City Attorney.

34. Binding Upon Heirs, Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon all heirs, successors and assigns of the parties hereto; provided, however, that this Agreement shall not be binding upon a purchaser or transferee of any portion of the Property unless this Agreement has been assigned pursuant to Section 33, in which event this Agreement shall remain binding upon Developer.

35. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

36. Severability. If any provision of this Agreement is held, to any extent, invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and shall remain in full force and effect.

37. Entire Agreement. The terms and conditions of this Agreement constitute the entire agreement between City and Developer with respect to the matters addressed in this Agreement. This Agreement may not be altered, amended or modified without the written consent of both parties hereto.

38. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Sonoma, State of California.

39. Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

40. Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

41. Runs with the Land; Recordation. This Agreement pertains to and shall run with the Property. Upon execution, this Agreement shall be recorded in the Official Records of Sonoma County.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the Effective Date.

"CITY"

CITY OF ROHNERT PARK, a California  
municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager

City Clerk

City Attorney

Dated: \_\_\_\_\_

COBT, LLC/CBI, LLC, Oregon Limited Liability Corporations

By: Cia  
Its: Manager

[illegible]

On \_\_\_\_\_ before me, \_\_\_\_\_  
(here insert name and title of the officer)

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.

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

## ACKNOWLEDGMENT

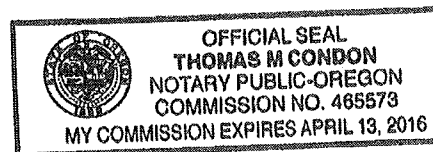
STATE OF OREGON                 )  
COUNTY OF DESCHUTES          ) ss.

On JULY 1, 2014 before me, THOMAS M. CONDON,  
 (here insert name and title of the officer)  
 personally appeared CURTIS A. BANEY, 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 Thomas M Condon  
(Seal)



## Exhibit C

### REIMBURSEMENT AGREEMENT ROHNERT PARK PUBLIC FACILITIES COBT, LLC/CBI, LLC FOR OXFORD SUITES HOTEL

#### 1. PARTIES AND DATE

This Agreement is made this day of July 1<sup>st</sup>, 2014 by and between the City of Rohnert Park, California, a Municipal Corporation ("City") and COBT, LLC/CBI, LLC, Oregon limited liability companies ("Developer").

#### 2. RECITALS

2.1 The Developer has submitted an application to develop a 4.58 acre parcel identified by Sonoma County Assessor as parcel number 045-055-007 in the City ("Developer's Property") shown in **Exhibit "A"** attached hereto.

2.2 As a condition to the development of Developer's Property, City required Developer to design, construct and install the improvements generally described in **Exhibit "B"** attached hereto (the "Improvements"). Improvement plans have been completed by Developer and approved by the City pursuant to Chapter 16.16 of the Rohnert Park Municipal Code (Code).

2.3 Developer is willing to advance the costs of designing, financing, constructing, installing, inspecting and bonding for the approved Improvements, subject to facility fee credits and cash payments over time from the City.

2.4 City has found that this Agreement is in accordance with the requirements of Sections 3.28.080 of the Code and California Government Code Sections 66485 through 66489.

#### 3. TERMS

3.1 Design and Construction of Improvements. Developer shall design, finance, construct and install the Improvements. Developer shall be solely responsible for designing, financing, constructing, installing, providing for the inspection and bonding of the Improvements. The Improvements shall be fully completed and ready for acceptance prior to issuance of a certificate of occupancy for any building being constructed on the Developer Property. Developer shall not sell or otherwise transfer any portion of the Developer Property without notifying the purchaser or transferee in writing, with a copy to the City, of the requirement that the Improvements be completed prior to any occupancy on the Developer Property. The plans and specifications for the Improvements have been submitted and approved by the City per Grading Permit #BDGR2013-00002. The design, construction and installation of the Improvements shall be to the satisfaction of City in its sole and reasonable discretion per these documents and their conditions of approval.

3.2 Source and Method of Reimbursement. City shall reduce Public Facility Fees collected from the Developer in an amount up to the total costs associated with the design, financing, construction and installation of the Improvements listed in Exhibit "B". The initial estimated total reimbursable amount is indicated in **Exhibit "C"** "Reimbursement Calculation" attached hereto. In the event that fee credits are insufficient to provide full reimbursement to Developer, the City shall reimburse the remaining funds from development fees paid by other development. Reimbursements shall be made from and in accordance with the Public Facility Fee funds and



no other. Reimbursement of the remaining fee credits shall be paid only after City acceptance of Improvements and only as funds become available in the City's Public Facilities Fee Fund. In making the determination as to whether funds are available, City shall do the following:

- a. Set aside sufficient amounts to meet debt service requirements on constructed projects including but not limited to Subregional System Expansion Debt Service;
- b. Set aside sufficient amounts to finance scheduled capital improvement projects in the City's Five-Year Capital Improvement Program Budget at the time of the determination of funds availability; and
- c. Make reimbursement payments to other developers due reimbursement for improvements accepted prior to acceptance of Developer's Improvements.

3.3 Fee Obligation. Developer's obligation to pay the Public Facilities Fee for any development on Developer's Property shall remain a debt and obligation of Developer until completion and acceptance of the Improvements by City. In the event that the Improvements are not completed by a date two years from the date Developer begins construction (which two year period shall be extended to the extent the work is stopped by federal, state or local agencies through no fault of the Developer) , any outstanding Public Facilities Fee shall be immediately due and payable. If such fees are not paid as required, City may provide written notice to Developer of its default. If such default is not corrected within 30 days from the date of written notice, Developer agrees that the amount of any unpaid Public Facilities Fees may be placed upon the Developer's Property as a lien and special assessment. The assessment shall continue until it is paid, together with interest at the legal maximum rate computed from the date of confirmation of the statement until payment. The assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and procedure and sale in case of delinquency as is provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. In addition, the City may use any other available legal means to collect the unpaid Public Facilities Fee and the choice of one remedy does not affect the City's ability to use alternative remedies.

3.4 Term of Reimbursement Obligation. The City's obligation to reimburse the Developer shall continue for two years from the date the Developer begins construction of the Improvements (which two year period shall be extended to the extent the work is stopped by federal, state or local agencies through no fault of the Developer) or the obligation is sooner satisfied.

3.5 Maximum Reimbursement. The total amount of the reimbursement obligation over the life of this Agreement for the Improvements shall be as determined by the CITY OF ROHNERT PARK 2011 UPDATE TO THE PUBLIC FACILITIES FINANCE PLAN. The parties acknowledge and agree that the credit amount for the Improvements is estimated to be **SEVEN HUNDRED AND THIRTY-FOUR THOUSAND, SIX HUNDRED AND FIFTY-FOUR DOLLARS (\$734,654.00).**

3.6 Inspection. The City shall have the right at all times to inspect the construction of the Improvements to confirm compliance with City plans and specifications.

3.7 Areas and Quantities. The areas and quantities used to develop this reimbursement agreement are based on the information and plans available at this time. The actual areas and quantities may change at the time of dedication to the City and/or construction by the

Developer. If it is determined by the City Engineer that the areas and quantities have changed, the reimbursable amount may be adjusted accordingly.

### 3.8 Indemnity and Insurance.

a. Developer agrees to indemnify, defend and hold the City, its elective and appointed boards, commissions, officers, agents, employees and consultants (collectively, the "City Parties"), harmless from and against any and all claims, liabilities, losses, damages or injuries of any kind (collectively, "Claims") arising out of Developer's, or Developer's contractors', subcontractors', agents' or employees', acts, omissions, or operations under this Agreement, including, but not limited to, the performance of the Work, whether such acts, omissions, or operations are by Developer or any of Developer's contractors, subcontractors, agents or employees. The foregoing indemnification shall exclude Claims to the extent arising from the negligence or intentional misconduct of the City or any of the City Parties. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them.

b. The aforementioned indemnity shall apply regardless of whether or not City has prepared, supplied or approved plans and/or specifications for the Work or Improvements and regardless of whether any insurance required under this Agreement is applicable to any Claims. The City does not and shall not waive any of its rights under this indemnity provision because of its acceptance of the bonds or insurance required under the provisions of this Agreement. Developer's obligation to indemnify City shall survive the expiration or termination of this Agreement.

c. Developer shall maintain Commercial General Liability Insurance protecting the City from incidents as to bodily injury liability and property damage liability that may occur as a result of the Work and additional repairs. Developer shall provide certificate(s) of insurance and endorsements to City before any Work commences. The insurance policy shall contain, or be endorsed to contain, the following provisions:

(1) The City, its officers, elected officials, employees, consultants, agents and volunteers are to be covered as additional insured's as respects to liability arising out of activities performed by or on behalf of Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, elected officials, employees, consultants, agents and volunteers.

