

RESOLUTION NO. 2012-116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING AN AMENDED AND RESTATED GRANT OF STORM DRAIN EASEMENT AGREEMENT WITH NBC PARTNERS, LLC FOR RELOCATION OF A PUBLIC STORM DRAIN EASEMENT (APN's 143-051-010 & 143-051-073)

WHEREAS, the City of Rohnert Park has an existing Public Storm Drain Easement encumbering the property located at 6335 Commerce Blvd, also known as Assessor's Parcel Numbers 143-051-010 and 143-051-073 ("Property");

WHEREAS, the owner of the Property, NBC Partners, LLC, proposed a new building over the location of the existing storm drain easement and pipe;

WHEREAS, the City approved the proposed new building under City Council Resolution No. 2010-131 adopted November 23, 2010 which incorporated Planning Commission conditions of approval adopted on October 14, 2010 by Planning Commission Resolution No. 2010-28;

WHEREAS, Planning Commission Resolution No. 2010-28 condition of approval number 6 requires the relocation of the existing Storm Drain Easement;

WHEREAS, the property owner in cooperation with the City has prepared an amended and restated grant of storm drain easement agreement;

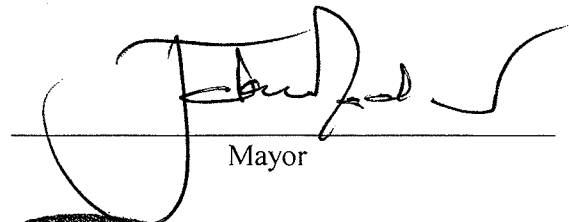
WHEREAS, the property owner and the City are willing to enter the agreement upon the terms and conditions specified therein;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve the amended and restated grant of storm drain easement agreement by and between NBC Partners, LLC, a California limited liability company, and the City of Rohnert Park, a municipal corporation, for relocation of the existing storm drain easement ("Agreement").

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to take all actions to effectuate this agreement for and on behalf of the City of Rohnert Park, including execution, if necessary, in substantially similar form to the Agreement attached hereto as Exhibit A and incorporated herein by this reference, subject to minor modifications by the City Manager or City Attorney.

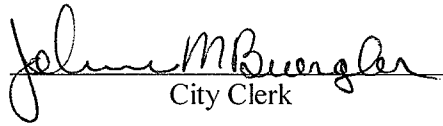
DULY AND REGULARLY ADOPTED this 9th day of October, 2012.

CITY OF ROHNERT PARK



Mayor

ATTEST:



City Clerk



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

Attachment: Exhibit A

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

(ABOVE LINE FOR RECORDER'S USE ONLY)

Exempt from Recording Fee
Per Gov't Code section 27383

AMENDED AND RESTATED GRANT OF STORM DRAIN EASEMENT AGREEMENT

This Amended and Restated Grant of Storm Drain Easement Agreement (the "**Agreement**") is made and entered into as of September 14, 2012 ("**Effective Date**"), between NBC Partners, LLC, a California limited liability company (the "**Grantor**") and the City of Rohnert Park, a municipal corporation ("**Grantee**"). Grantor and Grantee may be referred to collectively herein as the "**Parties**."

RECITALS

A. Grantor is the fee owner of that certain real property located in the City of Rohnert Park, County of Sonoma, State of California, commonly known as North Bay Center and described in Exhibit A attached hereto ("**Grantor's Property**").

B. On March 24, 1977, Grantor's predecessor in interest, Cofego Enterprises, a Limited Partnership, granted to Grantee an easement for drainage purposes recorded on April 29, 1977 as Document Number S09879 in Book 3225 Page 854 of the Sonoma County Records ("**Original Easement**") in and upon that portion of Grantor's Property described therein ("**Original Easement Area**").

C. The Parties desire to amend and restate the Original Easement to partially relocate the Original Easement Area to the location legally described in attached Exhibit B ("**Easement Area**") and graphically shown on attached Exhibit C.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Termination of Original Easement. From and after the Effective Date, the Original Easement shall be of no further force or effect.

2. Grant of Easements. Grantor hereby grants and dedicates to Grantee a non-exclusive perpetual easement in, under and upon the Easement Area, together with the perpetual right of ingress to and egress from said Easement Area over portions of Grantor's Property designed for ingress and egress, for storm drainage purposes, including the rights to excavate, install, replace, repair and maintain storm drain lines and facilities located within the Easement Area.

