

RESOLUTION NO. 2015-134

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING AN AGREEMENT FOR PURCHASE AND SALE (INCLUDING JOINT ESCROW INSTRUCTIONS) AND TERMS FOR DEVELOPMENT OF 5870 LABATH AVENUE WITH 356 ADVISORS AND MJW INVESTMENTS

WHEREAS, the City of Rohnert Park ("City") is owner of property at 5870 Labath Avenue, consisting of approximately 12.25 acres of the aforementioned land (the "Property"); and

WHEREAS, the Property is zoned Commercial-Regional in the Stadium Area Master Plan Planned Development Zoning District; and

WHEREAS, the City is seeking to sell the property in order to encourage economic development in the community by converting vacant land into uses that are both employment and revenue generators; and

WHEREAS, on September 11, 2014, the Planning Commission of the City of Rohnert Park conducted a review pursuant to Government Code Section 65402 and determined that the City's disposition of the Property is consistent with, and will facilitate implementation of the City of Rohnert Park General Plan; and

WHEREAS, the City received an offer from 356 Advisors and MJW Investments (collectively the "Buyers") to purchase and develop the Property; and

WHEREAS, the City and Buyers negotiated the terms of an Agreement for Purchase and Sale (Including Joint Escrow Instructions) and Terms of Development for the Property which includes a hotel and retail/commercial/office projects ; and

NOW, THEREFORE, the City Council of the City of Rohnert Park does hereby resolve, determine, find and order as follows:

Section 1. Recitals. The above referenced recitals are true and correct and are incorporated into and form a material part of this Resolution.

Section 2. Environmental Review. The transfer of ownership of the property from the City to Buyer is exempt from CEQA review under CEQA Guidelines section 15061(b)(3) because there is no possibility for the conveyance to have an effect on the environment.

Section 3. Approval of Agreement for Purchase and Sale (Including Joint Escrow Instructions) and Terms of Development ("Agreement"); Authority of Mayor. The City Council hereby consents to the sale of the Property to Buyers for a price of Seven Million One Hundred Fifty Thousand Dollars (\$7,150,000.00) and approves the Agreement for Purchase and Sale (Including Joint Escrow Instructions) and Terms of Development in substantially similar form as provided for in "Exhibit A", attached hereto and incorporated by this reference and hereby

authorizes the Mayor to execute the Agreement subject to minor modifications as approved by the City Attorney.

Section 4. Section 65402 Consistency. Pursuant to Government Code Section 65402, the City Council hereby affirms and accepts the City Planning Commission's recommended finding that the actions described in this Resolution are consistent with the City's General Plan.

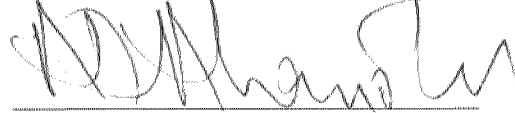
Section 5. Approval of Deed. The Mayor is hereby authorized and directed to execute a Grant Deed for and on behalf of the City of Rohnert Park, subject to the terms stated in the Agreement for Purchase and Sale (Including Joint Escrow Instructions) and Terms of Development, and to the review and acceptance by the City Attorney.

Section 6. Other Actions Authorized. Subject to review and acceptance by the City Attorney, the Mayor and City Manager, as appropriate, are hereby authorized and directed to take all actions necessary or reasonably required to carry out, give effect to, and consummate the transactions contemplated by this Resolution and to take all action necessary in conformity therewith.

Section 7. Severability. If any action, subsection, sentence, clause or phrase of this Resolution shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Resolution that can be given effect without the invalid provisions.


DULY AND REGULARLY ADOPTED this 11th day of August, 2015.

CITY OF ROHNERT PARK



Amy O. Ahanotu, Mayor

ATTEST:


JoAnne Buergler, City Clerk

Attachments: Exhibit A, Agreement for Purchase and Sale (Including Joint Escrow Instructions) and Terms of Development between the City of Rohnert Park and 356 Advisors and MJW Investments.

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

EXHIBIT A

**AGREEMENT FOR PURCHASE AND SALE (INCLUDING JOINT ESCROW
INSTRUCTIONS) AND TERMS OF DEVELOPMENT**

**AGREEMENT FOR PURCHASE AND SALE
(INCLUDING JOINT ESCROW INSTRUCTIONS) AND
TERMS OF DEVELOPMENT**

This Agreement for Purchase and Sale (Including Joint Escrow Instructions) and Terms of Development (“**Agreement**”), dated as of _____, 2015, (“**Effective Date**”), is between the CITY OF ROHNERT PARK, a California municipal corporation (“**Seller**” or “**City**”), and 356 ADVISORS, INC., a California corporation, and MJW INVESTMENTS, LLC, a California limited liability corporation (each a “**Buyer Party**” and collectively, “**Buyer**”).

R E C I T A L S

A. Seller desires to sell that certain real property consisting of 12.25 acres and located at Labath Avenue and Carlson Avenue in the City of Rohnert Park, as more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by this reference (the “**Property**”), in order for the Property to be developed with a hotel and retail uses.

B. Buyer has submitted a proposal to Seller to acquire the Property from Seller at fair market value and obtain land use entitlements to develop and construct up to a 300-room select service and suite hotel with a retail component on the Property (the “**Project**”).

C. On September 11, 2014, the Planning Commission of the City of Rohnert Park conducted a review pursuant to Government Code Section 65402 and determined that Seller’s disposition of the Property to Buyer pursuant to the terms hereof is consistent with, and will facilitate implementation of the City of Rohnert Park General Plan, as adopted by Planning Commission Resolution No. 2014-37.

D. On _____, 2015, the City Council of the City of Rohnert Park (“**City Council**”) considered and by Resolution No. _____ approved Seller entering into this Agreement.

A G R E E M E N T

**ARTICLE I
PURCHASE AND SALE OF PROPERTY**

Section 1.1 Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

Section 1.2 Sale. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, on the terms and conditions set forth herein, the Property together with any and all rights, privileges and easements appurtenant thereto owned by Seller.

Section 1.3 Purchase Price. The purchase price for the Property is Seven Million One Hundred and Fifty Thousand Dollars (\$7,150,000.00) (“**Purchase Price**”). The Purchase Price shall be paid to Seller at Closing, as defined in Section 6.2(a), in immediately available funds. The Purchase Price was determined based on a survey of comparable parcels and an

evaluation of potential uses of the Property. In the event that the acreage of the Property is modified, the Purchase Price shall be proportionately adjusted.

Section 1.4 Project, Processing of Approvals and Requirements to Develop.

(a) Buyer intends to develop the Project on the Property and will submit applications for land use entitlements to Seller, as City of Rohnert Park, as soon as practicable after the Effective Date, which entitlements shall include a Conditional Use Permit, Site Plan and Architectural Review and a Development Agreement.