(2) The amounts of public liability and property damage coverage shall not be less than \$3,000,000 (Three Million Dollars) per occurrence for bodily injury, personal injury and property damage.

(3) The insurance shall be maintained in full force until the work has been completed to the satisfaction of the City Engineer.

(4) The insurance policy shall provide for 30 days notice of cancellation to the City. The policy shall not be cancelled earlier than nor the amount of coverage be reduced earlier than 30 days after the City receives notice from the insurer of the intent of cancellation or reduction.

(5) Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, elected officials, employees, consultants, agents and volunteers.

(6) Developer's insurance coverage shall be primary insurance as respects the City, its officers, elected officials, employees, consultants, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, elected officials,

employees, consultants, agents and volunteers shall be in excess of Developer's insurance and shall not contribute to it.

(7) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

(8) Developer and Developer's insurance company agree to waive all rights of subrogation against City, its officers, elected officials, employees, agents and volunteers for losses paid under Developer's workers' compensation insurance policy which arise from the work performed by Developer.

d. In the event that Developer's insurance is cancelled, Developer shall provide replacement coverage or all work must cease as of the cancellation date until replacement insurance coverage is provided.

e. **Workers' Compensation Insurance.** Developer shall provide, or cause to be provided, Workers' Compensation insurance as required by law, and shall cause its contractors and their subcontractors, agents and representatives to also maintain Workers' Compensation insurance as required by law. No Work shall commence until such Workers' Compensation insurance is obtained and in full force and effect.

f. **Other insurance requirements.** Developer shall:

(1) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance which shall clearly evidence all insurance required in this section and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on thirty (30) days prior written notice to City.

(2) Provide to City certified copies of endorsements and policies if requested by City, and properly executed certificates of insurance evidencing the insurance required herein.

(3) Replace or require the replacement of certificates, policies and endorsements for any insurance required herein expiring prior to completion and acceptance of the Improvements.

(4) Maintain all insurance required herein from the time of execution of this Agreement until the acceptance of the Improvements.

(5) Place all insurance required herein with insurers licensed to do business in California.

**3.9 Commencement of Construction and Inspection.** Developer and its contractor or subcontractors shall not commence construction of the Improvements until Developer has received written authorization from City to proceed. Written authorization shall be in the form of signed approved plans along with permit issuance. All work performed on the Improvements shall be done in strict compliance with the City approved plans, specifications and the contract documents and in a good and workmanlike manner. All work performed by Developer, its contractor or agents to construct the Improvements shall be subject to inspection by City. All fees and costs to construct the Improvements shall be borne solely by Developer, subject to reimbursement as provided herein. Inspection by City or its employees or agents shall not relieve Developer of its liability for design defects or improper or inadequate workmanship.

**3.10 Compliance with Applicable Laws.** Developer shall insure that all work performed on the Improvements is performed in a manner which complies with all applicable federal, state, county and local government laws, regulations and rules, including all rules and regulations of City, as these rules and regulations may be modified or changed from time to time.

3.11 Prevailing Wages. The work of the Improvements constitutes a "public work" as defined in the California Labor Code, section 1771, *et seq* ("Labor Code Regulations"). Developer agrees and acknowledges that the construction of the Improvements is subject to the payment of prevailing wages and agrees to comply with the requirements of the Labor Code Regulations. Further, Developer agrees to defend, indemnify and hold City, its elected officials, officers, employees, and agents free and harmless from any and all claims, damages, suits or actions arising out of or incident to Developer's obligations under this section.

3.12 Contractor Licenses. All work performed on the Improvements shall be done only by contractors licensed in the State of California and qualified to perform the type of work required and comply with the City's Business License Ordinance.

3.13 Acceptance of Work. Upon completion of the Improvements to the satisfaction of City, the Improvements shall be presented to the City Council for dedication and acceptance and for authorization to file a Notice of Completion. The City Council shall accept the Improvements if it determines that the Improvements were constructed in accordance with the approved plans, specifications and contract documents, that the Improvements operate satisfactorily, and that all other requirements of this agreement have been satisfied. Immediately upon, and as a condition of, the expiration of the guarantee period set forth in Section 3.15, Developer shall assign to City all of Developer's rights and remedies, including warranties, as set forth in the approved contract documents, and thereafter City shall have the same recourse under said contract documents that City would have had if City itself had engaged Developer's contractor to construct the Improvements.

3.14 Liability for Work Prior to Formal Acceptance. Until the City Council has formally accepted the Improvements, Developer shall be solely responsible for all damage to the work, regardless of cause, and for all damages or injuries to any person or property at the work site, except damage or injury due to the sole negligence of City, or its employees.

3.15 Guarantee. Developer shall guarantee all work and materials for the Improvements to be free from all defects due to faulty materials or workmanship for a period of one (1) year after the date of formal acceptance of the work by City. A guarantee bond in the amount of ten (10) percent of the total cost of the Improvements as determined by the City its sole reasonable exercised discretion, shall be posted with the City prior to its acceptance of the Improvements. Developer shall repair or remove and replace and all such work, together with any other work which may be displaced in so doing, that is found to be defective in workmanship or materials within the one (1) year period, without any expense whatsoever to City. In the event Developer fails to comply with the above-mentioned provisions within thirty (30) days after being notified in writing (or in cases of emergency, immediately) City shall be authorized to proceed to have the defects remedied and made good at the sole cost and expense of Developer, who is hereby contractually bound to pay the costs and charges therefore immediately upon demand. Such action by City will not relieve Developer of the guarantee required by this section. This section shall not, in any way, limit the liability of Developer or any other party for any design or construction defects in the work subsequently discovered by City.

3.16 Record Drawings. Prior to acceptance of the Improvements by the City Council, Developer shall provide City with one electronic file and one mylar copy of record drawings with certification by a licensed engineer in the State of California as to accuracy and completeness. Developer shall be solely responsible and liable for ensuring the completeness and accuracy of the record drawings.

3.17 Ownership of the Improvements. From and after acceptance of the Improvements by formal action of the City Council, ownership of the Improvements shall be vested exclusively in City.

3.18 Notice. Any notices required or desired to be sent pursuant to this agreement shall be addressed as follows:

**CITY:**           **City Manager**  
                  **City of Rohnert Park**  
                  **130 Avram Avenue**  
                  **Rohnert Park, CA 94928**

**With Copy To:**   **City Attorney**  
                          **City of Rohnert Park**  
                          **1901 Harrison St.**  
                          **9th Floor**  
                          **Oakland, CA 94612-3582**

**DEVELOPER:**     **COBT, LLC/CBI, LLC**  
                          **475 Bellevue NE Bellevue Drive, Suite 210**  
                          **Bend, Oregon 97701**  
                          **Attn. Mr. Curt Baney**

3.19 Termination. In the event that Developer defaults in the performance of any of its obligations under this agreement or materially breaches any of the provisions of this agreement, City shall have the option to terminate this agreement upon 30 days written notice to Developer. In the event of such termination, Developer shall provide City with detailed statements to track the actual costs in constructing the Improvements to the date of termination and the actual amount spent shall be determined by City ("Actual Cost"). In the event that any fee credits granted exceed the Actual Cost, Developer shall repay the City any amount owed within ten business days of notice by the City.

3.20 Attorney's Fees. In the event, any action is commenced to enforce or interpret any term or condition of this agreement, in addition to costs and any other relief, the prevailing party shall be entitled to reasonable attorney's fees. Jurisdiction over the authority in any dispute shall be maintained in Sonoma County.

