

RESOLUTION NO. 2017-142

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING A GRANT OF TRAIL EASEMENT AGREEMENT WITH VAST OAK EAST LP FOR A PORTION OF THE HINEBAUGH CREEK TRAIL LOCATED WITHIN THE VAST OAK EAST DEVELOPMENT

WHEREAS, the conditions of approval for the University District Specific Plan require the Developer to dedicate a trail along Hinebaugh Creek, within the project area, to the City; and

WHEREAS, portions of this trail have been dedicated on the approved final maps for the Vast Oak West and Vast Oak developments within the University District; and

WHEREAS, the historic configuration of the large lot parcels that compromise the University District has resulted in a situation where a small portion of the Hinebaugh Creek Trail within the Vast Oak East portion of the development lies outside of the area covered by the approved final maps; and

WHEREAS, the University District developer has offered to dedicate this small portion of the trail through a separate easement agreement in order to satisfy its conditions of approval.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve an agreement by and between Vast Oak LP, a California Limited Partnership, and the City of Rohnert Park, a municipal corporation, for a portion of the Hinebaugh Creek Trail located within the Vast Oak East Development.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Easement Agreement for and on behalf of the City of Rohnert Park in substantially similar form to the agreement attached hereto as Exhibit "A," subject to minor modifications by the City Manager or City Attorney, and to take all actions and execute documents to effectuate the acceptance of the easement and the terms of the agreement, including execution of a certificate of acceptance.

DULY AND REGULARLY ADOPTED this 12th day of December, 2017.

CITY OF ROHNERT PARK


Jake Mackenzie, Mayor

ATTEST:



Caitlin Saldanha, Deputy City Clerk

Attachment: Exhibit A

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

This Document is Recorded
For the Benefit of the
City of Rohnert Park
and is Exempt from Fee
Per Government Code
Sections 6103 and 27383

When Recorded, Mail to:

City of Rohnert Park
130 Ayram Ave.
Rohnert Park, CA 94928

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF TRAIL EASEMENT AGREEMENT

This TRAIL EASEMENT AGREEMENT (this "Agreement") is made and entered into effective as of this 3rd day of November, 2017, by and between Vast Oak Properties L.P., a California limited partnership (the "Grantor"), and the City of Rohnert Park, a municipal corporation (the "Grantee"), with reference to the following facts and intentions:

RECITALS

A. Grantor is the owner of that certain real property located in the City of Rohnert Park, County of Sonoma, State of California (APN 159-550-008), as more particularly identified on Exhibit A, attached hereto (the "Property"); and

B. Grantor is willing to grant to Grantee and Grantee is willing to accept an easement over those certain portions of the Property more particularly described in the legal description attached hereto as Exhibit "A" (the "Easement Area"), for the purpose of maintaining a trail open to the public, on the terms and conditions as provided herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a non-exclusive, perpetual easement in, on, over, under, across, and through the Easement Area for public access on the Property (the "Easement").

For the purposes of this Agreement, the right to use the Easement Area for public access shall include the installation, construction, repair, replacement, maintenance, operation, inspection, restoration, modernization and use of the easement area for any activity reasonably related to providing public access.

2. Restrictions on Use of Easement Area. The Easement Area shall not be used for any purpose other than as a trail easement. The Parties agree that no building, wall, fence, barrier or other permanent structure of any kind which impairs or impedes access to, or use of, any of the Easement shall be constructed or maintained on the Easement Area, nor shall any deep rooted tree, deep rooted shrubs or other plants or vegetation be installed, constructed, erected, placed, planted or maintained in the Easement Area, nor shall the Parties do anything which shall prevent, impair or discourage the use of the Easement.