(b) Buyer acknowledges that such applications shall include the requirement to enter into a Reimbursement Agreement with City, in a form approved by City, to reimburse City for its customary costs in processing the land use entitlements for the Project. These costs include, but are not limited to, fee types listed in the Development, Fire Services, Planning, Engineering, and Building fee schedules adopted by City. Further, Buyer agrees and acknowledges that the City shall conduct a traffic and parking analysis, including demands for the proposed Project, as part of the CEQA process for the Project, which shall be funded by Buyer.

(c) Buyer agrees and acknowledges that it will be required to enter into a Development Agreement, in a form approved by City and including the terms set forth in Exhibit B, attached hereto and incorporated herein by reference, which will grant Buyer vested rights and set forth the obligations of Buyer to develop the Project. The terms of the Development Agreement, including phasing requirements as set forth in Exhibit B, shall be incorporated by reference in this Agreement, with such additional terms as may be negotiated by the parties.

(d) The City makes no representations as to the processing of the applications and retains discretion to approve, disapprove or condition such applications, which may include modifications to the proposed Project as approved by the City in its discretion.

Section 1.5 Good Faith Deposits.

(a) Within three business days of Escrow being opened as outlined in Section 6.1 of this agreement (Title Company to notify all parties of the exact date), Buyer shall deliver into escrow a good faith deposit in the amount of Fifty Thousand Dollars (\$50,000.00) ("**First Good Faith Deposit**"). The First Good Faith Deposit shall serve as security for the performance of Buyer's obligations under this Agreement, shall be applied towards the Purchase Price at Closing and is fully refundable to Buyer prior to the expiration of the Due Diligence Period (see Section 3.4). After the Due Diligence Period, the First Good Faith Deposit shall be nonrefundable and shall constitute liquidated damages to Seller in the event the purchase and sale is not completed as provided herein.

(b) Within three business days after expiration of the Due Diligence Period, assuming Buyer approves the Property and elects to proceed, Buyer shall deliver into escrow a second good faith deposit in the amount of One Hundred Thousand (\$100,000.00) ("**Second Good Faith Deposit**"). The Second Good Faith Deposit shall serve as security for the performance of Buyer's obligations under this Agreement, shall be applied towards the Purchase Price at Closing and shall constitute liquidated damages and be nonrefundable to Buyer. The

First and Second Good Faith Deposits shall be transferred to Seller within three business day of deposit of the Second Good Faith Deposit into escrow.

(c) Prior to the date that is 18 months after the Effective Date, Buyer shall deliver into escrow a third good faith deposit in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) ("**Third Good Faith Deposit**"). For example, if the Effective Date is August 3, 2015, the Third Good Faith Deposit shall be delivered on February 3, 2017. The Third Good Faith Deposit shall serve as security for the performance of Buyer's obligations under this Agreement, shall be applied towards the Purchase Price at Closing and shall constitute liquidated damages and be nonrefundable to Buyer. The Third Good Faith Deposits shall be transferred to Seller within three business day of its deposit into escrow. The First, Second and Third Good Faith Deposits may hereafter each be referred to as a "**Good Faith Deposit**" or collectively as the "**Good Faith Deposits**."

After the expiration of the Buyer's Due Diligence Period and Buyer's acceptance of the condition of the Property, as set forth in Section 3.4, the Good Faith Deposits may only be returned to Buyer if all Buyer's Conditions Precedent to Conveyance, as set forth in Section 2.1 have not been satisfied or waived by Buyer, or Seller is in default under this Agreement following notice and expiration of applicable cure periods.

Buyer acknowledges that the construction of the Project on the Property is a material consideration to Seller. Buyer agrees and acknowledges that the Good Faith Deposits shall be retained by Seller in the event that the Buyer does not obtain land use entitlements from City or is not prepared to construct the Hotel. However, if Buyer applies for and City does not approve a Project that includes a minimum 125-room Upscale or higher hotel, as provided in the STR Hotel Chain Scale (the "**Hotel**"), with City retaining reasonable discretion to refine and address details with respect to the Hotel as part of the public hearing process, both parties agree to work in good faith to resolve any differences. If a mutually acceptable agreement cannot be reached, Buyer may terminate this Agreement and within 15 business days of such termination, City shall pay to Buyer an amount equal to one half (1/2) of the Good Faith Deposits received up to the date of such termination.

IN THE EVENT BUYER DEFAULTS IN BUYER'S OBLIGATION TO SATISFY ALL CONDITIONS PRECEDENT AND PURCHASE THE PROPERTY WITHIN THE TIME AND IN THE MANNER SPECIFIED IN THIS AGREEMENT, AND SELLER IS READY, WILLING AND ABLE TO CLOSE THIS TRANSACTION, SELLER SHALL BE RELEASED FROM ALL OBLIGATIONS AT LAW OR IN EQUITY TO CONVEY THE PROPERTY TO BUYER. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE AMOUNT OF DAMAGES SUFFERED BY SELLER BECAUSE OF SUCH DEFAULT; THAT THE GOOD FAITH DEPOSITS DEPOSITED INTO ESCROW BY BUYER CONSTITUTE A REASONABLE ESTIMATE AND AGREED STIPULATION OF SUCH DAMAGES; THAT SELLER SHALL RETAIN SUCH SUM AS LIQUIDATED DAMAGES AS ITS SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF BUYER'S DEFAULT, WAIVING

ANY RIGHT TO SPECIFIC PERFORMANCE OR ANY OTHER REMEDY AT LAW OR IN EQUITY.

Seller's Initials

MJW Investments, LLC Initials

356 Advisors, Inc. Initials

If this Agreement is not cancelled or terminated, as provided herein, or the Good Faith Deposits are not retained by Seller as liquidated damages, the Good Faith Deposits shall be credited against the Purchase Price at Closing.

ARTICLE II CONDITIONS

Section 2.1 Buyer's Conditions Precedent to Conveyance.

Buyer's obligation to purchase the Property is conditioned upon the following:

(a) All of the representations and warranties made by Seller to Buyer pursuant to this Agreement shall be true and correct in all material respects as of the Closing date, as if made on such date.

(b) Pursuant to Section 3.4, Buyer shall have completed its due diligence within the Due Diligence Period and provided written notice to Seller that all aspects of the Property are acceptable to Buyer. Title Company (as defined in Section 6.1) shall provide notice to the parties of the time-frame; however, failure of Title Company to provide such notification shall not effect Buyer's obligations hereunder. The parties in good faith shall undertake such actions to direct the Title Company to issue the aforementioned notification in a timely manner.

(c) Seller shall have delivered each of the documents described in Section 6.3(a), prior to the Closing date.

(d) Title Company (as defined in Section 6.1) shall have issued an irrevocable and unconditional commitment to issue the Title Policy (as defined in Section 4.3) upon recordation of the Grant Deed (as defined in Section 4.1).

(e) Seller shall not be in material default of any of its obligations under this Agreement following notice and expiration of any applicable cure period.

The conditions precedent to conveyance set forth in this Section 2.1 ("**Buyer's Conditions Precedent to Conveyance**") are solely for the benefit of Buyer and may be waived only by Buyer. No such waiver shall be binding upon Buyer unless made in writing by an authorized representative of Buyer.