3.21 Entire Agreement. This agreement contains the entire agreement of the parties hereto with respect to the matters contained herein.

3.22 Agreement Does Not Run with the Land. This agreement shall not run with the Developer's Property, but is a contractual agreement between the City and Developer.

3.23 Assignment. This agreement shall not be assigned without the written consent of the parties hereto, and any assignment without such written consent shall be void and ineffective. The written notice shall become effective within thirty days upon delivery to the City, provided that the City shall not be responsible for any misdirected written notices under this section.

3.24 Time of Essence. Time is of the essence for this Agreement.

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

CITY:

CITY OF ROHNERT PARK,  
a municipal corporation

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

DEVELOPER:

COBT, LLC/CBI, LLC  
Oregon limited liability companies

  
\_\_\_\_\_  
Curt Baney, Manager

ACKNOWLEDGMENT

STATE OF CALIFORNIA )

) ss.

COUNTY OF SONOMA )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

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.

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

CITY REPRESENTATIVE

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

Print Name: \_\_\_\_\_

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

ACKNOWLEDGMENT

STATE OF OREGON )

) ss.

COUNTY OF DESCHUTES )

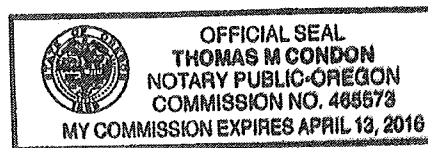
On JULY 1, 2014 before me, THOMAS M. CONDON,  
(here insert name and title of the officer)

personally appeared CURTIS A. BANEY, 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.

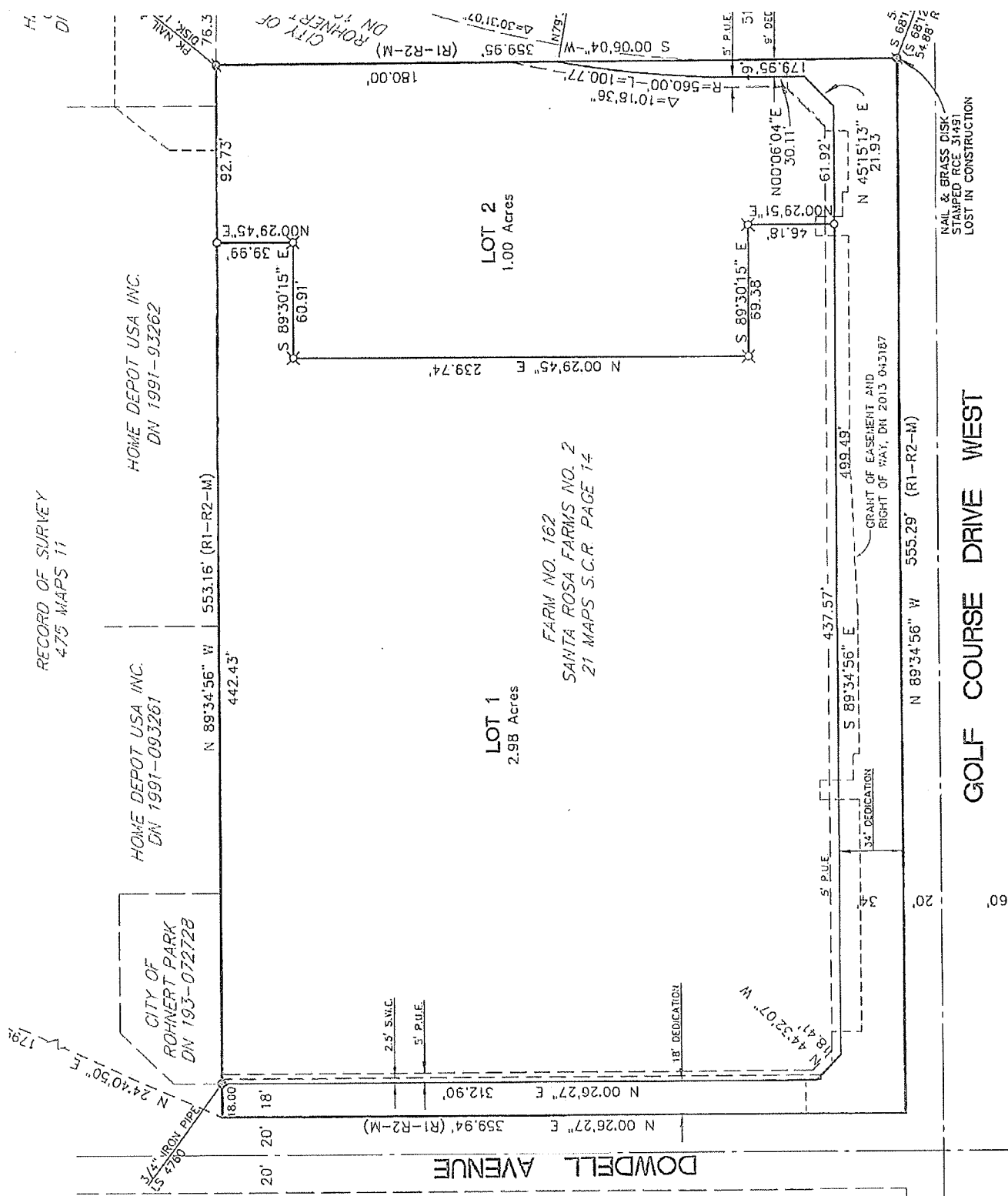
WITNESS my hand and official seal.

Signature Thomas M Condon  
(Seal)





## EXHIBIT A: DEVELOPER'S PROPERTY



## **Exhibit B**

Improvements that will be constructed by Developer that are eligible for PFFP improvements are as follows:

1. Dowdell Avenue will be reconstructed and widened along the frontage of the property from the widened section to the north through the intersection with Golf Course Drive West. The roadway will be widened to the east only, preserving the current western boundary of the roadway. The widened roadway will include one lane northbound, a left turn lane, and a combination through and right turn lane southbound. The structural section for Dowdell Avenue will be designed for a minimum traffic index of 8. Pavement width shall be 35', from the westerly edge of pavement to the easterly face of curb. A 6' sidewalk will be provided behind an 8' vegetated treatment swale.

Improvements include construction of the easterly half of the street, including both the street improvements and frontage improvements included in the PFFP. The project will be eligible for PFFP credits in both categories for the length of the frontage for one side of the street.

2. A new 12" water line will be constructed in Dowdell Avenue, from the existing 12" stub at Golf Course Drive West north to tie into the 8 inch line on Dowdell Avenue at the north end of the frontage. A new 18" storm drain will be installed in Dowdell Avenue from the existing stub at the north end of the frontage south to Golf Course Drive West.

The PFFP includes four utilities lines (storm drain, water, sewer, and recycled water) in Dowdell Drive. The project will install two of the four utilities, and will be eligible for PFFP credits for 50% of the allowed PFFP costs the length of the frontage.

3. Improvements will be completed on the north side of Golf Course Drive West between Redwood Drive and Dowdell Avenue. An additional 34' of right-of-way will be dedicated along the frontage. Improvements shall include a 6' wide sidewalk, meandering within the right-of-way. The remainder of the right-of-way will be landscaped. Curb, gutter, and pavement are existing along the frontage.

Street improvements were completed by others and no PFFP street improvements are being built. Median and frontage improvements being built include mobilization, sidewalk, planter strip landscaping, and street lighting. These improvements account for approximately 24% of the costs allowed in the PFFP for frontage and median improvements. Improvements are being completed on only one side of the street.

4. Redwood Drive will be widened to provide a separate southbound right turn lane at Golf Course West Drive. The turn lane will be 120' long with a 60' taper. The pavement will be widened by 9' to accommodate the right turn lane. New curb and gutter will be provided. A new 7.5' wide contiguous sidewalk will be provided along the length of the

right turn lane. Approximately 200' of existing 48" Cast-In-Place Storm Drain line will be removed and replaced with Class V Oval Reinforced Concrete Pipe due to cover limitations.

