

## **RESOLUTION NO. 2017-095**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK APPROVING A FOURTH AMMENDMENT TO THE AGREEMENT FOR PURCHASE AND SALE BETWEEN THE CITY OF ROHNERT PARK AND STADIUM RP DEVELOPMENT PARTNERS LLC AND RELATED ACTIONS**

**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**, on November 22, 2016, the City and the Buyer entered into a Third Amendment to the Original Agreement, as amended, to: remove the City's right to repurchase the Property; amend the description of the Property to add an additional 0.1 acres; amend Buyer's condition to close to require a grading permit, rather than a building permit, and a construction deed of trust; and amend the Development Agreement Term Sheet to set forth the terms by which the Buyer will construct the Martin Avenue improvements; and

**WHEREAS**, on January 10, 2017, the City Council approved a Planned Development, Tentative Map and Development Agreement for the property that entitled a mixed use project including a hotel, apartment complex, retail center and public park (the "Project"); and

**WHEREAS**, on January 24, 2017, the City and the Buyer entered into a Development Agreement that formalized the Buyer's rights and obligations that were initially outlined in the Purchase and Sale Agreement; and

**WHEREAS**, the Buyer has been diligently pursuing the development of the property including securing various planning and engineering approvals necessary to subdivide the property and construct its Project; and

**WHEREAS**, Buyer and City now desire to amend the Agreement a fourth time in order to allow the Buyer to purchase the property in two phases, associated with the lots created by its

subdivision in order to provide for the further transfer of the property and construction of the Project, including transfer to the developer of the hotel portion of the Project; and

**WHEREAS**, Buyer and City staff have negotiated the form of a Fourth Amendment to Purchase and Sale Agreement (Including Joint Escrow Instructions) and Terms of Development, attached hereto as Exhibit A (the "Fourth 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 Fourth Amendment. The form of the Fourth 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 his designee is hereby authorized and directed to execute the Fourth Amendment, in substantially similar form to that attached as Exhibit A.

Section 4. Authority to Implement. The City Manager is hereby authorized and directed to take all actions necessary to implement the intent of the Purchase and Sale Agreement and its amendments including executing various documents associated with escrow and closing and executing various assignments of the Development Agreement, in forms approved by the City Attorney.


Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

**DULY AND REGULARLY ADOPTED** this 25<sup>th</sup> day of July, 2017.

**CITY OF ROHNERT PARK**

  
Jake Mackenzie, Mayor

**ATTEST:**

  
Caitlin Saldanha, Deputy City Clerk

Attachment: Exhibit A

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

Exhibit A

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

This Fourth 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**").

**R E C I T A L S**

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 D. 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**").

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. On \_\_\_\_\_, Buyer and City entered into a Third Amendment to the Original Agreement, as amended, 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 (the "**Third Amendment**"). The Original Agreement, as modified by the First, Second and Third Amendments, may be referred to herein as the "**Agreement**."

F. Buyer now desires to purchase the Property in two phases. First, the Buyer desires to purchase that portion of the Property described in Exhibit A-1a, attached hereto and incorporated herein by reference, as the Hotel Property (the "**Hotel Property**"). Thereafter, Buyer desires to purchase the remaining portion of the Property described in Exhibit A-1b, attached hereto and incorporated herein by reference, as the "Retail/Residential Property" (the "**Retail/Residential Property**").

G. The City and Buyer desire to amend the Agreement a fourth time to allow for a phased closing of the Property, with the Hotel Property to close separately from Retail/Residential Property.

H. The City Council of the City of Rohnert Park duly authorized the execution of this Fourth Amendment by resolution adopted on \_\_\_\_\_, 2017.

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

1. Section 1.3, Purchase Price, is hereby deleted in its entirety and replaced with the following:

“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**”), consisting of One Million Three Hundred Fifty-Four Thousand and Nine Hundred Twenty-Five Dollars (\$1,354,925.00) for the Hotel Property (“**Hotel Purchase Price**”) and Five Million Seven Hundred Ninety-Five Thousand and Seventy-Five Dollars (\$5,795,075.00) for the Retail/Residential Property (“**Retail/Residential Purchase Price**”). Each of the Hotel Purchase Price and Retail/Residential Purchase Price shall be paid to Seller at each of the individual Closings for the Hotel Property and Retail/Residential Property, respectively, 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.”

2. Section 1.5, Good Faith Deposits, is hereby deleted in its entirety and replaced with the following:

“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 Retail/Residential Purchase Price at the closing for the Retail/Residential Property 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 Retail/Residential Purchase Price at the closing for the Retail/Residential Property 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 Retail/Residential Purchase Price at the closing for the Retail/Residential Property 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 is not prepared to construct the Hotel.

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

Stadium RP Development  
Partners, LLC 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 Retail/Residential Purchase Price at the closing for the Retail/Residential Property."