Section 2.2 Seller's Conditions Precedent to Conveyance.

Seller's obligation to sell the Property is conditioned upon the following:

(a) All of the representations and warranties made by Buyer to Seller pursuant to this Agreement shall be true and correct in all material respects as of the Closing date, as if made on such date.

(b) Buyer shall have delivered the Good Faith Deposits into Escrow, as required by Section 1.5.

(c) Buyer shall have delivered each of the items described in Section 6.3(b) prior to the Closing date, and shall have performed all of its obligations under this Agreement in accordance with the provisions hereof.

(d) Buyer shall have obtained all discretionary land use entitlements necessary to develop the Project.

(e) Buyer and Seller shall have entered into a Development Agreement in a form approved by the City Council, which incorporates the terms set forth in Exhibit B, attached hereto, with such additional terms as may be negotiated by the parties.

(f) Buyer shall be prepared to obtain building permits and to construct the Hotel immediately upon close of escrow, as demonstrated by an agreement between Buyer and a hotel operator or franchise and a construction contract between Buyer and a contractor ready to begin construction of the Hotel.

(g) Buyer shall not be in material default of any of its obligations under this Agreement following notice and expiration of any applicable cure period.

The conditions precedent to conveyance set forth in this Section 2.2 ("Seller's Conditions Precedent to Conveyance") are solely for the benefit of Seller and may be waived only by Seller. No such waiver shall be binding upon Seller unless made in writing by an authorized representative of Seller.

ARTICLE III REPRESENTATIONS AND WARRANTIES, BUYER'S DUE DILIGENCE, AND DISCLAIMERS AND RELEASES

Section 3.1 Representations and Warranties of Seller.

Seller hereby makes the following representations and warranties.

(a) Seller, as of the Effective Date, owns fee simple title to the Property.

(b) There is no litigation, action, suit, arbitration, claims proceeding or governmental investigation in law or equity pending or, to Seller's actual knowledge, threatened,

with respect to the Property or against Seller which would prevent Seller from performing its obligations hereunder, or which would have a material adverse effect on the Property or Buyer.

(c) To the best of Seller's knowledge, Seller's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Seller is a party or by which it is bound.

(d) To the best of Seller's knowledge, the governmental reports, notices, soils tests, environmental reports, plans, surveys, engineering reports, and other documents, information and data relative to the Property delivered or made available by Seller to Buyer pursuant to Section 3.4 below, represent all Seller Materials, as defined in Section 3.4 below, that are in Seller's possession or under Seller's control.

(e) Seller shall maintain the Property until Closing in a manner generally consistent with the manner in which Seller has maintained the Property prior to the date of this Agreement.

(f) Prior to Closing, Seller will not violate or modify, orally or in writing, any lease, contract, understanding or any other agreements, or create any new leases or other agreements affecting the Property, without Buyer's written approval.

(g) To the best of Seller's knowledge, no person, except as disclosed by this Agreement or otherwise in writing to Buyer, has any right to possession of the Property. There exist no oral or written leases or rental agreements affecting all or any portion of the Property.

(h) To the best of Seller's knowledge, there are no sums due, owing or unpaid for labor and materials furnished to the Property which might give rise to a mechanic's or materialman's lien.

(i) Seller will convey fee simple title to Buyer subject only to the Permitted Exceptions, as defined in Section 4.2 below. Seller agrees not to create any new title exceptions following the Effective Date unless Buyer's written approval of such new exception(s) is first obtained.

(j) All references herein to "Seller's knowledge" means the current, actual knowledge of Darrin Jenkins or his designee ("**Seller's Representative**"), without any obligation of inquiry, and such term shall not include the knowledge of any other person or firm, it being understood by Buyer that (a) Seller's Representative was not involved in the operation of the Property before Seller's acquisition of the Property, (b) Seller's Representative is not charged with knowledge of any of the acts or omissions of predecessors in title to the Property or the management of the Property before Seller's acquisition of the Property, and (c) Seller's current actual knowledge shall not apply to, or be construed to include, information or material which may be in the possession of Seller generally or incidentally, but of which Seller's Representative is not actually aware.

(k) Each of the representations and warranties of Seller contained in this Section 3.1 is true as of the Effective Date, and shall be deemed remade by Seller and shall be true as of the Closing date.

Section 3.2 Representations and Warranties of Buyer.

Buyer represents and warrants to Seller as follows:

(a) 356 Advisors, Inc. is a corporation organized under the laws of the State of California, and MJW Investments, LLC, is a limited liability corporation organized under the laws of the State of California. Each Buyer Party has full right, power and lawful authority to undertake all obligations of Buyer as provided herein and the execution, performance and delivery of this Agreement by each Buyer Party has been fully authorized by all requisite company actions on the part of the Buyer Party, which have been provided to City for review.

(b) To the best of each Buyer Party's knowledge, Buyer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which any Buyer Party is a party or by which it is bound.

(c) No Buyer Party is the subject of any bankruptcy proceeding.

(d) There are no actions, suits, material claims, legal proceedings, or any other proceedings affecting any Buyer Party that would affect its authority to enter into and undertake all obligations under this Agreement.

Each of the representations and warranties of Buyer contained in this Section 3.2 is true as of the Effective Date, and shall be deemed remade by Buyer and shall be true as of the date of Closing.

Section 3.3 Survival Period.

The representations and warranties of Seller and Buyer contained herein shall survive for a period of two (2) years after the Closing (the "**Survival Period**"). Any claim which Buyer or Seller may have at any time against the other for a breach of any such representation or warranty, whether known or unknown, which is not asserted by written notice to the other within the Survival Period shall be deemed waived, unless otherwise agreed in writing by the parties.

Section 3.4 Buyer's Due Diligence.

Within 90 calendar days following the Effective Date ("**Due Diligence Period**"), Buyer shall have reviewed, inspected and investigated, at its expense, the Property, either independently or through agents of Buyer's choosing, including, but not limited to, the following:

(a) The size and dimensions of the Property.

(b) The availability and adequacy of water, sewage, fire protection, and any utilities serving the Property.

(c) All matters relating to title, including extent and conditions of title to the Property, taxes, assessments, and liens.

(d) All legal and governmental laws, statutes, rules, regulations, ordinances, and restrictions or requirements concerning the use and development of the Property including zoning, use permit requirements and building codes.

(e) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Property.