The right turn lane is eligible for PFFP credits. The PFFP includes improvements on all four legs of the intersection; the right turn lane is approximately 25% of the total costs for the intersection.

5. In addition to the above improvements specifically described above, improvements along the three frontages will include street lights, fire hydrants, landscaping and drainage facilities, to create a finished street on all three frontages.

**Exhibit C**  
**Reimbursement Calculation**

Item Number in PFFP	Item Description	Element Description	Total Cost per 2011 Update	Oxford Project Share	Rationale for Project Share	Extended Share	Construction	Soft costs	Contingency
Segment 2	Dowdell Avenue: 375' N to 750' S of Golf Course Drive West	Roadway	\$ 870,000	17%	1/3 length of 1/2 width	\$ 147,900	\$ 102,000	\$ 25,325	\$ 20,400
		Median & Frontage	\$ 754,076	17%	1/3 length of 1/2 width	\$ 128,193	\$ 88,409	\$ 21,951	\$ 17,682
		Wet Utility Costs	\$ 420,109	17%	1/3 length, 2 out of 4 utilities	\$ 71,419	\$ 49,254	\$ 12,229	\$ 9,851
Segment 11	Golf Course Drive West: Redwood to Dowdell Avenue	Roadway	\$ 453,500	0%	Constructed by others	\$ -	\$ -	\$ -	\$ -
		Median & Frontage	\$ 508,706	20%	One side only, 40% of improvement costs one side	\$ 120,118	\$ 82,840	\$ 20,568	\$ 16,568
I/S 11	Redwood Drive @ Golf Course Drive West	Traffic Signal	\$ 1,068,099	25%	1 of 4 corners	\$ 267,025	\$ 184,155	\$ 45,723	\$ 36,831
<b>Total Credits Due</b>						<b>\$ 734,654</b>	<b>\$ 506,658</b>	<b>\$ 125,797</b>	<b>\$ 101,332</b>

27-Mar-14

Based on PFFP 2011 Update  
Revised 15 May 14

Construction Est from Gary Garfield for Bond

Construction Amount Above	\$ 567,744
Contingency towards construction	\$ 506,658
Contingency remaining to soft costs	\$ 61,086
Soft Costs Above	\$ 40,246
Total Soft Costs with contingency	\$ 125,797
	\$ 166,042

## Exhibit D(1)

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
 )  
City of Rohnert Park )  
130 Avram Avenue )  
Rohnert Park,, California 94928 )  
Attention: City Clerk )  
 )  
 )

(Space Above This Line for Recorder's Use Only)  
Exempt from recording fee per Gov. Code § 27383.

### LANDSCAPE MAINTENANCE AGREEMENT (COBT, LLC/CBI, LLC dba Oxford Suites)

THIS LANDSCAPE MAINTENANCE AGREEMENT ("Agreement") is made and entered into this 1<sup>st</sup> day of July, 2014, ("Effective Date"), by and between COBT, LLC/CBI, LLC, limited liability corporations ("Developer"), and the CITY OF ROHNERT PARK, a California municipal corporation ("City") with reference to the following facts:

#### RECITALS

A. Reference is made to that certain real property situated in the City of Rohnert Park, County of Sonoma, State of California, known as the Oxford Suites site and described on **Exhibit "A"**, attached hereto and incorporated by this reference as if fully set forth herein (the "Property"). The Property is being developed as a commercial (hotel) project.

B. In connection with its development of the Property, the Developer submitted to the City a grading permit application, which include, inter alia, landscaping plans for along the Property frontage ("Plans"), all of which Plans have been approved by the City. The Plans provide for installation of certain landscaping (including water quality planting) and irrigation ("Improvements") within the Dowdell Avenue and Golf Course Drive West Public Right-of-Way ("Maintenance Area") as the Improvements and Maintenance Area are more specifically shown on **Exhibit "B"** attached hereto and by this reference made a part hereof.

C. The Developer has submitted a parcel map for the Property, which has been reviewed by the City Engineer and is being approved concurrently with this Agreement ("Parcel Map").

D. The Developer recognizes that the City's approval of the Parcel Map is based on the Developer's commitment to the long-term maintenance, repair, care and, if and when Improvements are in poor health or cause a safety hazard, replacement of the Improvements, and that the Parcel Map would not have been approved without the assurance that this Agreement would be executed by the Developer.

E. The City and the Developer desire to enter into an agreement pursuant to which the Developer will maintain the Improvements within the Maintenance Area as both are depicted on Exhibit "B".

## AGREEMENT

NOW, THEREFORE, the City and the Developer (together, the "Parties") hereby agree as follows:

1. PURPOSE OF AGREEMENT. The purpose of this Agreement is to assure the maintenance, periodic inspection, repair, safe operation and, if and when necessary, replacement of the Improvements by the Developer at its expense in accordance with the standards, including the Maintenance Standards (defined in Section 4 below), set forth herein.
2. IMPROVEMENTS AS A BENEFIT. The Developer agrees that the Improvements will materially benefit the Property and that Developer's maintenance, repair, safe operation and, if and when necessary, replacement thereof in accordance with this Agreement is necessary for approval of the Developer's Parcel Map.
3. DEVELOPER'S RESPONSIBILITIES. Developer, at its sole expense, shall maintain, safely operate, periodically inspect, repair and, if and when necessary, replace the Improvements identified in Exhibit "B", as well as perform all necessary service on maintenance equipment, in order to ensure the attractive and healthy appearance of the landscaping, the attractive appearance, condition and safety of any and all structures, and the efficient operation of all of the Improvements, including paying the electrical expense of operating the irrigation controller, said electrical expense to be paid by the Developer upon the direct receipt of invoices for electrical service from Pacific Gas and Electric, all in accordance with the Maintenance Standards described in Section 4 below, and industry and City standards applicable to similar improvements.
4. MAINTENANCE STANDARDS. The Developer and its maintenance staff, contractors and subcontractors shall comply with the following standards (collectively, "Maintenance Standards") in connection with the required maintenance of the Improvements:
  - a. The Improvements shall be maintained in compliance with the Plans and Parcel Map, in good condition, and in accordance with the custom and practice generally applicable to public rights-of-way within the City of Rohnert Park..
  - b. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; periodic trimming, mowing, and/or edging of grass and lawn areas; pruning of trees, shrubs, and other vegetation; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, safe road conditions and visibility, and irrigation coverage; removal and 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.
  - c. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas excluding roadway and curbs 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.
  - d. All maintenance work shall be performed in a good and workman like manner and shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

e. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governmental requirements. Reasonable precautionary measures shall be employed recognizing that all areas are open to public access.

5. CITY'S RIGHT TO PERFORM MAINTENANCE. In the event that the Developer fails to repair, periodically inspect, maintain, care for and, if and when necessary, replace the Improvements on and about the Property in the manner set forth herein, the City may enter upon the Property and take whatever steps it deems reasonably necessary to maintain, repair, periodically inspect, care for, and replace such Improvements, or to contract for the correction of such deficiencies, after written notice to the Developer. By executing this Agreement, Developer knowingly and willfully provides consent to the City to enter on the Property and perform such maintenance work as it deems necessary to maintain the standards of this agreement. It is expressly understood that the City is under no obligation to maintain or repair the Improvements, and in no event shall this Agreement be construed to impose such an obligation on the City.

a. NOTICE TO DEVELOPER. Prior to taking any such corrective action, the City agrees to notify the Developer in writing if the condition of said Improvements does not conform to the standards and requirements set forth herein, including without limitation the Maintenance Standards, and to specify the deficiencies and the actions required to be taken by the Developer to cure the deficiencies. Upon notification of any deficiency, the Developer shall have thirty (30) days from the date of the notice within which to correct, remedy, contest the notice of deficiency or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then the Developer shall have twenty-four (24) hours to rectify the problem.

b. Lien for Costs of Required Maintenance. In the event that Developer fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such deficiency after notification and after expiration of any applicable cure period, then the City may enter upon the Property and maintain, repair, care for and, if and when necessary, replace such Improvements at the Developer's expense. The Developer agrees to reimburse the City within 60 days of the date of a notice identifying all charges and costs incurred by the City for such maintenance, repair and replacement work. Until so paid, the City 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 Property. This lien shall affect all parcels jointly if portions of the Property have been sold. Any lien in favor of the City 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 its interest, of record, to such lien. No lien in favor of the City 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.

c. Legal Action. The City may bring legal action to collect the sums due as the result of expending public monies to maintain, repair and, if and when necessary, replace any Improvements which are the responsibility of the Developer as provided herein. The Developer agrees that if the City is the prevailing party in legal action to enforce its rights under this Section 5, the Developer shall pay the City all costs incurred by it, including attorneys' fees and court costs, together with interest from the date the City provided notice under Section 5.a, at the rate of seven percent (7%) per annum.

d. Additional Remedies. The Developer acknowledges and agrees that the City may also pursue any and all other remedies available in law or equity in the event of a breach of the Developer's obligations and agreements set forth herein.

e. Intention of City. Nothing in this Section 6 shall be construed, either expressly or by implication, as indicating an intention of the City to exercise dominion or control over the Improvements.