3. Maintenance of the Easement Area. Grantor may, at its sole cost and expense without reimbursement, landscape the surface of the Easement Area with any vegetation or ground cover that is readily removable, (not to include, however, any trees or deep rooted shrubbery), or make such other use of the surface of the Easement Area that will not unreasonably interfere with Grantees' use and enjoyment of the Easement. Any damage caused by Grantor, or by any of Grantor's lessees, licensees, permittees, agents, employees, contractors and/or successors and assigns that occur in the Easement Area, as a result of the Grantor maintaining the Easement Area shall be promptly repaired, replaced, or compensated for by Grantor, at its sole cost and expense.

4. Indemnification. Grantor shall, indemnify, protect, defend and hold harmless Grantee, and its officers, agents, employees, contractors licensees, permittees, transferees, successors and assigns (each, an "Indemnatee" and collectively, "Indemnitees") from and against all claims, losses, actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), that arise from or occur in whole or in part as a result of the actions during the construction or maintenance of the Easement by Grantor or its employees, agents, representatives, contractors, subcontractors, consultants, or invitees, or the performance of, or failure to perform, Grantors's duties under this Agreement, including, but not limited to, Claims arising out of: (a) injury to or death of persons, including but not limited to employees of Grantor or Grantee; (b) injury to property or other interest of Grantor, Grantee, or any third party; (c) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all of the foregoing relating to the environment and including any liability imposed by law or regulation without regard to fault, excepting only with respect to any Indemnatee, to the extent of any Claim arising from the gross negligence or willful misconduct of such Indemnatee. In the event any action or proceeding is brought against any Indemnatee for any Claim against which Grantor is obligated to indemnify or provide a defense hereunder, Grantor upon written notice from Grantee shall defend such action or proceeding at Grantor's sole expense by counsel reasonably acceptable to Grantee.

5. Rights of Grantor. Grantor shall retain the right for itself, and its personal representatives, heirs, successors, and assigns all rights accruing from its ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not inconsistent with the terms of this Agreement.

6. Recordation and Binding on Successors. This Agreement shall be recorded in the Recorder's Office in the County of Sonoma and, upon such recordation, shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

7. Exclusivity. The Easement granted hereunder is non-exclusive and Grantor reserves the right to use and grant other easement rights in and to the Easement Area, subject to the terms of this Agreement, and provided that such easement rights shall not unreasonably interfere with the Easement rights granted hereunder.

8. Term of Agreement. This Agreement and the Easement contained herein may be terminated upon mutual written consent of the parties.

9. Attorneys' Fees and Governing Law. This Agreement may be enforced by an action at law or in equity and in the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach thereof, the prevailing party in such suit shall be entitled to recover reasonable attorneys' fees from the other party and any judgment or decree rendered in such suit shall include an award therefore. This Agreement shall be governed by, enforced and construed in accordance with the laws of the State of California.

10. Severability. If any provision of this Agreement is determined to be illegal or unenforceable, this determination shall not affect any other provision of this Agreement, and all other provisions shall remain in full force and effect.

11. Notices. All notices or demands which either party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with the appropriate postage paid, by personal delivery, by facsimile or by private overnight courier service to the address or facsimile number set forth below for the respective party, or such other address or facsimile number as either party may designate by written notice to the other. All such notices or demands shall be effective as of actual receipt or refusal of delivery. Should any act or notice required hereunder fall due on a weekend or holiday, the time for performance shall be extended to the next business day.

If to Grantor: Vast Oak Properties L.P.
Attn: Diane Anderson
Email: dea@qhdc.com

With a copy to: University District, LLC.
Attn: Kevin Pohlson
Email: k.pohlson@brookfieldrp.com

If to Grantee: City of Rohnert Park
130 Avram Ave.
Rohnert Park, CA 94928
Attn: City Manager's Office
Phone: 707-588-2232
Email: admin@rpcity.org

With a copy to: Michelle Marchetta Kenyon
Rohnert Park City Attorney

Burke, Williams & Sorensen
1901 Harrison Street, Suite 900
Oakland, CA 94612
Phone: 510-273-8780
Email: mkenyon@bwslaw.com

12. Operative Date. This Agreement shall become effective, operative and enforceable upon the last date upon which a party duly executes this Agreement.