(f) The physical, legal, economic and environmental condition and aspects of the Property, and all other matters concerning the conditions, use, sale or development of the Property, including any permits, licenses, engineers' reports and studies and similar information relating to the Property. Such examination of the condition of the Property may include examinations for the presence or absence of Hazardous Materials, as defined below, as Buyer deems necessary or desirable. The term "**Hazardous Materials**" means any and all substances, contaminants, chemicals, wastes, sewage, materials or emissions which are now or hereafter regulated, controlled, prohibited or otherwise affected by any present or future local, state or federal statute, ordinance, code, rule, regulation, order, decree, permit or other law now or hereafter in effect, including but not limited to (i) asbestos (including asbestos-containing materials); (ii) flammable, explosive, infectious, carcinogenic, mutagenic, or radioactive materials; (iii) petroleum or any substance containing or consisting of petroleum hydrocarbons (including gasoline, diesel fuel, motor oil, waste oil, grease or any other fraction of crude oil); (iv) paints and solvents; (v) lead; (vi) cyanide; (vii) DDT; (viii) printing inks; (ix) acids; (x) pesticides; (xi) ammonium compounds; (xii) polychlorinated biphenyls; (xiii) radon and radon gas; and (xiv) electromagnetic or magnetic materials, substances or emissions.

(g) Any easements and/or access rights affecting the Property.

(h) Any contracts and other documents or agreements affecting the Property.

(i) All other matters of material significance affecting the Property.

Within ten (10) business days of the Effective Date, Seller shall deliver or make available to Buyer copies of all governmental reports, notices, soils tests, environmental reports, plans, surveys, engineering reports, and any other material documents, information and data relative to the Property that are in Seller's possession or under Seller's control ("**Seller Materials**").

Prior to expiration of the Due Diligence Period Buyer shall provide written notice to Seller that (i) it has approved the physical, legal, economic and environmental condition and aspects of the Property, and all other matters concerning the legal status, condition, use, sale or development of the Property as set forth above in its sole and absolute discretion and intends to move forward with the purchase and development of the Property; or (ii) it desires to terminate the Agreement. If Buyer fails to notify Seller on or before the last day of the Due Diligence Period that Buyer has approved the Property as provided above, Buyer shall be deemed to have elected to terminate this Agreement. If Buyer terminates this Agreement as provided herein, the First Good Faith Deposit shall be returned to Buyer.

Section 3.5 As-Is Conveyance. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS, CONDITION AND STATE OF REPAIR

INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE CLOSING, INCLUDING THE ENVIRONMENTAL CONDITIONS DESCRIBED ABOVE ("AS IS CONDITION") AND THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3.1, ABOVE, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES FROM SELLER OR ANY OF SELLER'S ELECTED OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, ATTORNEYS OR BROKERS (COLLECTIVELY, "**SELLER PARTIES**") AS TO ANY MATTERS CONCERNING THE PROPERTY.

Section 3.6 Disclaimers.

Buyer acknowledges and agrees that except as expressly set forth in this Agreement: (i) neither Seller, nor any Seller Party, has made any representations, warranties, or promises to Buyer, or to anyone acting for or on behalf of Buyer, concerning the condition of the Property or any other aspect of the Property; (ii) the condition of the Property has been independently evaluated by Buyer prior to the Closing; and (iii) any information, including Seller Materials, which Buyer has received or may hereafter receive from Seller or any Seller Party were and are furnished without warranty of any kind and on the express condition that Buyer has made its own independent verification of the accuracy, reliability and completeness of such information and that Buyer will not rely on any of the foregoing.

Section 3.7. Waivers and Releases. Buyer hereby releases Seller from any and all manner of rights, liabilities, claims, actions, causes of action, suits, proceedings, demands, damages, costs, expenses (including attorney's fees and costs) or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent that Buyer now has or may have or which may arise in the future arising out of, directly or indirectly, or in any way connected with (i) all warranties of whatever type or kind with respect to the physical or environmental condition of the Property, whether express, implied or otherwise, including those of fitness for a particular purpose or use; (ii) use, management, ownership or operation of the Property; (iii) the physical, environmental or other condition of the Property; (iii) the application of, compliance with or failure to comply with any Applicable Laws as to the Property; (iv) Hazardous Materials as to the Property; and (v) the As Is Condition (the foregoing are collectively referred to as "**Claims**"). By releasing and forever discharging the Claims, Buyer expressly waives any rights under California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR (BUYER) DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

INITIALS: CITY _____ BUYER _____

Notwithstanding the foregoing, the release and waiver of Claims set forth in this Section 3.7 shall not apply to any Claims arising from the sole active negligence or willful misconduct of Seller or from breaches by Seller of this Agreement (including but not limited to breaches of representations and warranties of Seller expressly set forth herein). The provisions of this Section 3.7 are a material portion of the consideration given by each party to the other in exchange for such party's performance under this Agreement and shall survive the Closing.

ARTICLE IV CONVEYANCE AND TITLE

Section 4.1 Conveyance.

At the Closing, Seller shall convey title to the Property to Buyer by grant deed in a form substantially similar to that attached hereto as Exhibit C ("**Grant Deed**"), free of any possession or right of possession by any person except that of Buyer and subject only to those exceptions approved by Buyer pursuant to Section 4.2 below. The Grant Deed shall provide that the Seller has the right to repurchase the Property in the event that Buyer does not construct the Project on the Property within a certain period of time, as described in more detail in Article VII below.

Section 4.2 Review and Approval of Condition of Title. Within five business days after the Effective Date, Buyer shall cause Title Company to deliver to Buyer and to Seller a standard preliminary title report for the Property, together with legible copies of the documents underlying the exceptions set forth in the preliminary title report. Buyer shall have the right to reasonably approve or disapprove all exceptions. Buyer hereby approves the following exceptions which shall be referred to herein as the "**Pre-Approved Exceptions**": (a) the lien of any non-delinquent property taxes and assessments (which, if any exist, shall be prorated by the Title Company at Closing); and (b) easements and right-of-way exceptions, including those that may be created by City's creation of a legal lot commiserate with the Property.

Within thirty (30) days after the Effective Date, Buyer shall give written notice to Seller of Buyer's approval or disapproval of any of the title exceptions, except the Pre-Approved Exceptions. Buyer's failure to give written disapproval of the exceptions within such time period shall be deemed Buyer's disapproval of the exceptions. If Buyer delivers notice of disapproval of any exceptions, Seller shall have the right, but not the obligation, to cause any disapproved exceptions to be removed within thirty (30) days after receiving such notice of disapproval (or until five (5) business days prior to Closing, if earlier than the expiration of such thirty (30) day period) or provide assurances satisfactory to Buyer, in its sole discretion, that such exceptions will be removed on or before the Closing. Failure to notify Buyer within such thirty (30) day (or shorter) period shall be deemed Seller's election not to remove the disapproved exceptions. Seller's election or deemed election not to remove any disapproved exceptions shall not be a default under this Agreement. If Seller cannot or does not elect to remove any of the disapproved exceptions within such thirty (30) day (or shorter) period, Buyer shall have five (5) business days after the expiration of such thirty (30) day (or shorter) period to either give Seller notice that Buyer elects, in its sole discretion, to proceed with the Closing, subject to the disapproved exceptions, or to give Seller notice that Buyer elects to terminate this Agreement, in which case neither party will have any further rights or obligations under this Agreement other than those obligations which survive termination hereof. The Pre-Approved Exceptions and other exceptions to title approved by Buyer as provided herein are hereinafter

referred to as the “**Permitted Exceptions**.” Subject to the Seller’s representation and warranty in Section 3.1(m) not to create any new title exceptions following the Effective Date without Buyer’s written approval, if any exceptions other than the Permitted Exceptions are reported by the Title Company after Buyer has approved the condition of title for the Property pursuant to the foregoing procedures, then any such new exception shall be subject to the same procedures for review and approval set forth above for the Permitted Exceptions.