6. NO IMPAIRMENT OF LIEN. No violation or breach of the agreements, conditions, restrictions, provisions or limitations contained in this Agreement 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; provided, however, that any successor of Developer to the Site or any portion thereof shall be bound by such agreements, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

7. ENCROACHMENT PERMIT; RIGHT OF ENTRY. The Developer and the City acknowledge that, to the extent that the Improvements are located within the City rights-of-way, the Developer shall obtain a single on-going revocable encroachment permit from the City in order for the Developer to perform its obligations under this Agreement. Such an encroachment permit shall set forth the terms and provisions upon which the Developer has a right to enter onto such rights-of-way in order to perform maintenance, inspection, repair and, if and when necessary, replacement services (collectively, "Maintenance Services"). The encroachment permit shall be issued on the terms and conditions of this Agreement.

The Developer shall obtain and deliver to the City, at no cost to the City, certificates of commercial general liability insurance which indicate that the City, its elective and appointive boards, commissions, officers, agents and employees are covered as additional insureds under all insurance policies maintained for performance of the Maintenance Services and other Activities by (i) the Developer or (ii) any contractor or subcontractor directly or indirectly employed by the Developer to perform any Maintenance Services or other Activities. Each of these policies shall also provide that no cancellation, major change in coverage, or expiration may be affected by the insurance company or the insured during the time of performance of the Maintenance Services and other Activities, without first giving to the City thirty (30) days' written notice prior to the effective date of such cancellation or change in coverage. The Developer shall not permit any contractor or subcontractor to commence or continue performing Maintenance Services or other Activities until the certificates or any substitute certificates have been approved by the City's Risk Manager.

8. PERMITS AND APPROVALS. To the extent that performance of the Maintenance Services or other Activities requires permits or governmental approvals, the Developer shall, at its sole cost and expense, obtain such permits and approvals. The City shall issue encroachment permits, from time to time, on the terms set forth in Section 7 above.

9. TERM. This Agreement shall commence immediately upon the Effective Date and shall continue in perpetuity until and unless terminated, with or without cause, by the City upon ten (10) days written notice to Developer.

10. INDEMNIFICATION. Developer shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the City and its Council, boards, offices, commissions, officials, agents and employees, from and against any liability, (including, but not limited to, liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, damages, losses, expenses or costs of any kind, including reasonable attorneys' fees, that may be asserted by any



person or entity, including Developer, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same relates to, or arises out of, any work performed or services provided under this Agreement by the Developer, or the Developer's contractors, subcontractors, agents or employees, including, but not limited to, the performance of the Maintenance Services or other Activities, excepting only that resulting from the negligence or intentional misconduct of the City, its employees, officials, or agents. Developer's duty to defend and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code Section 2778. This indemnification obligation shall survive termination of this Agreement and is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the Developer or its agents under insurance policies or workers' compensation acts, disability benefits acts or other employees' benefits acts. If any judgment or claim for which Developer is responsible pursuant to this Section 10 shall be entered against the City, its officials, agents, or employees, Developer shall pay all cost and expenses in connection therewith.

11. DEFAULT. The failure to maintain the Improvements will constitute an event of default. Upon such event of default, the City shall provide written notice to the Developer. Upon receipt of the written notice, the Developer shall have thirty (30) days to remedy such event of default (or such longer period of time as may reasonably be required, provided that the Developer shall commence to remedy such default within thirty (30) days period and thereafter diligently prosecute such remedy to completion). If the Developer fails to remedy the event of default within the prescribed time period, the City shall have the right to do all work necessary to remedy the event of default and charge the Developer actual costs incurred by the City for such work.

12. ASSIGNMENT BY CITY. The City shall have the right at its option to assign its rights and obligations under this Agreement to a municipal services district or other public agency without consent of the Developer.

13. AGREEMENT ATTACHES TO LAND AND BINDS DEVELOPER'S SUCCESSORS AND ASSIGNS. This Agreement attaches to and runs with the Property in perpetuity, and shall be recorded against the Property. This Agreement binds the assigns and successors-in-interest of the Developer. Upon Developer's sale or other transfer of the Property, Developer's obligations hereunder shall cease, except for those obligations that accrued prior to the date of transfer. The City and its successors and assigns, in the event of any breach of this Agreement, 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 against the Developer or its permitted successors and assigns to enforce the curing of such breach.

14. ASSIGNMENT BY DEVELOPER. The Developer may assign its obligations under this Agreement only with the prior written approval of the City which shall not be unreasonably withheld. In connection with any such assignment, the Developer and its assignee shall execute and deliver to the City a written assignment and assumption agreement in a form acceptable to the City Attorney. No written assignment or City consent shall be necessary for assignments that result from the sale or transfer of Property as described in Section 13 above.

15. NOTICES. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or three (3) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

To the Developer:

COBT, LLC/CBI, LLC  
475 Bellevue NE Bellevue Drive, Suite 210  
Bend, OR 97701

Attn: Mr. Curt Baney

With a copy to:

Ball Janik, LLP  
15 SW Colorado Avenue, St. K  
Bend, OR 97702  
Attn: Ms. Laura Cooper

To the City:

City of Rohnert Park  
130 Avram Avenue  
Rohnert Park, California 94928  
Attn: City Manager

With a copy to:

Michelle Marchetta Kenyon  
Rohnert Park City Attorney  
1901 Harrison Street  
Oakland, California 94612

16. MISCELLANEOUS.

a. Entire Agreement, Amendments. This Agreement contains the entire understanding and agreement of the parties. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement.

b. Paragraph Headings. Paragraph headings as used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning hereof.

c. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California. Venue shall be the County of Sonoma.

d. Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the Parties.

e. Exhibits. Any and all exhibits and schedules attached or to be attached hereto are hereby incorporated and made a part of the Agreement by reference.

f. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect.

g. Authority. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

h. No Agency Relationship. Neither the Developer nor any of the Developer's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of any of the Developer's obligations under this Agreement. Nor shall City and Developer, be deemed to have become a partner of each other in the conduct of their respective business or otherwise a joint venture.

i. Attorneys' Fees and Costs. Either party may bring a lawsuit to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party's reasonable costs and expenses, including attorneys' fees.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

**DEVELOPER**

COBT, LLC/CBI, LLC,

Limited Liability Corporations By: Curtis A. Baney

Name: Curtis A. Baney

Title: Managing Member

*[Signature must be notarized]*

ACKNOWLEDGMENT

STATE OF OREGON )

) ss.

COUNTY OF DESCHUTES )

On JULY 1, 2014 before me, THOMAS M. LONDON,

*(here insert name and title of the officer)*

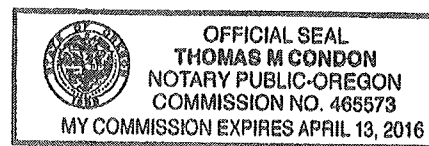
personally appeared CURTIS A. BANEY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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 Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  
(Seal)

Thomas M. Condon



**CITY**

**CITY OF ROHNERT PARK**

A municipal corporation

\_\_\_\_\_  
Darrin Jenkins, City Manager

*[Signature must be notarized]*

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )

) ss.