3. The following is hereby added to the end of Section 2.1, Buyer's Conditions Precedent to Conveyance: "Buyer's Conditions Precedent to Conveyance shall separately apply to each of the individual Closings of the Hotel Property and the Retail/Residential Property."

4. The following is hereby added to the end of Section 2.1, Seller's Conditions Precedent to Conveyance: "Seller's Conditions Precedent to Conveyance shall separately apply to each of the individual Closings of the Hotel Property and the Retail/Residential Property."

5. Section 3.1(k) is hereby deleted in its entirety and replaced with the following: "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 date of each of the individual Closings. In the event the purchase and sale of the Hotel Property or Retail/Residential Property closes prior to the closing of the other portion of the Property, the representations and warranties set forth in this Section 3.1 shall no longer be applicable to the portion of the Property that has been transferred to Buyer."

6. Section 4.1, Conveyance, is hereby deleted in its entirety and replaced with the following:

**"Section 4.1 Conveyances.** At each of the individual Closings, Seller shall convey title to the Hotel Property or Retail/Residential Property, as applicable, 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."

7. Section 4.3, Title Insurance, is hereby deleted in its entirety and replaced with the following:

**"Section 4.3 Title Insurance.** Concurrently with recordation of each of the Grant Deeds, the Title Company shall issue to Buyer such policy of title insurance for the Hotel Property or Retail/Residential Property, as applicable, 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

Hotel Property or Retail/Residential Property, as applicable, subject only to the Permitted Exceptions and other encumbrances expressly contemplated by this Agreement to be recorded at each of the individual Closings. 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.”

8. Section 6.2(a) is hereby deleted in its entirety and replaced with the following:

“(a) **“Closing”** means the consummation of the purchase and sale of the Property, including both the Hotel Property and the Retail/Residential 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 each of the Grant Deeds, 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. **“Each of the individual Closings”** shall refer to each of the separate phased closings with respect to the Hotel Property and the Retail/Residential Property.”

9. Section 6.3 is hereby deleted in its entirety and replaced with the following:

**“Section 6.3 Deposit of Documents.**

(a) At or before each of the individual Closings, Seller shall deposit into escrow the following items:

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

(2) with respect to the Retail/Residential Property, documentation of a credit towards the Retail/Residential Purchase Price in the amount of the Good Faith Deposit;

(3) a duly executed and acknowledged Grant Deed conveying the Hotel Property or Retail/Residential Property, as applicable, 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 each of the individual Closings, 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 Hotel Purchase Price or Retail/Residential Purchase, adjusted with respect to the Retail/Residential Purchase Price by a credit towards the Retail/Residential 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 Hotel Property or Retail/Residential Property, as applicable: (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 Hotel Property or Retail/Residential Property, as applicable: (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 each of the individual Closings, if any, shall be paid by Seller. Ad valorem taxes and assessments levied, assessed or imposed on the Hotel Property or Retail Residential Property, as applicable, for the period after each of the individual Closings shall be paid by Buyer.

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

10. Section 8.14, Termination, is hereby deleted in its entirety and replaced with the following:

**"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 each of the individual Closings, Buyer's Conditions Precedent to Conveyance have not been satisfied or waived; (iii) by Seller, if prior to each of the individual Closings, 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.”

11. Exhibits A-1a, Legal Description of the Hotel Property, attached hereto, is hereby added to the Agreement and incorporated herein by this reference.

12. Exhibit A-1b, Legal Description of the Retail/Residential Property, attached hereto, is hereby added to the Agreement and incorporated herein by this reference.

13. Except as hereby amended by this Fourth Amendment, the Agreement, as amended by the First, Second and Third Amendments, remains in full force and effect.

*[SIGNATURES ON FOLLOWING PAGE]*

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

**SELLER:**

City of Rohnert Park

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

By: \_\_\_\_\_  
Jake Mackenzie, 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

**EXHIBIT A-1a**

**Legal Description of the Hotel Property**

Real property in the City of Rohnert Park, County of Sonoma, State of California,  
described as follows:

PROPOSED LOT 3 OF THE FIVE CREEK SUBDIVISION BEING A PORTION OF THE  
LANDS OF THE CITY OF ROHNERT PARK AS DESCRIBED IN THAT GRANT DEED  
RECORDED AS DOCUMENT 2001-173231 OFFICIAL RECORDS OF SONOMA COUNTY  
CALIFORNIA, ALSO BEING A PORTION OF:

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 A

**EXHIBIT A-1b**

**Legal Description of the Retail/Residential Property**

Real property in the City of Rohnert Park, County of Sonoma, State of California,  
described as follows:

PROPOSED LOTS 2 AND 4 OF THE FIVE CREEK SUBDIVISION BEING A PORTION OF  
THE LANDS OF THE CITY OF ROHNERT PARK AS DESCRIBED IN THAT GRANT  
DEED RECORDED AS DOCUMENT 2001-173231 OFFICIAL RECORDS OF SONOMA  
COUNTY CALIFORNIA, ALSO BEING A PORTION OF:

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