Section 4.3 Title Insurance. Concurrently with recordation of the Grant Deed, the Title Company shall issue to Buyer such policy of title insurance for the Property which at Buyer’s option may be an ALTA extended coverage owner’s policy (“**Title Policy**”) as may be required by Buyer, and/or Buyer’s lenders or other institutions that may be providing financing for the Project, together with such endorsements as are reasonably requested by Buyer and/or Buyer’s lenders or other institutions, insuring that Buyer has a valid fee ownership interest in the Property, subject only to the Permitted Exceptions and other encumbrances expressly contemplated by this Agreement to be recorded at Closing. The premium for the Title Policy, plus any additional costs, including the cost of surveys, and any endorsements requested by Buyer shall be paid by Buyer.

ARTICLE V BROKERS AND EXPENSES

Section 5.1 Brokers.

Under a separate agreement, Seller shall pay Keegan and Coppin Company, Inc. (“**Seller’s Broker**”) for its services as Seller’s broker in this transaction. Seller’s Broker shall be responsible for additional broker’s payments due to HotelBrokerOne under a separate agreement between Seller’s Broker and HotelBrokerOne, which agreement has been provided to all parties prior to the Effective Date. If any person other than Seller’s Broker or HotelBrokerOne brings a claim for a commission or finder’s fee based upon any contact, dealings or communication with Buyer or Seller, then the party through whom such person makes his or her claim shall defend the other party (“**Indemnified Party**”) from such claim, and shall indemnify the Indemnified Party and hold the Indemnified Party harmless from any and all costs, damages, claims, liabilities or expenses (including without limitation, reasonable attorneys’ fees and disbursements) incurred by the Indemnified Party in defending against the claim. The provisions of this Section 5.1 shall survive the Closing or other termination of this Agreement.

ARTICLE VI CLOSING AND ESCROW

Section 6.1 Escrow Instructions.

Within ten (10) days following the Effective Date of this Agreement, the parties shall open escrow and deposit an executed counterpart of this Agreement with First American Title Company (“**Title Company**”), and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this

Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

Section 6.2 Closing.

(a) “**Closing**” means the consummation of the purchase and sale of the Property as described herein as evidenced by the performance by each party of its obligations hereunder, including the Title Company’s recordation and delivery of the Grant Deed, delivery of the documents as set forth in this Agreement, Title Company’s irrevocable and unconditional commitment to issue the Title Policy upon recordation of the Grant Deed, and the payment of the Purchase Price by Buyer.

(b) The Closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of the Title Company on the date which is within ten calendar days of completion of all conditions precedent to conveyance as set forth in Article II, but in no event later than a date two years after the Effective Date, as may be extended as provided herein (“**Outside Closing Date**”). Buyer may extend the Outside Closing Date no more than two times for a period of six months each upon deposit of \$100,000.00 for each extension submitted to Title Company at least ten business days prior to the Outside Closing Date, as may be extended (each, an “**Extension Payment**”). The Extension Payment(s) shall constitute a payment for the extensions and be nonrefundable to Buyer and shall not accrue toward the Purchase Price.

Section 6.3 Deposit of Documents.

(a) At or before the Closing, Seller shall deposit into escrow the following items:

(1) Documentary transfer taxes and Seller’s customary share of the normal prorations;

(2) Documentation of a credit towards the Purchase Price in the amount of the Good Faith Deposit;

(3) the duly executed and acknowledged Grant Deed conveying the Property to Buyer;

(4) an executed affidavit pursuant to Section 1445(b)(2) of the Internal Revenue Code, and on which Buyer is entitled to rely, that Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code; and

(5) an executed California 597-W Certificate.

(b) At or before Closing, Buyer shall deposit into escrow the following items:

(1) an executed Preliminary Change of Ownership Report; and

(2) funds necessary to close this transaction, including the Purchase Price, adjusted by a credit towards the Purchase Price in the amount of the Good Faith Deposit, any normal prorations, the Title Policy premium, all escrow fees and recording charges, and all other closing costs.

Seller and Buyer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the purchase and sale transaction in accordance with the terms hereof. Seller and Buyer hereby designate Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Internal Revenue Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

(c) Buyer shall be solely responsible for paying the following costs associated with the transfer of the Property: (i) the premium for the Title Policy, including any endorsements; (ii) all escrow fees and recording charges, (iii) Buyer's customary share of other normal prorations; (iv) all other closing costs; and (v) all of Buyer's due diligence expenses. Seller shall be solely responsible for paying the following costs associated with the transfer of the Property: (i) documentary transfer taxes and (ii) Seller's customary share of normal prorations.

(d) Ad valorem taxes and assessments levied, assessed or imposed on the Property for any period prior to the Closing, if any, shall be paid by Seller. Ad valorem taxes and assessments levied, assessed or imposed on the Property for the period after the Closing shall be paid by Buyer.

(e) The provisions of this Section 6.3 shall survive the Closing.

ARTICLE VII DEFAULT AND REMEDIES

Section 7.1 General.

The failure by any party to perform any obligation under this Agreement or the Development Agreement, if the failure has continued for a period of thirty (30) days after the other party demands in writing that the defaulting party cure the failure, except for such longer period set forth in Section 7.3, shall be deemed a default hereunder. If, however, by its nature the failure cannot be cured within thirty (30) days, the defaulting party may have a longer period as is necessary to cure the failure, in any event not to exceed sixty (60) days, provided, however, such extended cure period shall be conditioned upon the defaulting party promptly commencing to cure within the thirty (30) day period and thereafter diligently completing the cure.

Section 7.2 Remedies Upon Default.

(a) Upon the occurrence of an event of uncured default by Buyer, Seller, subject to the terms of this Agreement, shall be entitled to retain the Good Faith Deposits as liquidated damages.

(b) Upon the occurrence of an event of uncured default by Seller, Buyer may either institute an action for specific performance or other equitable relief to compel sale of the Property to Buyer on the terms set forth herein or Buyer may opt to terminate this Agreement by written notice to Seller in which case the Good Faith Deposits previously deposited into escrow by Buyer shall be immediately returned to Buyer upon unilateral demand to the Title Company or by Seller, if such amounts have previously been released to Seller.

(c) Except as otherwise provided herein, neither party shall be entitled to any monetary damages, and each party hereby waives any and all rights to recover consequential or special damages arising directly or indirectly from a breach of this Agreement by the other party.

Section 7.3 City Option to Repurchase, Reenter and Repossess.