COUNTY OF SONOMA )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
*(here insert name and title of the officer)*

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.

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

APPROVED AS TO FORM:

---

Michelle Marchetta Kenyon, City Attorney

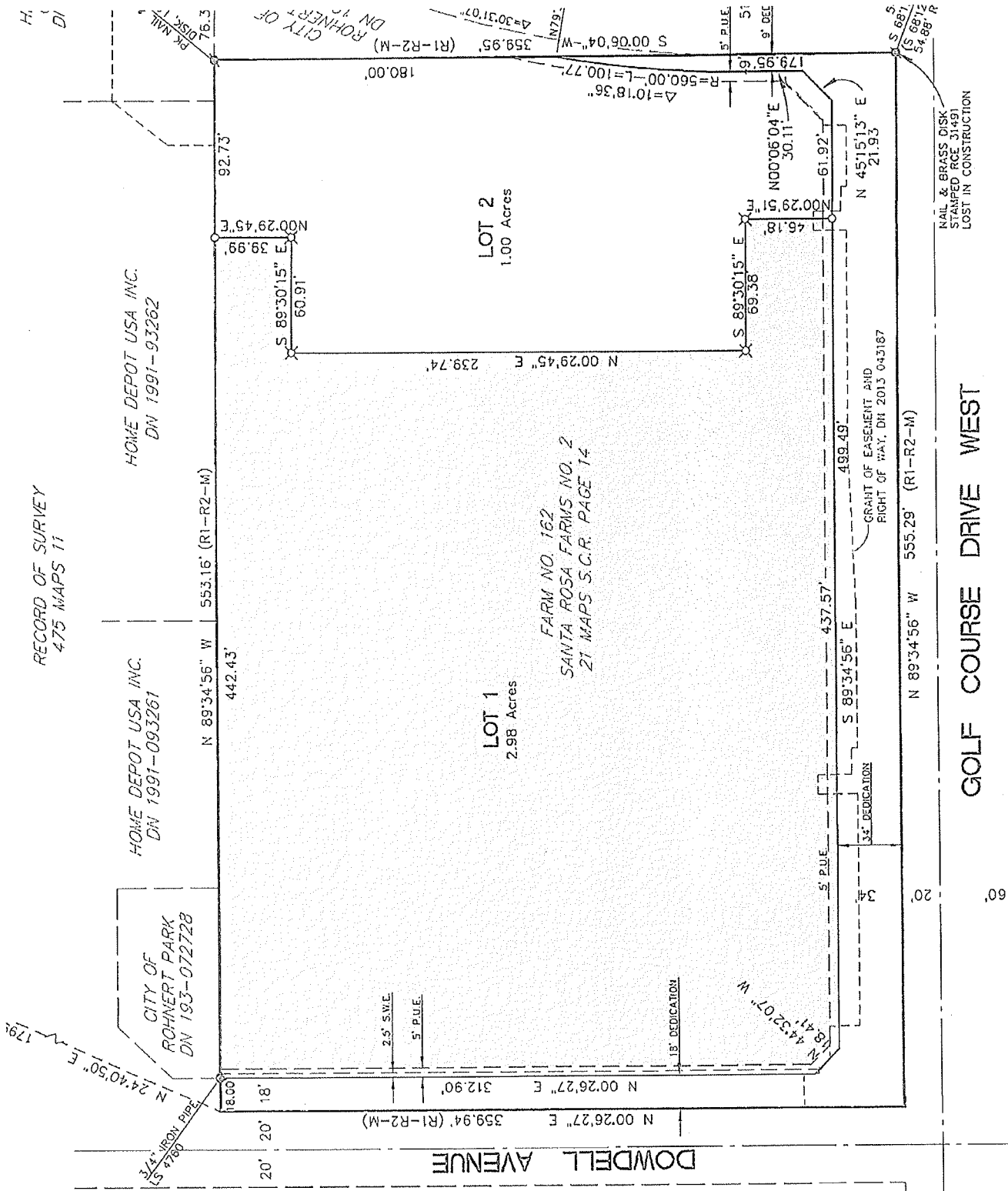
ATTEST:

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Jo Anne Buergler, City Clerk

# EXHIBIT A: LEGAL DESCRIPTION OF SITE

Draft Final Parcel Map Sheet 3/6, April 2014



[illegible]

## Exhibit D(2)

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )

City of Rohnert Park )  
130 Avram Avenue )  
Rohnert Park,, California 94928 )  
Attention: City Clerk )

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(Space Above This Line for Recorder's Use Only)  
Exempt from recording fee per Gov. Code § 27383.

### LANDSCAPE MAINTENANCE AGREEMENT (McDonald's Corporation)

THIS LANDSCAPE MAINTENANCE AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between McDonald's Corporation, a Delaware corporation ("Developer"), and the CITY OF ROHNERT PARK, a California municipal corporation ("City") with reference to the following facts:

#### RECITALS

A. Reference is made to that certain real property situated in the City of Rohnert Park, County of Sonoma, State of California, known as the McDonald's site and described on Exhibit "A", attached hereto and incorporated by this reference as if fully set forth herein (the "Property"). The Property is being developed as a commercial project.

B.

B. In connection with its development of the Property, the Developer submitted to the City a grading permit application, which include, inter alia, landscaping plans for along the Property frontage ("Plans"), all of which Plans have been approved by the City. The Plans provide for installation of certain landscaping (including water quality planting) and irrigation ("Improvements") within the Dowdell Avenue and Golf Course Drive West Public Right-of-Way ("Maintenance Area") as the Improvements and Maintenance Area are more specifically shown on **Exhibit "B"** attached hereto and by this reference made a part hereof.

C. The Developer has submitted a parcel map for the Property, which has been reviewed by the City Engineer and is being approved concurrently with this Agreement ("Parcel Map").

D. The Developer recognizes that the City's approval of the Parcel Map is based on the Developer's commitment to the long-term maintenance, repair, care and, if and when Improvements are in poor health or cause a safety hazard, replacement of the Improvements, and that the Parcel Map would not have been approved without the assurance that this Agreement would be executed by the Developer.

E. The City and the Developer desire to enter into an agreement pursuant to which the Developer will maintain the Improvements within the Maintenance Area as both are depicted on Exhibit "B".



## AGREEMENT

NOW, THEREFORE, the City and the Developer (together, the "Parties") hereby agree as follows:

1. PURPOSE OF AGREEMENT. The purpose of this Agreement is to assure the maintenance, periodic inspection, repair, safe operation and, if and when necessary, replacement of the Improvements by the Developer at its expense in accordance with the standards, including the Maintenance Standards (defined in Section 4 below), set forth herein.

2. IMPROVEMENTS AS A BENEFIT. The Developer agrees that the Improvements will materially benefit the Property and that Developer's maintenance, repair, safe operation and, if and when necessary, replacement thereof in accordance with this Agreement is necessary for approval of the Developer's Parcel Map.

3. DEVELOPER'S RESPONSIBILITIES. Developer, at its sole expense, shall maintain, safely operate, periodically inspect, repair and, if and when necessary, replace the Improvements identified in Exhibit "B", as well as perform all necessary service on maintenance equipment, in order to ensure the attractive and healthy appearance of the landscaping, the attractive appearance, condition and safety of any and all structures, and the efficient operation of all of the Improvements, including paying the electrical expense of operating the irrigation controller, said electrical expense to be paid by the Developer upon the direct receipt of invoices for electrical service from Pacific Gas and Electric, all in accordance with the Maintenance Standards described in Section 4 below, and industry and City standards applicable to similar improvements.

4. MAINTENANCE STANDARDS. The Developer and its maintenance staff, contractors and subcontractors shall comply with the following standards (collectively, "Maintenance Standards") in connection with the required maintenance of the Improvements:

a. The Improvements shall be maintained in compliance with the Plans and Parcel Map, in good condition, and in accordance with the custom and practice generally applicable to public rights-of-way within the City of Rohnert Park..

b. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; periodic trimming, mowing, and/or edging of grass and lawn areas; pruning of trees, shrubs, and other vegetation; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, safe road conditions and visibility, and irrigation coverage; removal and 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.

c. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas excluding roadway and curbs 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.

d. All maintenance work shall be performed in a good and workman like manner and shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

e. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governmental requirements. Reasonable precautionary measures shall be employed recognizing that all areas are open to public access.