3. Improvements; Landscaping. Grantor shall keep the Easement Area open and free from any new buildings or permanent structures of any kind. Grantor may pave over and/or landscape the Easement Area, provided that Grantor shall not install any landscaping, including any trees whose mature growth exceeds five feet (5') in height, which could potentially interfere with Grantee's exercise of the easement rights provided for herein.

4. Maintenance. When undertaking any maintenance or repair work, Grantee shall utilize diligent good faith efforts to ensure that the work is undertaken expeditiously and in a manner to reasonably minimize any adverse impact upon business activities that are being conducted on Grantor's Property and shall restore the surface of the Easement Area and any other portion of Grantor's Property disturbed by Grantee to substantially the same condition as before such access, including, but not limited to, the restoration of all improvements, hardscape and landscaping and the repair of all damage caused by such access and/or work performed by or for Grantee.

5. Miscellaneous Provisions.

a. Attorneys' Fees. Should any dispute arise over the interpretation of this Agreement or should any action be brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs.

b. Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties relating to the rights herein granted and the obligations herein set forth. Any prior, contemporaneous, or subsequent written or oral representations and modifications concerning this Agreement shall be of no force or effect. This Agreement may be amended only by a written instrument signed by both Grantor and Grantee.

c. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective heirs, executors, administrators, successors and assigns.

d. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

e. Recitals; Exhibits. The Recitals above and Exhibits attached hereto are incorporated herein by reference.

f. Covenants Running with the Land. Grantor's Property is to be burdened by, and Grantee is to be benefited by, the provisions of this Agreement, and such property is to

be benefited and burdened, as applicable by the covenants in this Agreement and is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the foregoing limitations, restrictions, easements, covenants, obligations and conditions. All provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of Grantor's Property and all parties having or acquiring any right, title, or interest in Grantor's Property and shall be binding upon and inure to the benefit of Grantee and its successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

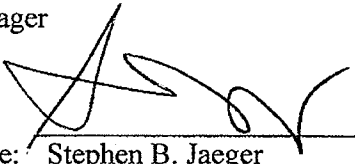
GRANTOR:

NBC PARTNERS, LLC, a California limited liability company

By: Argonaut Investments, LLC, a Delaware limited liability company

Its: Manager

By:

Name:  Stephen B. Jaeger

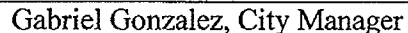
Its: Manager

(signature must be notarized)

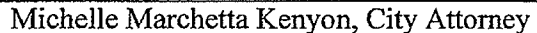
GRANTEE:

CITY OF ROHNERT PARK, a municipal corporation

By:


(signature must be notarized)

APPROVED AS TO FORM:


Michelle Marchetta Kenyon, City Attorney

ACKNOWLEDGMENTS

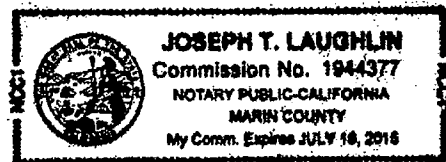
State of California)
) ss
County of MARIN)

On September 14, 2012 before me, JOSEPH T. LAUGHLIN, Notary Public, personally appeared STEPHEN B. JAEGER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Joseph T. Laughlin (Seal)



State of California)
) ss
County of _____)

On _____ before me, _____, 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.

Signature _____ (Seal)

EXHIBIT "A"

DESCRIPTION OF GRANTOR'S PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ROHNERT PARK, COUNTY OF SONOMA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Tract One:

Parcel One, as shown upon the map entitled Rohnert Park, Parcel Map No. 37, filed in the office of the County Recorder of Sonoma County on May 31, 1977, in Book 251 of Maps, at Page(s) 37 and 38, Sonoma County Records.

APN: 143-051-010

Tract Two:

Lot One, as shown upon the map entitled Rohnert Park, Parcel Map No. 150, filed in the office of the County Recorder of Sonoma County on December 6, 1993, in Book 516 of Maps, at Page(s) 37, 38 and 39, Sonoma County Records.

APN: 143-051-073

EXHIBIT B

LEGAL DESCRIPTION OF EASEMENT AREA

All that real property situate in the City of Rohnert Park, County of Sonoma, State of California, more particularly described as follows:

Being a strip of land, 20 feet in width, for drainage purposes, the centerline of said strip of land being more particularly described as follows:

COMMENCING from Point "A" as described in the Easement Deed recorded in Book 3225 of Official Records at Page 854, Sonoma County Records dedicated on Rohnert Park Parcel Map No. 37, filed for record in Book 251 of Maps, Pages 37 and 38, Sonoma County Records, and in the Deed recorded as Document Number 1977-009879, Sonoma County Records; thence North 13°45'16" East 242.59 feet; thence North 00°36'52" West 176.00 feet to the POINT OF BEGINNING; thence North 00°36'52" West 10.00 feet; thence North 43°34'39" East 44.89 feet; thence North 01°16'04" West 61.01 feet; thence North 20°08'30" West 27.45 feet; thence North 56°47'00" East 9.74 feet to the POINT OF TERMINUS.

