

## RESOLUTION NO. 2016-111

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK APPROVING A THIRD AMENDMENT TO THE AGREEMENT FOR PURCHASE AND SALE BETWEEN THE CITY AND STADIUM RP DEVELOPMENT PARTNERS, LLC, REGARDING THE SALE OF THE PROPERTY KNOWN AS STADIUM LANDS

**WHEREAS**, on August 11, 2015, the City and 356 Advisors, Inc. and MJW Investments, LLC (the “**Initial Buyer Party**”), entered into that certain Agreement for Purchase and Sale (Including Joint Escrow Instructions) and Terms of Development (the “**Original Agreement**”) with respect to Buyer’s purchase and development of that certain real property consisting of 12.25 acres and located at Labath Avenue and Carlson Avenue in the City of Rohnert Park (the “**Property**”); and

**WHEREAS**, on November 2, 2015, City and the Initial Buyer Party entered into a First Amendment to the Original Agreement to extend the due diligence period an additional 30 days to allow the buyer time for further analysis; and

**WHEREAS**, on November 24, 2015, City and the Initial Buyer Party entered into a Second Amendment to the Original Agreement, as amended, to set forth the terms and conditions of a modified project that allows for residential development, including a revised Development Agreement Term Sheet; and

**WHEREAS**, the Initial Buyer Party subsequently assigned its interests in the Original Agreement, as amended, to MJW Investments, Inc., who subsequently assigned its interests in the Agreement to Stadium RP Development Partners, LLC (the “**Buyer**”); and

**WHEREAS**, Buyer and City now desire to amend the Agreement a third time to: (1) remove the City’s right to repurchase the Property; (2) amend the description of the Property to add an additional 0.1 acres; (3) amend Buyer’s condition to close to require a grading permit, rather than a building permit, and a construction deed of trust; and (4) amend the Development Agreement Term Sheet to set forth the terms by which the Buyer will construct the Martin Avenue improvements; and

**WHEREAS**, Buyer and City staff have negotiated the form of a Third Amendment to Purchase and Sale Agreement (Including Joint Escrow Instructions) and Terms of Development, attached hereto as Exhibit A (the “**Third Amendment**”).

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Rohnert Park that it does hereby find, determine, declare and resolve as follows:

**Section 1.** Recitals. The foregoing recitals are true and correct.

**Section 2.** Approval of the Third Amendment. The form of Third Amendment included as Exhibit A to this Resolution is approved subject to minor modifications approved by the City Manager and City Attorney.

**Section 3.** Authority to Execute. The Mayor or her designee is hereby authorized and directed to execute the Third Amendment, in substantially similar form to that attached as Exhibit A

**Section 4.** Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

**DULY AND REGULARLY ADOPTED** this 22nd day of November, 2016.

**CITY OF ROHNERT PARK**

  
Gina Belforte, Mayor

**ATTEST:**

  
JoAnne M. Buerger, City Clerk

Attachment: Exhibit A

AHANOTU: Aye CALLINAN: Aye STAFFORD: Aye MACKENZIE: Aye BELFORTE: Aye  
AYES: ( 5 ) NOES: ( 0 ) ABSENT: ( 0 ) ABSTAIN: ( 0 )

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

This Third Amendment to Agreement for Purchase and Sale (Including Joint Escrow Instructions) and Terms of Development ("**Third Amendment**"), dated as of \_\_\_\_\_, 2016 ("**Effective Date**"), is by and between the CITY OF ROHNERT PARK, a California municipal corporation ("**Seller**" or "**City**"), and STADIUM RP DEVELOPMENT PARTNERS, LLC, a California limited liability company (the "**Buyer**").

RECITALS

A. On August 11, 2015, Seller and Buyer's predecessor-in-interest, 356 Advisors, Inc. and MJW Investments, LLC (the "**Initial Buyer Party**"), entered into that certain Agreement for Purchase and Sale (Including Joint Escrow Instructions) and Terms of Development (the "**Original Agreement**") with respect to Buyer's purchase and development of that certain real property consisting of 12.25 acres and located at Labath Avenue and Carlson Avenue in the City of Rohnert Park (the "**Property**"). Terms not otherwise defined herein shall have the meaning set forth in the Agreement, as defined in Recital C. below.

B. On November 2, 2015, City and the Initial Buyer Party entered into a First Amendment to the Original Agreement to extend the Due Diligence Period an additional 30 days to allow Buyer time for further analysis (the "**First Amendment**").

C. On November 24, 2015, City and the Initial Buyer Party entered into a Second Amendment to the Original Agreement, as amended, to set forth the terms and conditions of a modified project that allows for residential development, including a revised Development Agreement Term Sheet (the "**Second Amendment**"). The Original Agreement, as modified by the First and Second Amendments, may be referred to herein as the "**Agreement**."