5. CITY'S RIGHT TO PERFORM MAINTENANCE. In the event that the Developer fails to repair, periodically inspect, maintain, care for and, if and when necessary, replace the Improvements on and about the Property in the manner set forth herein, the City may enter upon the Property and take whatever steps it deems reasonably necessary to maintain, repair, periodically inspect, care for, and replace such Improvements, or to contract for the correction of such deficiencies, after written notice to the Developer. By executing this Agreement, Developer knowingly and willfully provides consent to the City to enter on the Property and perform such maintenance work as it deems necessary to maintain the standards of this agreement. It is expressly understood that the City is under no obligation to maintain or repair the Improvements, and in no event shall this Agreement be construed to impose such an obligation on the City.

a. NOTICE TO DEVELOPER. Prior to taking any such corrective action, the City agrees to notify the Developer in writing if the condition of said Improvements does not conform to the standards and requirements set forth herein, including without limitation the Maintenance Standards, and to specify the deficiencies and the actions required to be taken by the Developer to cure the deficiencies. Upon notification of any deficiency, the Developer shall have thirty (30) days from the date of the notice within which to correct, remedy, contest the notice of deficiency or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then the Developer shall have twenty-four (24) hours to rectify the problem.

b. Lien for Costs of Required Maintenance. In the event that Developer fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such deficiency after notification and after expiration of any applicable cure period, then the City may enter upon the Property and maintain, repair, care for and, if and when necessary, replace such Improvements at the Developer's expense. The Developer agrees to reimburse the City within 60 days of the date of a notice identifying all charges and costs incurred by the City for such maintenance, repair and replacement work. Until so paid, the City 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 Property. This lien shall affect all parcels jointly if portions of the Property have been sold. Any lien in favor of the City 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 its interest, of record, to such lien. No lien in favor of the City 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.

c. Legal Action. The City may bring legal action to collect the sums due as the result of expending public monies to maintain, repair and, if and when necessary, replace any Improvements which are the responsibility of the Developer as provided herein. The Developer agrees that if the City is the prevailing party in legal action to enforce its rights under this Section 5, the Developer shall pay the City all costs incurred by it, including attorneys' fees and court costs, together with interest from the date the City provided notice under Section 5.a, at the rate of seven percent (7%) per annum.

d. Additional Remedies. The Developer acknowledges and agrees that the City may also pursue any and all other remedies available in law or equity in the event of a breach of the Developer's obligations and agreements set forth herein.

e. Intention of City. Nothing in this Section 6 shall be construed, either expressly or by implication, as indicating an intention of the City to exercise dominion or control over the Improvements.

6. NO IMPAIRMENT OF LIEN. No violation or breach of the agreements, conditions, restrictions, provisions or limitations contained in this Agreement 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; provided, however, that any successor of Developer to the Site or any portion thereof shall be bound by such agreements, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

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The Developer shall obtain and deliver to the City, at no cost to the City, certificates of commercial general liability insurance which indicate that the City, its elective and appointive boards, commissions, officers, agents and employees are covered as additional insureds under all insurance policies maintained for performance of the Maintenance Services and other Activities by (i) the Developer or (ii) any contractor or subcontractor directly or indirectly employed by the Developer to perform any Maintenance Services or other Activities. Each of these policies shall also provide that no cancellation, major change in coverage, or expiration may be affected by the insurance company or the insured during the time of performance of the Maintenance Services and other Activities, without first giving to the City thirty (30) days' written notice prior to the effective date of such cancellation or change in coverage. The Developer shall not permit any contractor or subcontractor to commence or continue performing Maintenance Services or other Activities until the certificates or any substitute certificates have been approved by the City's Risk Manager.

8. PERMITS AND APPROVALS. To the extent that performance of the Maintenance Services or other Activities requires permits or governmental approvals, the Developer shall, at its sole cost and expense, obtain such permits and approvals. The City shall issue encroachment permits, from time to time, on the terms set forth in Section 7 above.

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10. INDEMNIFICATION. Developer shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the City and its Council, boards, offices, commissions, officials, agents and employees, from and against any liability, (including, but not limited to, liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, damages, losses, expenses or costs of any kind, including reasonable attorneys' fees, that may be asserted by any

person or entity, including Developer, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same relates to, or arises out of, any work performed or services provided under this Agreement by the Developer, or the Developer's contractors, subcontractors, agents or employees, including, but not limited to, the performance of the Maintenance Services or other Activities, excepting only that resulting from the negligence or intentional misconduct of the City, its employees, officials, or agents. Developer's duty to defend and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code Section 2778. This indemnification obligation shall survive termination of this Agreement and is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the Developer or its agents under insurance policies or workers' compensation acts, disability benefits acts or other employees' benefits acts. If any judgment or claim for which Developer is responsible pursuant to this Section 10 shall be entered against the City, its officials, agents, or employees, , Developer shall pay all cost and expenses in connection therewith.

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12. ASSIGNMENT BY CITY. The City shall have the right at its option to assign its rights and obligations under this Agreement to a municipal services district or other public agency without consent of the Developer.

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15. NOTICES. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or three (3) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

To the Developer:	McDonald's Corporation
	One McDonald's Plaza
	Oak Brook, IL 60523

Attn: Director, Real Estate #091  
LC: 004-3309

With a copy to: McDonald's Corporation  
2999 Oak Road, Suite 900  
Walnut Creek, CA 94597

To the City: City of Rohnert Park  
130 Avram Avenue  
Rohnert Park, California 94928  
Attn: City Manager

With a copy to: Michelle Marchetta Kenyon  
Rohnert Park City Attorney  
1901 Harrison Street  
Oakland, California 94612

16. MISCELLANEOUS.

a. Entire Agreement, Amendments. This Agreement contains the entire understanding and agreement of the parties. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement.

b. Paragraph Headings. Paragraph headings as used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning hereof.

c. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California. Venue shall be the County of Sonoma.

d. Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the Parties.

e. Exhibits. Any and all exhibits and schedules attached or to be attached hereto are hereby incorporated and made a part of the Agreement by reference.

f. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect.

g. Authority. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

h. No Agency Relationship. Neither the Developer nor any of the Developer's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of any of the Developer's obligations under this Agreement. Nor shall City and Developer, be deemed to have become a partner of each other in the conduct of their respective business or otherwise a joint venture.

i. Attorneys' Fees and Costs. Either party may bring a lawsuit to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party's reasonable costs and expenses, including attorneys' fees.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

**DEVELOPER**

McDonald's Corporation, a Delaware corporation

Name: \_\_\_\_\_

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

*[Signature]*  
*Jennifer Cohn, Senior Counsel*

*[Signature must be notarized]*

**CITY**

**CITY OF ROHNERT PARK**

A municipal corporation

\_\_\_\_\_  
Darrin Jenkins, City Manager

*[Signature must be notarized]*

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

ATTEST:

\_\_\_\_\_  
Jo Anne Buerger, City Clerk

**McDonald's  
(ACKNOWLEDGMENT)**

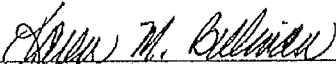
STATE OF ILLINOIS

SS:

COUNTY OF DuPAGE

I, Karen M. Billman, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Jennifer Cohn, Senior Counsel, of McDonald's Corporation, a Delaware corporation, who is personally known to me to be the same person whose names is subscribed to the foregoing instrument as such Christine M. Dekker appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act as such Senior Counsel, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this day of July 3, 2014.