(a) City shall have the additional right, at its option, to repurchase, reenter and take possession of the Property (or portion thereof) with all improvements thereon, if after conveyance of title to the Property and prior to the issuance of a certificate of occupancy for the Project, the Buyer:

(1) Fails to commence construction of the Hotel within three years of the Effective Date, subject to force majeure as defined in Section 8.20, as required by this Agreement and the Development Agreement, for a period of three months after written notice thereof from the City; or

(2) Abandons or substantially suspends construction of the Hotel for a period of three months after written notice of such abandonment or suspension from the City, subject to force majeure as defined in Section 8.20.

(b) Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit any mortgage, deed of trust or other security instrument permitted by this Agreement; or any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

(c) In order to exercise the repurchase option set forth in Section 7.3(a), City shall give Buyer notice of intent to exercise option and City and Buyer shall meet in good faith within 30 days to discuss potential resolution or amendments to this Agreement and the Development Agreement or Project approvals, if applicable. If the parties are unable to reach resolution, City may provide Buyer with a notice to exercise option to repurchase and, within 240 days thereafter, may pay to Buyer the Fair Market Value, as determined by Section 7.3(d), and Buyer shall thereupon execute and deliver to City grant deeds transferring to City all of Buyer's interest in the Property. In the event City exercises its repurchase option under this Section 7.3, such exercise shall constitute City's sole and exclusive remedy on account of any default of Buyer which gives rise to City's repurchase option hereunder, except that the foregoing limitation on remedies shall not affect either party's indemnity obligations under this Agreement. City may withdraw its notice to exercise option at any time prior to the transfer of the Property to City.

(d) Within 30 days of City's notice to repurchase, as set forth in Section 7.3(c), City and Buyer shall each appoint one independent commercial real estate appraiser, or designate an appraiser and appraisal completed in the past year, to appraise the value of the Property with the general plan land use designation and zoning in place as of the Effective Date. Buyer acknowledges that City may hire an appraiser and obtain an appraisal prior to exercising its option to repurchase and that such appraisal may be used as City's appraisal under this Section 7.3(d). If either City or Buyer fails to appoint or designate its appraiser within the prescribed time period, the single appraiser appointed shall determine the Fair Market Value of the Property. If both parties fail to appoint or designate appraisers within the prescribed time periods, then the first appraiser thereafter selected by a party shall determine the Fair Market Value of the Property. Each party shall bear the cost of its own appraiser and the parties shall share equally the cost of the single appraiser, if applicable. The appraisers shall be real estate appraisers licensed in the State of California and have at least 10 consecutive years of experience in the appraisal of real property in Sonoma County. If each party appoints or designates an appraiser, such appraisers shall, within 90 days after the appointment of the last appraiser, complete or provide, if already completed, their determinations of Fair Market Value and furnish the same to City and Buyer. If the low valuation varies from the higher valuation by 5% of the low valuation or less, the Fair Market Value shall be the average of the two valuations. If the low valuation varies from the high valuation by more than 5%, the two appraisers shall, within 30 days after submission of the last appraisal, appoint a third appraiser who shall meet the qualifications set forth in this Section 7.3. If the two appraisers are unable to agree on the selection of a third appraiser in a timely manner, then either City or Buyer may request such appointment by the presiding judge of the Superior Court of Sonoma County. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for or against either party. Such third appraiser shall, within 90 days after appointment, make a determination of Fair Market Value and said third appraiser shall select the opinion of Fair Market Value as determined by the one appraisal determination, completed by the two appraisers, which most closely matches the third appraiser's opinion of Fair Market Value. The Fair Market Value of the Property shall be the Fair Market Value selected by said third appraiser. All fees and costs of the third appraiser in connection with the determination of Fair Market Value shall be paid one-half by City and one-half by Buyer.

(e) City's rights under this Section 7.3 shall survive the Closing and shall terminate upon the issuance of a certificate of occupancy by Buyer for the Hotel.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Notices.

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) by certified mail, postage prepaid, return receipt requested, or (b) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

To Seller: City of Rohnert Park
130 Avram Avenue
Rohnert Park, California 94608-3517
Attention: City Manager

With a copy to: Burke Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, California 94612
Attention: Michelle Marchetta Kenyon

To 356 Advisors, Inc.: 356 Advisors, Inc.
3757 Falcon Ave.
Long Beach, CA 90807
Attention: Bruce Orr

To MJW Investments, LLC: MJW Investments, LLC
1278 Glenneyre Street, Suite 439
Laguna Beach, CA 92651
Attention: Matthew J. Waken

With a copy to: Palmieri, Tyler, Wiener, Wilhelm & Waldron, LLP
2603 Main Street, Suite 1300
Irvine, CA 92614
Attention: Stephen A. Scheck, Esq.

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery or refusal to accept delivery by the intended recipient.

Section 8.2 Assignments; Successors and Assigns.

Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, except that Buyer may assign its rights and obligations to an affiliate or subsidiary wholly controlled by all Buyer parties. Subject to the provisions of this Section 8.2, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No assignment shall release the assigning party from its obligations or liabilities hereunder accruing prior to the date of such assignment.

Section 8.3 Right of Entry.

Prior to the Effective Date, Seller has provided, and after the Effective Date shall continue to provide, Buyer with reasonable access to the Property and the records of Seller

relating thereto. Without limiting the foregoing, prior to any entry to perform any invasive on-site testing, Buyer shall give Seller written notice thereof, including the identity of the company or persons who will perform such testing and the proposed scope of the testing. Seller or its representative may be present to observe any testing (whether or not invasive) or other inspection performed on the Property. Buyer shall maintain, and shall assure that its contractors maintain public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Buyer and its agents, employees or contractors, arising out of any entry or inspections of the Property pursuant to the provisions hereof, and Buyer shall provide Seller with evidence of such insurance coverage upon request by Seller. Buyer shall indemnify and hold Seller harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, reasonable attorney's fees), arising out of or relating to any entry on the Property by Buyer, its agents, employees or contractors in the course of performing the inspections, testings or inquiries provided for in this Agreement. Buyer agrees to keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Buyer or Buyer's agents, employees or contractors with respect to any inspection or investigation of the Property. If any such lien at any time shall be filed, Buyer shall cause the same to be discharged of record within ten (10) days thereafter by satisfying the same or, if Buyer, in its discretion and in good faith determines that such lien should be contested, by recording a bond or providing title insurance insuring over such lien. Failure by Buyer to discharge or bond over or provide title insurance over such lien shall be a material breach of this Agreement and Seller may terminate this Agreement and pursue such other rights and remedies against Buyer as may be available at law or in equity. Buyer's indemnity obligations under this Section 8.3 shall survive the Closing or other termination of this Agreement.

Section 8.4 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its choice of laws rules.

Section 8.5 Interpretation of Agreement.

Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity. The words "include" and "including" shall in all instances be interpreted as though followed by the words "without limitation."

Section 8.6 Amendments.

This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller and duly authorized by the City Council.

Section 8.7 No Partnership.