D. The Initial Buyer Party subsequently assigned its interests in the Agreement to MJW Investments, Inc., who subsequently assigned its interests in the Agreement to Buyer.

E. Buyer and City now desire to amend the Agreement a third time to: (1) remove the City's right to repurchase the Property; (2) amend the description of the Property to add an additional 0.1 acres; (3) amend Buyer's conditions to close to require a grading permit, rather than a building permit, and a construction deed of trust; and (4) amend the Development Agreement Term Sheet to set forth the terms by which the Buyer will construct the Martin Avenue improvements.

F. The City Council of the City of Rohnert Park duly authorized the execution of this Third Amendment by resolution adopted on \_\_\_\_\_, 2016.

A G R E E M E N T

1. Recital A is amended to delete the reference to 12.25 acres and replace it with 12.35 acres.
2. Section 2.2(f) is hereby deleted in its entirety and replaced with the following:

“(f) Buyer shall be prepared to obtain a grading permit and to construct the Hotel immediately upon close of escrow, as demonstrated by an agreement between Buyer and a hotel operator or franchise, a construction contract between Buyer and a contractor ready to begin construction of the Hotel, and a construction deed of trust documenting the loan to Buyer of funds necessary to begin construction.”
3. The last sentence of Section 4.1, regarding Seller’s right to repurchase, is hereby deleted in its entirety.
4. The first sentence of Section 7.1 is hereby deleted and replaced with the following: “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, shall be deemed a default hereunder.”
5. Section 7.3 is hereby deleted in its entirety.
6. Exhibit A, Legal Description of the Property, is deleted in its entirety and replaced with Exhibit A-1, attached hereto and incorporated herein by this reference.
7. Exhibit B, Development Agreement Term Sheet, is deleted in its entirety and replaced with Exhibit B-2, attached hereto and incorporated herein by this reference.
8. Exhibit C, Grant Deed, is hereby deleted in its entirety and replaced with Exhibit C-1, attached hereto and incorporated herein by this reference.
9. Except as hereby amended by this Third Amendment, the Agreement, as amended by the First and Second Amendments, remains in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

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

**SELLER:**

City of Rohnert Park

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Gina Belforte, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