  
\_\_\_\_\_  
Karen M. Billman, Notary Public  
004-3309

My commission expires:

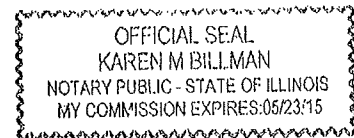
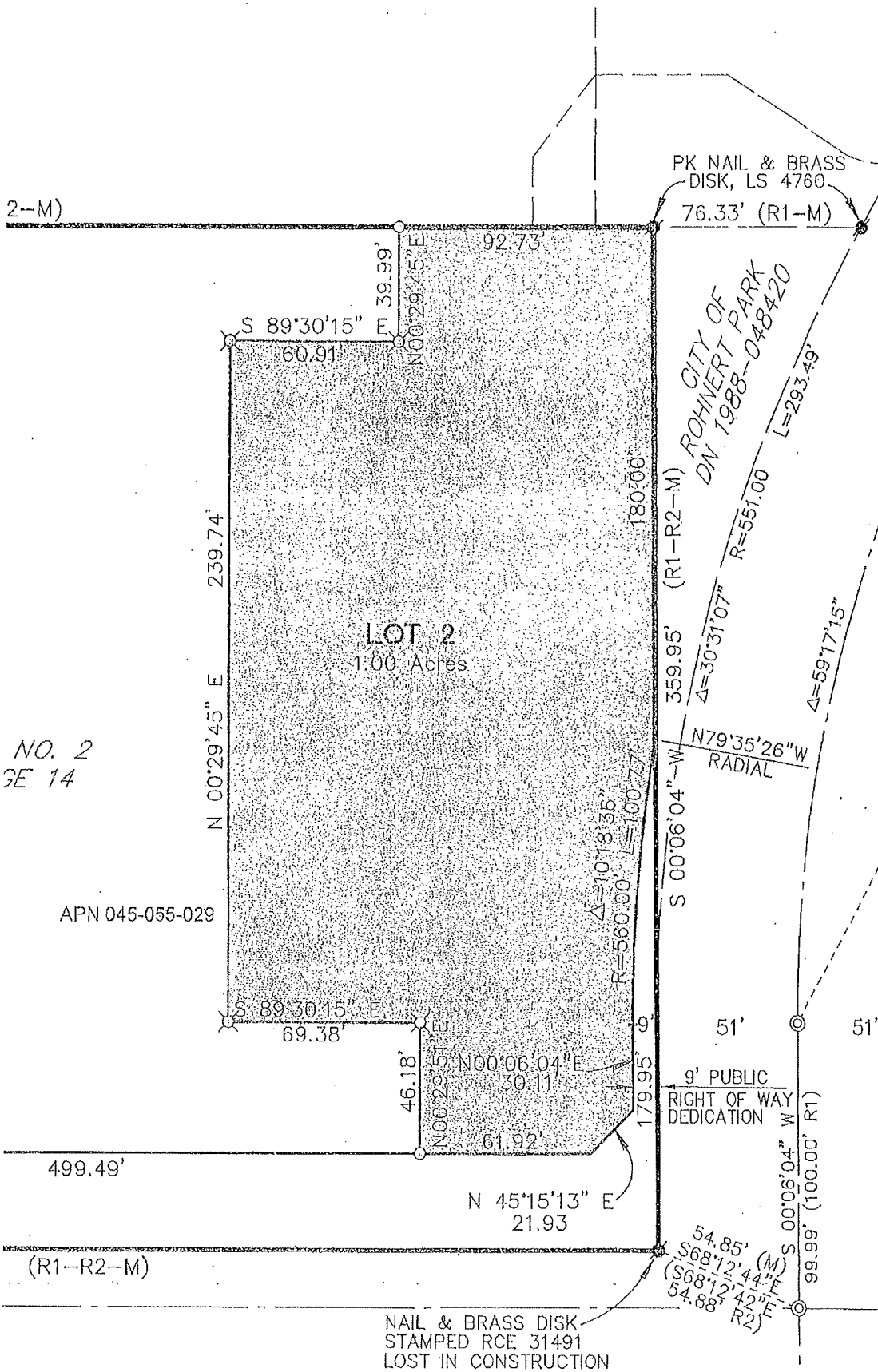


Exhibit "A"

**Legal Description of Site**

*[to be inserted]*





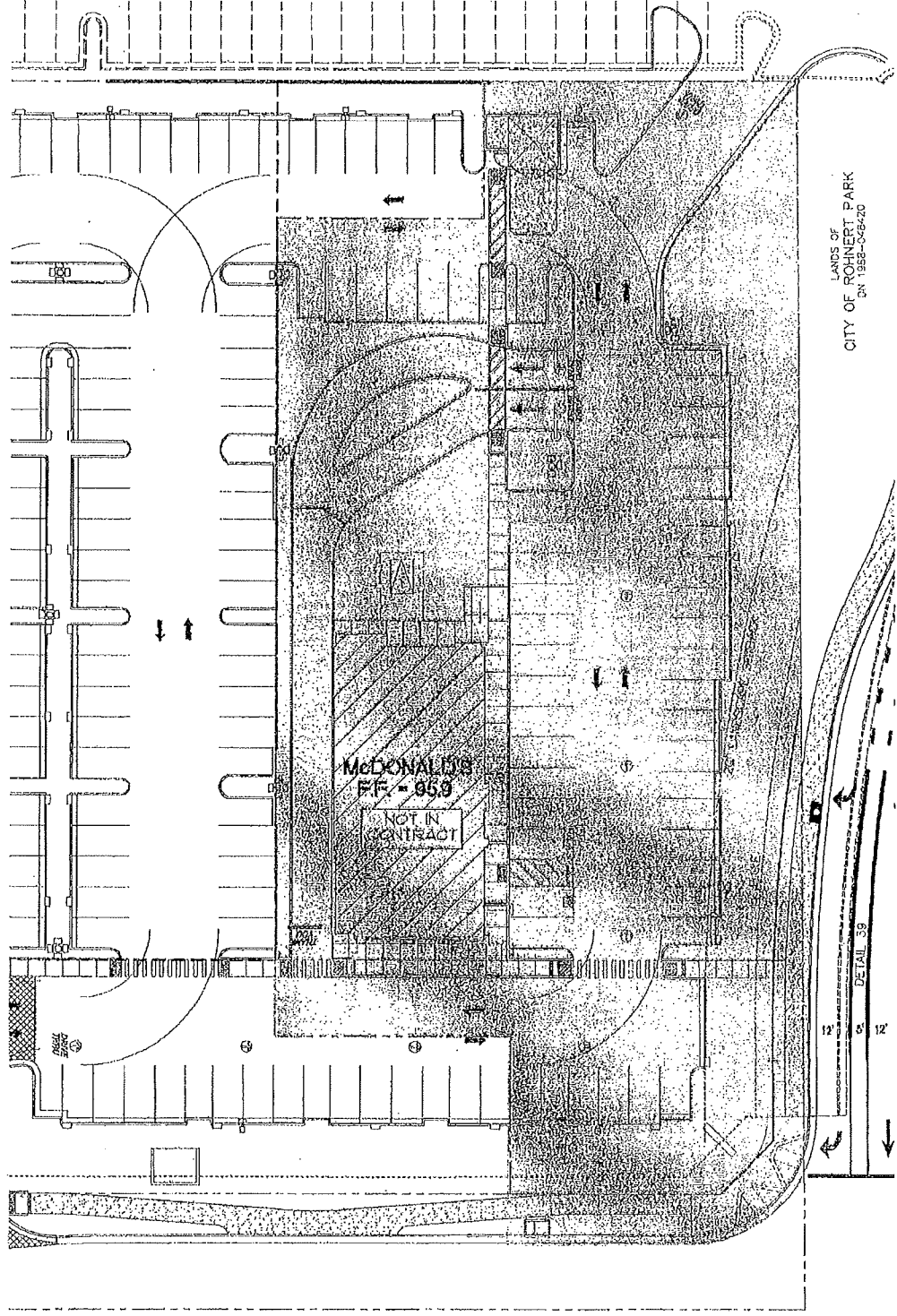
IUE)

Exhibit "B"

**Improvements and Maintenance Area**

*[to be inserted]*

LANDS OF  
HOME DEPOT USA INC.  
DN 1991-03262



LANDS OF  
CITY OF ROHNERT PARK  
DN 1988-046420