The relationship of the parties hereto is solely that of seller and buyer with respect to the Property and no joint venture, other partnership or agency relationship exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

Section 8.8 No Third Party Beneficiary.

The provisions of this Agreement are not intended to benefit any third parties.

Section 8.9 Joint and Several Liability.

The Seller acknowledges that Buyer consists of more than one entity which intends to form a limited liability company and that Buyer intends to have this Agreement assigned to such entity as provided in Section 8.2. Prior to such assignment, the liability of each Buyer Party shall be joint and several.

Section 8.10 Limitation of Liability.

Buyer acknowledges and agrees that no member, official or employee of Seller shall be personally liable to Buyer, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Buyer or its successors, or on any obligations under the terms of this Agreement.

Section 8.11 Recordation; Actions to Clear Title.

Prior to Closing Buyer shall not record this Agreement, any memorandum of this Agreement, any assignment of this Agreement or any other document which would cause a cloud on the title to the Property. If Buyer fails to complete its purchase of the Property for any reason, or if this Agreement shall terminate for any reason not solely due to Seller's default hereunder, then Buyer, at no cost to Seller, shall promptly execute, acknowledge and deliver to Seller, all within thirty (30) days after written request from Seller, a quitclaim deed, in recordable form, in favor of Seller, and any other documents requested by Seller to remove any cloud on title to the Property that may exist as the result of the existence of this Agreement or any escrow relating to this Agreement. In the event Buyer fails to so execute and deliver any such document, Buyer shall pay all losses, damages, costs and expenses, including, but not limited to, Seller's reasonable attorneys' fees, incurred in connection with Buyer's breach of its obligations under this Section including interest, carrying costs associated with the Property from the date of Buyer's failure to comply with this Section and costs of clearing any such cloud on title.

Section 8.12 Severability.

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, to any extent shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and in no way shall be affected, impaired or invalidated thereby; except that if the court which determines the provision to be invalid also determines such provision to be of such materiality as to make enforcement of the remaining terms inequitable, then this Agreement shall terminate.

Section 8.13 Waiver of Covenants, Conditions or Remedies.

The waiver by one party of the performance of any covenant, condition or promise under this Agreement shall not invalidate this Agreement, nor shall it be considered a waiver by it of any other covenant, condition or promise under this Agreement. The waiver by either or both parties of the time for performing any act under this Agreement shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provision in this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

Section 8.14 Termination.

This Agreement may be terminated: (i) by Buyer, if prior to expiration of Buyer's Due Diligence Period, Buyer elects not to proceed with purchase of the Property; (ii) by Buyer, if prior to Closing, Buyer's Conditions Precedent to Conveyance have not been satisfied or waived; (iii) by Seller, if prior to Closing Seller's Conditions Precedent to Conveyance have not been satisfied or waived; or (iv) if there is an uncured default, by written notice from the party not in default. The party wishing to terminate the Agreement must provide the other party with written notice of termination. In the event of termination by Seller due to Buyer's failure to satisfy Seller's Conditions Precedent to Closing or Buyer's default, the Good Faith Deposits shall be retained by Seller as liquidated damages.

Section 8.15 Cooperation in the Event of Third-Party Legal Challenge.

Seller and Buyer shall cooperate in the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of this Agreement. Should the challenge arise out of an uncured default by one of the parties; and to the extent that the defaulting party determines to contest such litigation challenge, the party in default shall indemnify and hold the other party harmless from and against any and all claims for recovery of the third party's litigation expenses, including attorney's fees. If the defaulting party elects, in its sole and absolute discretion, not to contest such litigation challenges, then the other party shall have no obligation to contest such challenges. Both Parties obligations under this Section 8.15 shall survive the Closing or other termination of this Agreement.

Section 8.16 Time.

Time is of the essence in the performance of each of the parties' respective obligations contained herein.

Section 8.17 Entire Agreement.

This Agreement, including the Exhibits hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits hereto.

Section 8.18 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 8.19 Exhibits.

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement.

Section 8.20 Force Majeure.

A force majeure event shall mean delay that a party could not reasonably have been expected to avoid and which by exercise of due diligence have been unable to overcome caused by: acts of God, war, fire, earthquake, windstorm, flood or other natural catastrophe, civil disturbance or disobedience, labor disputes, vandalism, sabotage, terrorism, or restraint by order of a court or administrative agency with jurisdiction. A party's financial inability to perform or obtain financing or adverse economic conditions generally shall not be grounds for claiming a force majeure event.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SELLER:

City of Rohnert Park

Dated: _____, 2015

By: _____
Amy O. Ahanotu, Mayor

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon, City Attorney

BUYER:

356 ADVISORS, INC., a California Corporation

Dated: _____, 2015

By: _____
Name: Bruce Orr
Its: President

MJW INVESTMENTS, LLC, a California limited liability corporation

Dated: _____, 2015

By: _____
Name: Matthew J. Waken
Its: Managing Member

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to herein is situated in the State of California, County of Sonoma, City of Rohnert Park and described as follows:

Lot 1, as shown upon that certain Parcel Map entitled "Parcel Map No. 180", filed for record December 11, 2009, in Book 736 of Maps, at Pages 30, 31 and 32 Sonoma County Records, excluding the southerly three acres of said Lot 1.

APN: 143-040-124

EXHIBIT B

DEVELOPMENT AGREEMENT TERM SHEET

Development Agreement (“DA”) between the City of Rohnert Park (“City”) and 356 Advisors, Inc. and MJW Investments, LLC (together the “**Buyer**”) concerning the development of certain real property consisting of 12.25 acres and located at Labath Avenue and Carlson Avenue in the City of Rohnert Park (“**Property**”)

1. Purpose of Agreement. The purpose of the DA is to set forth (a) Buyer’s vested rights to develop and construct an up to 300-room select service and/or suite hotel(s) with a separate retail and/or other commercial or office component in addition to the hotel (the “**Project**”) in accordance with the general plan, land use designation and zoning in place as of the date of the Agreement, (b) Buyer’s obligations to phase the Project to ensure the hotel is constructed prior to or simultaneously with retail/commercial development, and (c) Buyer’s obligation to construct and/or fund certain required public improvements.

2. Term. The term would be five years commencing on the effective date of the DA, with one possible two-year extension, which may be approved in City’s reasonable discretion if Buyer has made progress toward constructing the Project.

3. Development. The Project would be developed in accordance with the general plan designation and zoning currently in place and the following approvals to be obtained by the Buyer concurrently with approval of the DA: (a) Conditional Use Permit; and (b) Site Plan and Architectural Review (the “**Project Approvals**”). The permitted uses, density and intensity of development and maximum height and size of proposed buildings shall all be in accordance with the Project Approvals, including any mutually agreed upon amendments.

4. Phasing. Buyer would agree to certain milestones for development as follows:

(a) Buyer would obtain a building permit to construct the hotel prior to, or in concurrence with, issuance of a building permit for any other development on the Property and commence construction of the Hotel no later than three years from the Effective Date of the Purchase and Sale Agreement for the Buyer’s purchase of the Property, subject to force majeure as defined in Section 8.20 of the Purchase and Sale Agreement; and

(b) Buyer would complete construction of the hotel and obtain a certificate of occupancy within 18 months of commencement of construction, subject to force majeure as defined in Section 8.20 of the Purchase and Sale Agreement.

5. CEQA. Buyer will comply with all mitigation measures in the Stadium Area Master Plan EIR and Mitigation Monitoring and Reporting Plan (MMRP). Buyer shall comply with all additional mitigation measures imposed as a result of the Project-level CEQA process.

6. Vested Rights. City would grant Buyer the vested right to develop and construct the Project, in accordance with the City general plan and zoning in place as of the effective date and the Project Approvals, except for:

(a) New City laws and regulations regarding procedural matters, such as hearing bodies, appeals and applications, provided such laws and regulations are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties;

(b) New City laws and regulations that revise the City's uniform construction codes, and that are in effect at the time of permitting, provided such laws and regulations are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties;

(c) New City laws and regulations that are necessary to protect physical health and safety of the public or do not conflict with the DA or Project Approvals, provided such laws and regulations are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties; and

(d) Changes to the law mandated by State or Federal Law, as provided in Government Code section 65869.5.

7. Benefits to City.

(a) Buyer would agree to construct to City standards and specifications and/or dedicate the following improvements for public use within the noted time-frames:

(i) Final 1/3 of Carlson Avenue improvements, including curb, gutter, sidewalk and 16-foot wide of travelway to provide an ultimate curb-to-curb width of 48 feet, prior to occupancy of first development project;

(ii) Sidewalk along Dowdell Avenue frontage, prior to occupancy of first development project;

(iii) Labath Avenue northbound right-turn lane at Martin Avenue widening and improvements (or as determined by a traffic study), prior to occupancy of first development project;

(iv) Storm drain outfall into Hinebaugh Creek (design, permitting, and construction), as shown on the Stadium Lands approved tentative map, prior to occupancy of first development project;

(v) 12-inch water main in Redwood Drive between Hinebaugh Creek PRV vault to Martin Avenue, prior to occupancy of first development project.

(vi) Site irrigation connected to existing recycled water system within Labath Avenue and/or Dowdell Avenue at a date to be determined.

(b) Buyer would contribute its proportionate share, based on anticipated water usage by the Project, estimated cost of \$110,000, toward a water storage tank located on the west side of the City prior to issuance of first building permit.

(c) Buyer would enter into a Storm Water Maintenance Agreement to address long-term maintenance of on-site storm drainage and water quality features within the City. The Storm Water Maintenance Agreement shall include funding maintenance of any off-site storm drainage improvements required and installed with the development.

8. Fees, Taxes, Reimbursements and Assessments.

(a) Impact Fees. Buyer would pay impact fees in place at the time the Development Agreement is executed, at the rate then in effect as shall be increased based upon the Construction Cost Index from the Engineering News Report.

(b) Taxes and Assessments. City could impose and Buyer would pay any new, increased or modified taxes or assessments, provided such taxes or assessments are equally applied on a city-wide basis and have a uniform effect on a broadly-based class of land, projects or taxpayers, as applicable, within the City.

(c) Processing and Consultant Fees. Buyer would pay all reasonable processing fees imposed by the City to cover the actual costs to City of processing applications for the Project Approvals, as such fees are uniformly applied, at the rate in effect at the time of application. Buyer would also pay all reasonable, out-of-pocket costs of City of engaging third-parties consultants as City may deem reasonably necessary to process such applications.

(d) Reimbursements. Buyer will have no obligations under the COSTCO Reimbursement Agreement as City will provide funding from the proceeds of the sale of the Property. Buyer shall pay the developer of the Reserves site the amount of \$62,995, as set forth in the Reimbursement Agreement for the Reserves project, and provide City with proof of payment prior to or at issuance of the first building permit or grading permit for the Project. Buyer shall also pay Redwood Equities Investments the amount of \$83,585.35, as determined by the Reimbursement Agreement for the Stadium Lands Master Plan Environmental Impact Report and provide City with proof of payment prior to or at issuance of the first building permit or grading permit for the Project.

9. General Provisions.

(a) Joint and Several Liability. Each of the Buyer parties would be jointly and severally liable under the terms of the DA, unless and until the DA is assigned to a single party.

(b) Assignments. Assignments of Buyer's rights and obligations under the DA would be subject to City's review and approval, in City's reasonable discretion which will not be unreasonably withheld. Any assignment, other than reasonable financing requirements, would be documented by an assignment and assumption agreement in a form reasonably acceptable to City.

(c) Remedies/Default/Termination. The DA would include standard provisions for notice of default and opportunity to cure. In the event of default by City, the only remedy would be specific performance of the terms and provisions of the DA. In event of default by Buyer, the primary remedy would be specific performance of the terms and provisions of the DA and the City's right to repurchase the Property. A claim for actual monetary damages would only be

considered if specific performance is not granted by a court. In no event would either party be entitled to any consequential, punitive or special damages. City and Buyer would be required to follow the procedures set forth in Government Code sections 65867 and 65868, with a hearing before the City Council, prior to termination of the DA. In the event of termination, the only surviving provisions would be the Buyer's indemnification of City. A default under the Development Agreement would also be a default under the Purchase and Sale Agreement, by which the Property is transferred, and a default under the Purchase and Sale Agreement would also be a default under the Development Agreement.

(d) Indemnity. Buyer would defend, indemnify and hold harmless the City, with legal counsel reasonably acceptable to the City Attorney, in any action brought by a third party to challenge the DA, including the related environmental review. In addition, Buyer would defend, indemnify and hold harmless the City for any claims arising out of the development and construction of the Project.

(e) Annual Review. Buyer would provide City with annual written documentation demonstrating good faith compliance with the terms of the Development Agreement. If the City determines that Buyer has not complied in good faith, the Buyer shall have 30 days from written notice of default to cure the default, otherwise the City may terminate the DA in accordance with Government Code section 65865.1.

(f) Application Approval. City's signature on planning applications as property owner shall not grant approval of applications. City retains its full discretionary authority regarding approval of planning and other land use approvals regardless of signature by City as property owner on such applications.

APPROVED AS TO FORM:

By: _____,
_____, City Attorney

ACKNOWLEDGMENT

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

State of California)
) ss
County of)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

ATTACHMENT 1 - EXHIBIT C

PROPERTY DESCRIPTION

[to be inserted prior to close of escrow]



Brands/Chairs are slotted by Chain Scale based on the previous year's annual system wide (global) Average Daily Rate. Rate ranges defining each Chain Scale are determined by STR & STR Global. The STR Chain Scale list is a subset of the larger Global Chain Scale list. Brand Chain Scale pairings are consistent with each list. Brands listed are in U.S., Mexico, Caribbean and Canada. If you have any questions about the Chain Scales, please email support@str.com.

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