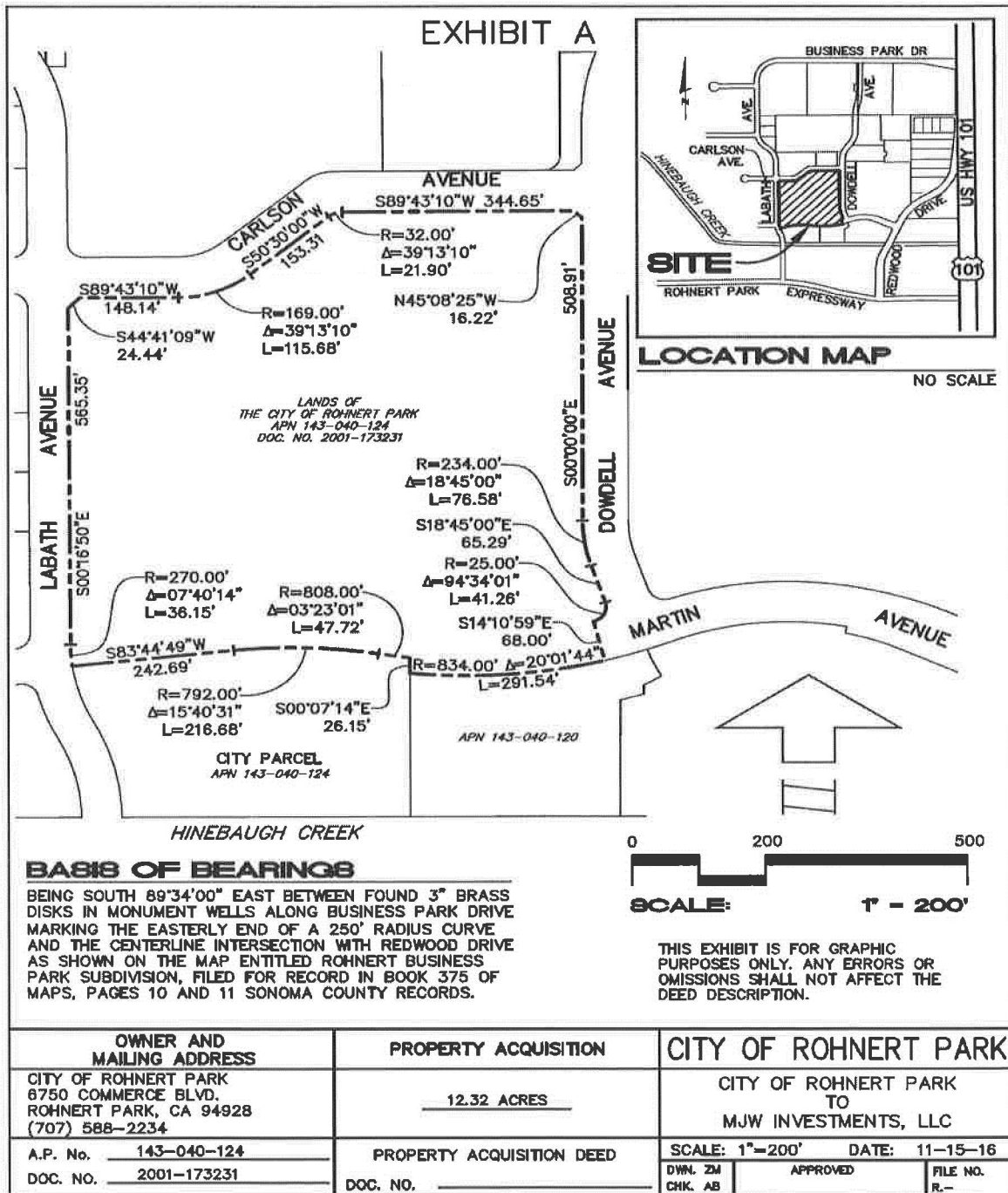
**BUYER:**

STADIUM RP DEVELOPMENT PARTNERS, LLC, a  
California limited liability corporation

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: Matthew J. Waken  
Its: Manager

# EXHIBIT A-1



## EXHIBIT B-2

### 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 (i) an up to 300-room select service and/or suite hotel(s); and (ii) a separate retail, commercial, residential (up to 135 apartments or such lower amount as can be adequately parked and meet any other established City requirements in existence at the time of this Amendment), or office component in addition to the hotel (collectively, 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; (b) Site Plan and Architectural Review; and (c) a Tentative Subdivision Map, as described in Section 4 below (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. Tentative Subdivision Map. Buyer would submit an application and undertake necessary actions to seek the approval of a Tentative Subdivision Map splitting the Property into 5 lots, including (a) the southern 2.9-acre portion to be retained by City; (b) the portion to be used for the park as described in Section 8(d) of this Exhibit; (c) the portion on which the hotel will be developed; (d) the portion on which the retail component will be developed; and (e) the portion on which the residential portion will be developed.

5. 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, including any residential development.

(b) Buyer would commence construction of the hotel prior to, or in concurrence with, commencement of construction of any other development on the property, but 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.

(c) 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.

6. 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.

7. 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.

8. 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; and

(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 agree to construct to City standards and specifications the Martin Avenue improvements, including curb, gutter, and sidewalk to provide an ultimate curb-to-curb width of 42 to 55 feet, as illustrated in Attachment 1, prior to occupancy of the first development project, with City to fund the half-width of the improvements adjacent to the property to be retained by City, as illustrated in Attachment 1.

(c) 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.

(d) 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.

(e) Buyer would design, construct and dedicate to City a public park of at least 0.65 acres in a location on the Property, as approved by the City. The total cost of the parkland and improvements shall equal \$788,000, with the land valued at \$583,673 per acre, as verified by the City with supporting documentation by Buyer. In the event that the Buyer's total costs are lower than \$788,000, the difference between \$788,000 and the actual costs would be paid by Buyer to City prior to the issuance of the first certificate of occupancy for the Project.

(f) Buyer would pay an annual assessment of \$800 per residential unit constructed on the Property, to be adjusted annually in accordance with the Consumer Price Index, to the City with such obligation to be documented in an instrument recorded against the Property. Buyer may consider an alternative financing mechanism to fund the annual assessments and City will work in good faith with Buyer to establish such a mechanism, if legally supportable, subject to City approval. The recorded instrument or financing mechanism shall be in place or established prior to the issuance of the first building permit.

(g) Buyer would contribute \$50,000 toward the creation of affordable housing in the City, with such payment due prior to the issuance of the first building permit.

9. 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.

10. General Provisions.

(a) 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.

(b) 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. 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.