Prepared By:


Irving L. Schwartz, C.E.



7-12-12

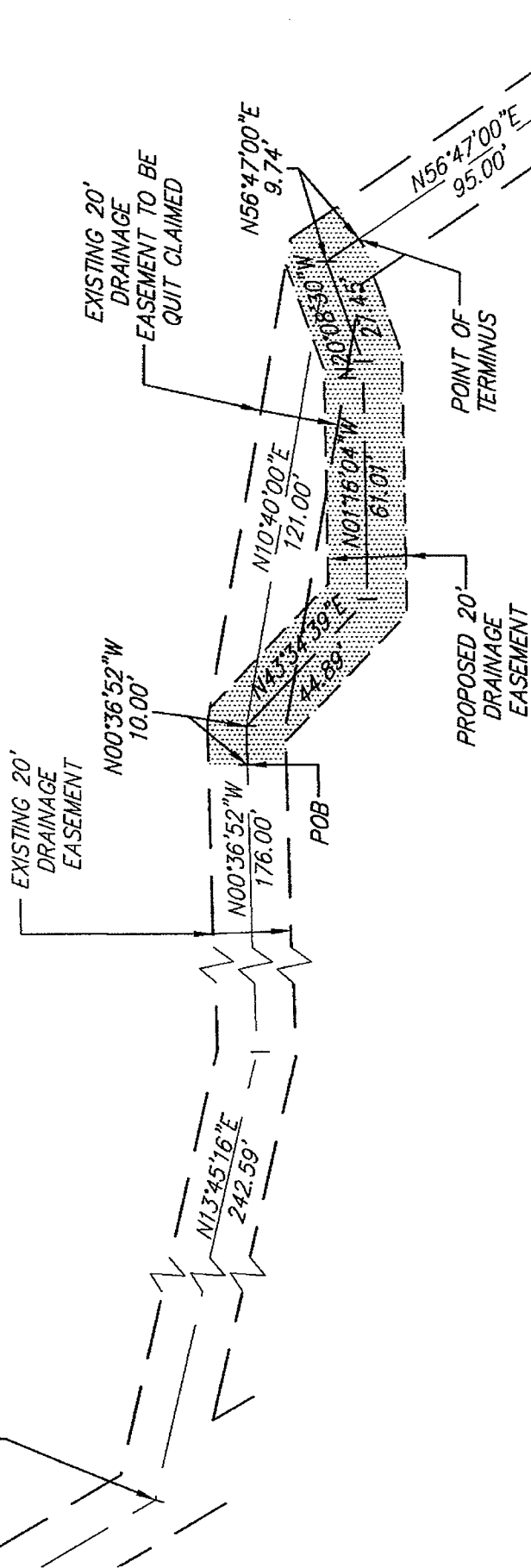
Job No. 8599

N:\GEN\LEGAL\DES\8599\Exhibit B.doc

POC
POINT "A"
PER 3225 OR 854
AND DN 1977-009879



SCALE: 1" = 40'



COMMERCE BLVD.

EXHIBIT C

ILS ASSOCIATES, INC.®
CIVIL ENGINEERING AND LAND SURVEYING

A.P.N. 143-051-073

DATE: 7/12/2012
FILE: 8599EX2.dwg

79 GALLI DRIVE, SUITE A NOVATO, CA 94949-5717 (415)883-9200 FAX (415)883-

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code 27281)

This is to certify that the interest in real property conveyed by the Amended and Restated Grant of Storm Drain Easement Agreement from NBC Partners, LLC, a California limited liability company, to the City of Rohnert Park ("City") dated _____, 2012; is hereby accepted on _____, 2012, by the undersigned officer or agent on behalf of the City pursuant to authority conferred by City Council Resolution No. _____ adopted on _____, 2012, and the City Council consents to the recordation of said document in the Office of the Recorder of Sonoma County, State of California.

Dated: _____, 2012

By: _____

Name: _____

Its: _____

[Notary acknowledgement required]

ACKNOWLEDGMENT

State of California)
) ss
County of _____)

On _____ before me, _____,
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.

Signature _____ (Seal)