13. Cooperation. Grantor and Grantee promise and agree to use their best efforts to cooperate together in the performance of the rights and obligations provided for in this Agreement. Each party shall use their best efforts to perform their rights and obligations under this Agreement in a manner that is respectful of the others' quiet enjoyment of their property.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and when taken together they shall constitute one and the same Agreement.

15. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by the parties to be charged.

[Signatures on the Following Page]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first written.

GRANTEE:

City of Rohnert Park,
a municipal corporation

By: _____
Name _____
Title: _____

GRANTOR:

VAST OAK PROPERTIES L.P., a
California limited partnership

By: Quaker Hill Development
Corporation, a California
corporation, its general partner

By: [Signature]
Name Diane Anderson
Its President

ACKNOWLEDGEMENT

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, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared _____,
Name of Signer(s)

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(is), 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.

(S E A L)

Signature of Notary Public

ACKNOWLEDGEMENT

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 ~~Idaho~~)

)ss

COUNTY OF Twin Falls)

On 11/03/2017, before me, Jeffrey L. Pierce

Date

Name And Title Of Officer (e.g. "Jane Doe, Notary Public")


Personally appeared Diane Anderson

Name of Signer(s)

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(is), 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~~ ^{Idaho} that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature of Notary Public

Exp.: 03/26/2019

(S E A L)

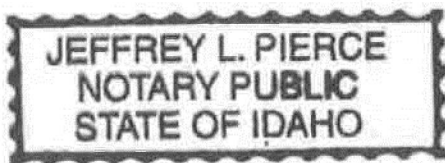


EXHIBIT A

LEGAL DESCRIPTION AND PLAT

EXHIBIT A

DESCRIPTION
TRAIL EASEMENT

ALL THAT REAL PROPERTY LOCATED IN THE CITY OF ROHNERT PARK, COUNTY OF SONOMA, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS OF VAST OAK PROPERTIES, AS DESCRIBED IN DOCUMENT NO. 2015-024047, SONOMA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHWESTERLY CORNER OF RESULTANT PARCEL B, AS DESCRIBED IN DOCUMENT NO. 2015-009066, SONOMA COUNTY RECORDS, THENCE ALONG THE NORTHERLY LINE OF SAID RESULTANT PARCEL B, SOUTH 89°56'07" EAST, 704.50 FEET, TO THE POINT OF BEGINNING;

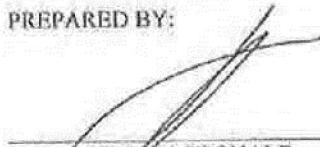
THENCE CONTINUING ALONG SAID NORTHERLY LINE THE FOLLOWING TWO (2) COURSES:

1. SOUTH 89°56'07" EAST, 28.69 FEET;
2. THENCE NORTH 0°00'10" WEST, 19.17 FEET;

THENCE LEAVING SAID NORTHERLY LINE AND ENTERING SAID LANDS OF VAST OAK PROPERTIES, SOUTH 56°17'57" WEST, 34.49 FEET TO THE POINT OF BEGINNING.

CONTAINING 275 SQUARE FEET MORE OR LESS

PREPARED BY:

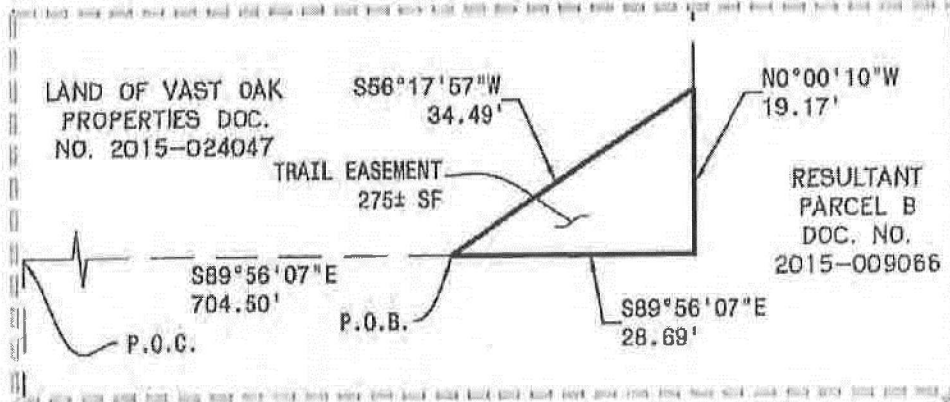

IAN BRUCE MACDONALD
LICENSED LAND SURVEYOR NO. 8817
(EXP. 12/31/17)
STATE OF CALIFORNIA



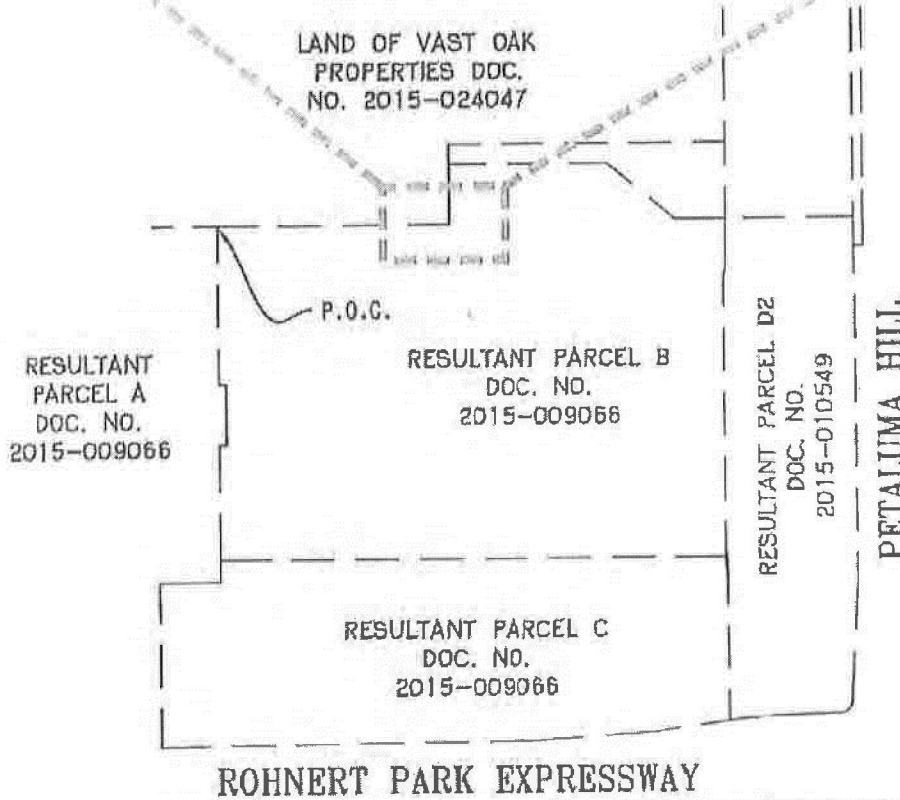
11/1/17
DATE

Mackay & Samps
CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING
5142 Franklin Drive Suite B, Pleasanton, CA. 94588-3358
(925) 226-0600

EXHIBIT "A"
PAGE 2 OF 2



SCALE
1"=20'



NOT TO SCALE

LEGEND

- BOUNDARY OF DESCRIPTION
- EXISTING PROPERTY LINE
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

PLAT TO ACCOMPANY DESCRIPTION

TRAIL EASEMENT

DUBLIN

CALIFORNIA

Mackay & Somps

ENGINEERS PLANNERS SURVEYORS
51428 FRANKLIN DR, PLEASANTON, CA 94588 (925)225-0690

DRAWN	DATE	SCALE	JOB NO.
AG	NOV. 2017	1"=20'	19539.000