(c) 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

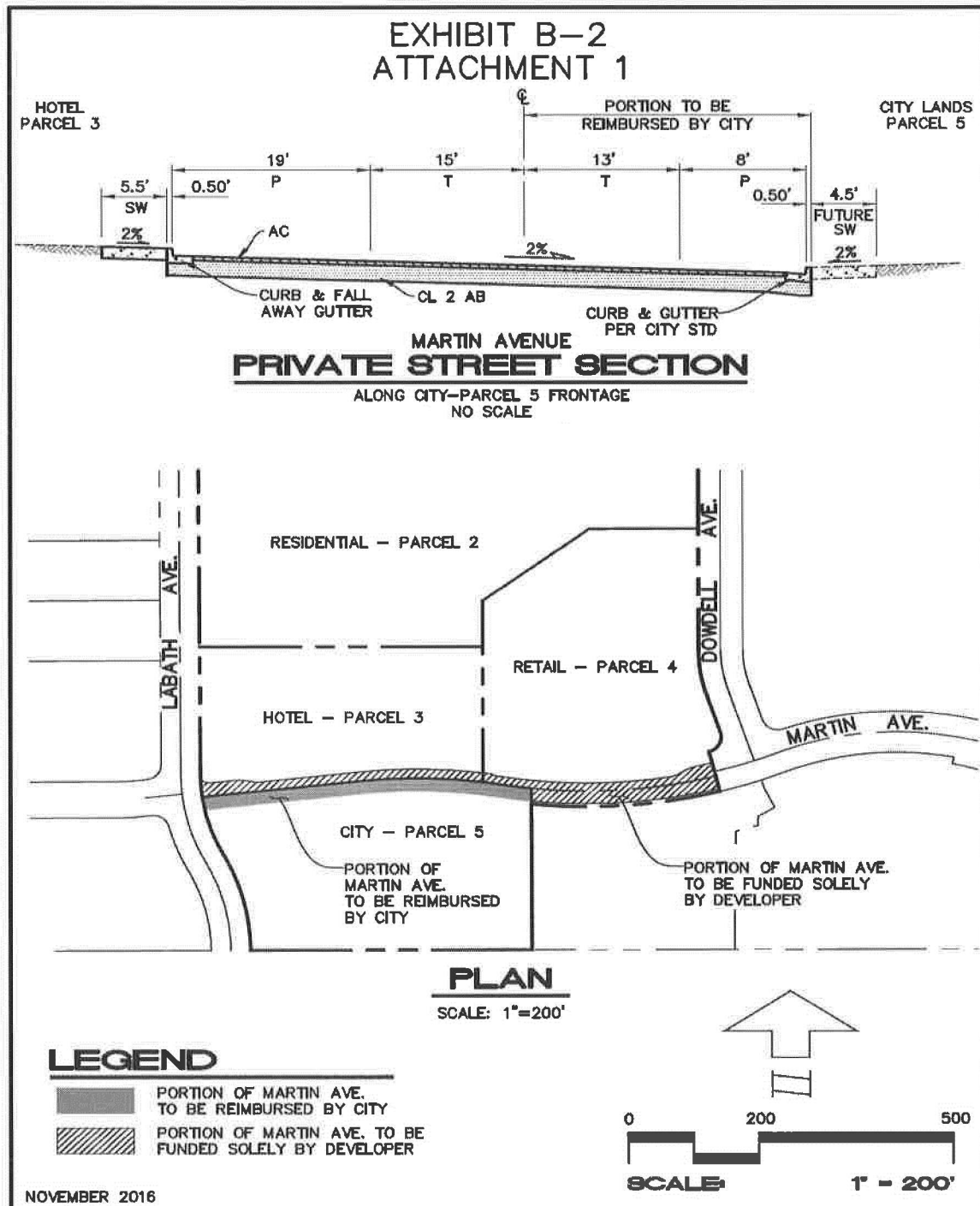
defend, indemnify and hold harmless the City for any claims arising out of the development and construction of the Project.

(d) 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.

(e) 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.

Attachment 1

Depiction of Martin Avenue Improvements



**EXHIBIT C-1**

**FORM OF GRANT DEED**

RECORDING REQUESTED BY  
\_\_\_\_\_ Title Insurance Company

AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
Attention: \_\_\_\_\_

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

**GRANT DEED**

For valuable consideration, the receipt of which is hereby acknowledged, the CITY OF ROHNERT PARK, a California municipal corporation ("**Grantor**"), hereby grants to STADIUM RP DEVELOPMENT PARTNERS, LLC, a California limited liability corporation (collectively, "**Grantee**"), all of Grantor's right, title, and interest in the real property described in Attachment 1 attached hereto and incorporated herein ("**Property**").

**GRANTOR:**

City of Rohnert Park

Dated: \_\_\_\_\_, 201\_

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor  
[signature must be notarized]

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney