

RESOLUTION NO. 2013-134

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING EXECUTION OF AN AGREEMENT FOR ACQUISITION OF RIGHT- OF-WAY, PUBLIC UTILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT WITH C.B. PROPERTIES, INC. AND AUTHORIZING ACCEPTANCE OF RIGHT OF WAY AND EASEMENTS (APN 143-040-064)

WHEREAS, the improvements necessary for the extension of Dowdell Avenue to Business Park Drive (“Dowdell Improvements”) are called for in the City’s Stadium Area Master Plan and are one of the improvements listed within the City’s adopted Public Facilities Financing Plan (RMPC Chapter 3.28 as implemented by Ordinance No. 715 and City Council Resolution No. 2011-112).

WHEREAS, as part of the City’s process of adopting the Stadium Area Master Plan, the Dowdell Improvements were found by the City Planning Commission to be consistent with the City’s General Plan.

WHEREAS, The Spanos Corporation (“Developer”) owns property located on Dowdell Avenue northerly of Carlson Court identified as Sonoma County APN 143-040-125 (“Fiori Estates Property”).

WHEREAS, Developer has agreed to design and construct the Dowdell Improvements on both the on-site and off-site portions of the Fiori Estates Property in exchange for facility fee credits from the City that would otherwise be covered by the Public Facilities Fee assessed to the Fiori Estates apartment project pursuant to Public Facilities Financing Plan.

WHEREAS, C.B. Properties, Inc., a California corporation, owns certain property located along Business Park Drive (APN 143-040-064) a portion of which property is needed to construct the Dowdell Improvements.

WHEREAS, the City has negotiated a Right-of-Way, Public Utility Easement and Temporary Construction Easement that are needed from C.B. Properties, Inc. to construct a portion of the Dowdell Improvements which has been documented in the Agreement with C.B. Properties Inc. for Acquisition of Right-of-Way, Public Utility Easement and Temporary Construction Easement (“Agreement”).

WHEREAS, the Temporary Construction Easement requires that it be countersigned by the City due to City representations contained therein.

WHEREAS, the Agreement requires that an escrow be opened to facilitate the conveyance of the Right-of-Way, Public Utility Easement and Temporary Construction Easement.

WHEREAS, the Right-of-Way, Public Utility Easement and Temporary Construction Easement each includes a certificate of acceptance that must be accepted by the City.

WHEREAS, the City desires to enter into the Agreement as well as accept the Right-of-Way and Easements consistent with the Dowdell Improvements.

WHEREAS, all environmental review required under the California Environmental Quality Act ("CEQA") has been done for the design and construction of the Dowdell Improvements as the Dowdell Improvements were previously analyzed by the City as part of the Final Environmental Impact Report that was prepared for the Stadium Area Master Plan [Resolution No. 2008-86; Stadium Area Master Plan Clearinghouse No. 12005042111].

WHEREAS, neither the obligation to conduct additional environmental review nor the statute of limitations on that prior action is re-triggered by execution of the Agreement or acceptance of the Right of Way and easements for design and construction of the Dowdell Improvements.

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

Section 1. Approval of Agreement for Right-of-Way, Public Utility Easement and Temporary Construction Easement. The City Council of the City of Rohnert Park hereby approves the Agreement for Acquisition of Right-of-Way, Public Utility Easement and Temporary Construction Easement with C.B. Properties, as provided for in Exhibit A hereto which is incorporated by this reference, for property interests located along Dowdell Avenue within Assessor Parcel Number APN 143-040-064, and the Mayor is hereby authorized to execute said Agreement on behalf of the City.

Section 2. Execution of Temporary Construction Easement. The City Manager is hereby authorized to execute the Temporary Construction Easement on behalf of the City and deposit same into escrow, in substantially similar form as provided for in the Exhibit "B" hereto, which is incorporated by this reference, for and on behalf of the City of Rohnert Park.

Section 3. Acceptance of Easements. The City Council hereby accepts the Right-of-Way, Public Utility Easement and Temporary Construction Easement contained in the Agreement conditioned upon the close of escrow and hereby authorizes recording and filing of the Certificates of Acceptance for said Right-of-Way and Easements.

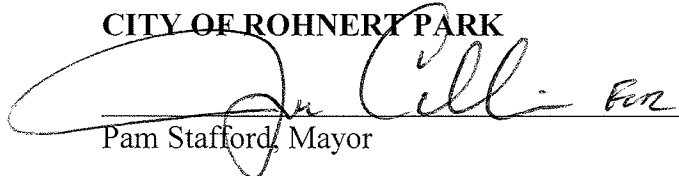
Section 4. Section 65402 Compliance. The Right-of-Way, Public Utility Easement and Temporary Construction Easement necessary for Dowdell Improvements are consistent with the City's General Plan.

Section 5. Escrow Authorization. The City Manager is hereby authorized and directed to facilitate the opening of escrow in the manner set forth in said Agreement. The City Manager is further hereby authorized to execute and deposit into escrow the certificates of acceptance accompanying the Right-of-Way, Public Utility Easement and Temporary Construction Easement, in substantially similar form as provided for in the Exhibit "B" hereto, which is incorporated by this reference, for and on behalf of the City of Rohnert Park.


Section 6. City Clerk Authorization. The City Clerk of the City of Rohnert Park is hereby authorized and directed to cause a certified copy of this resolution to be recorded with the Right-of-Way, Public Utility Easement and Temporary Construction Easement in the office of the Recorder of the Sonoma County, State of California for and on behalf of the City of Rohnert Park in the event that escrow closes in regard to the Agreement for Acquisition of Right-of-Way, Public Utility Easement and Temporary Construction Easement.

DULY AND REGULARLY ADOPTED by the City Council of the City of Rohnert Park this 24th day of September 2013.

CITY OF ROHNERT PARK


Pam Stafford, Mayor

ATTEST:


JoAnne Buergler, City Clerk

Attachments:

- Exhibit A Agreement for Acquisition of Right-of-Way, Public Utility Easement and Temporary Construction Easement with Exhibits (legal descriptions, plat maps and Right-of-Way, Public Utility Easement and Temporary Construction Easement).
- Exhibit B Right-of-Way, Public Utility Easement and Temporary Construction Easement for APN 143-040-064.



AHANOTU: AYE BELFORTE: AYE MACKENZIE: ABSENT CALLINAN: AYE STAFFORD: ABSENT
AYES: (3) NOES: (0) ABSENT: (2) ABSTAIN: (0)

EXHIBIT A
TO
C.B. PROPERTIES
RESOLUTION

**AGREEMENT FOR
ACQUISITION OF RIGHT-OF-WAY, PUBLIC UTILITY EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENT
(INCLUDING ESCROW INSTRUCTIONS)**

This AGREEMENT FOR ACQUISITION OF RIGHT-OF-WAY, PUBLIC UTILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT (this "**Agreement**") is made and entered into as of _____, 2013, by and between C.B. PROPERTIES, INC., a California corporation ("**C.B. Properties**") and the CITY OF ROHNERT PARK, a California municipal corporation (the "**City**"). C.B. Properties and the City may collectively be referred to as the "**Parties**."

RECITALS

A. C.B. Properties is the owner of the property located on Business Park Drive, identified by the Sonoma County Assessor by Assessor's Parcel Number 143-040-064, Rohnert Park, California ("**Greater Parcel**").

B. The Parties mutually desire for City to extend Dowdell Avenue to serve the Greater Parcel and other properties in the Stadium Lands Development Area, Wilfred Dowdell Specific Plan Development Area and Northwest Specific Plan Development Area and provide street frontage improvements, including curb, gutter, sidewalk, limited landscaping and lighting (the "**Project**").

C. In order to proceed with the Project, City will need to acquire from C.B. Properties (i) a permanent right-of-way interest in the approximately 0.44-acre (19,172 square foot) portion of the Greater Parcel more specifically described on Exhibit A (the "**Right of Way**"), (ii) an approximately 3,268 square-foot public utility easement ("**Public Utility Easement**") of approximately five feet in width in, under, along and across the portion of the C.B. Properties Remainder Property, as defined below, adjacent to the Right of Way, as more specifically described in Exhibit B ("**Public Utility Easement Area**") and (iii) an approximately 6,547 square-foot temporary construction easement ("**Temporary Construction Easement**") of approximately ten feet in width in, under, along and across the portion of the C.B. Properties Remainder Property, as defined below, adjacent to the Right of Way, as more specifically described in Exhibit C ("**Temporary Construction Easement Area**"). The portion of the Greater Parcel that will be retained by C.B. Properties after the conveyance of the Right of Way, Public Utility Easement and Temporary Construction Easement to City shall be referred to herein as the "**C.B. Properties Remainder Property**." The Parties anticipate that the Project will increase the value of the C.B. Properties Remainder Property.

D. C.B. Properties desires assurance that the City will assume responsibility for all costs of constructing the Project, including any required environmental mitigation under the United States Endangered Species Act or other laws, orders, rules and regulations pertaining to the protection of natural resources and endangered species.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

1. Incorporation of Recitals. Each of the Recitals set forth above is incorporated herein by this reference.

2. Conveyance of Right of Way, Public Utility Easement and Temporary Construction Easement; Payment. C.B. Properties agrees to convey to the City, and the City agrees to acquire from C.B. Properties, the Right of Way, Public Utility Easement and Temporary Construction Easement (collectively, the "**Property**"), on the terms and conditions set forth herein.

2.1 Purchase and Sale: Settlement of All Claims. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, C.B. Properties agrees to sell the Property to City and settle all related claims, including but not limited to, compensation for the Property and compensation for all damages of every kind and nature suffered, or to be suffered, by reason of the acquisition of the Property and construction of the Project for which the Property is being acquired (including but not limited to those claims referenced in Paragraph 14 of this Agreement); and City agrees to purchase the Property from C.B. Properties, and settle all related claims (including but not limited to those claims referenced in Paragraph 14 of this Agreement), upon the terms and conditions herein set forth.

2.2 Compensation. The total all-inclusive fair and just compensation for City's acquisition of the Property, as well as for all damages of every kind and nature suffered, or to be suffered, by reason of the acquisition of the Property and construction of the Project for which the Property is being acquired, shall be FIVE THOUSAND NINE HUNDRED SIXTY FIVE DOLLARS And No Cents (\$5,965.00) (hereinafter, the "Compensation").

2.3 Payment of Compensation. Prior to the Close of Escrow, City shall deposit or cause to be deposited with Escrow Agent, in cash or by a certified or bank cashier's check made payable to Escrow Agent or a confirmed wire transfer of funds, the Compensation.

2.4 No Relocation. C.B. Properties acknowledges and agrees that that neither City's acquisition of the Property nor the construction and use of the Project have caused or will cause C.B. Properties to be a "displaced person" as that term is used in California's Relocation Assistance Act (Gov. Code §§ 7260 et seq.), California regulations (Title 25 of California's Code of Regulations), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601-4655), federal regulations (49 C.F.R. Part 24) and City's Relocation Guidelines. As such, C.B. Properties, on behalf of itself and its parent, sister and/or related corporation(s) or company(ies), affiliates, divisions, subsidiaries, predecessors, successors, and each of them, releases and discharges City, and any and all of City's employees, agents, officers, servants, representatives, contractors, attorneys and assigns, from any and all liability, responsibility or obligation to provide relocation benefits and assistance of any kind whatsoever arising out of or in any way relating to any claim for relocation assistance and compensation under applicable provisions of, inter alia, the Uniform Relocation Assistance and Real Property

Acquisition Policies Act (42 U.S.C. §§ 4601 et seq.), California's Relocation Assistance Act (Gov. Code §§ 7260 et seq.), California regulations, federal regulations and City relocation guidelines resulting from the City's acquisition of the Property and the construction and use of the Project. This paragraph shall survive the Close of Escrow.

3. Condition of Title. Subject to the fulfillment of the Conditions Precedent described in Section 11 below, at Close of Escrow, C.B. Properties shall grant to the City the Right of Way and Public Utility Easement by Grant Deed and Public Utility Easement in the form attached as Exhibit D ("**Grant Deed and Public Utility Easement**") and the Temporary Construction Easement by Easement Deed in the form attached as Exhibit E ("**Temporary Construction Easement**"), free and clear of all recorded and unrecorded liens, encumbrances, assessments, other property, leases, taxes, and exceptions to title, except (i) County and City taxes not yet due and payable; and (ii) such other exceptions of which the City may indicate in writing its acceptance prior to Close of Escrow; and (iii) matters created by, through, or under the City (collectively, the "**Permitted Exceptions**"). Escrow Agent shall at Close of Escrow provide the City with a standard CLTA or ALTA (as the City may request in its sole discretion) policy of title insurance in the amount of \$186,000 issued by the title company, together with any endorsements reasonably requested by the City, showing the Property vested in City, subject only to the Permitted Exceptions set forth above and the printed exceptions and stipulations in the policy. The City shall pay the title policy premium. The term "**Close of Escrow**," if and where written in this Agreement, shall be deemed to have occurred on the date the Grant Deed and Public Utility Easement and Easement Deed and other necessary instruments of conveyance are recorded in the office of the Sonoma County Recorder. If C.B. Properties is unable to deliver the Right of Way, Public Utility Easement and Temporary Construction Easement in the condition described herein, this Agreement may be terminated by the City and neither party shall have any liability to the other with respect to the subject matter hereof. Recordation of instruments delivered through this Escrow is authorized, if necessary or proper in the issuance of the policy of title insurance.

4. Inspections.

4.1 Within 10 calendar days after the Opening of Escrow, C.B. Properties shall make available to City copies of the following items, if any, in C.B. Properties' possession applicable to the Property (collectively, the "Property Documents"): (a) all land and engineering surveys; (b) all soil tests and environment reports; (c) all traffic studies; (d) all building or site plans; and (e) all correspondence from any government authority. City shall pay the cost of copying such information and any other reasonable charges assessed by third parties to inspect or gain access to such information. If any of the foregoing items are not available during the 10 day time period specified above but become available prior to the Closing Date, C.B. Properties shall promptly provide them to City. C.B. Properties shall also provide all other information concerning the Greater Parcel as City may reasonably request. City acknowledges and agrees that the Property Documents are provided for informational purposes only and without representation or warranty of any kind or nature regarding their significance, accuracy or completeness.

4.2 During the period commencing on the Opening of Escrow and, except as provided below with respect to a Phase II environmental analysis, terminating on and including 30 days following the Opening of Escrow (the "Feasibility Period"), City may undertake at City's expense an inspection, investigation and review of the Property, including, but not limited to, the suitability of the Property for City's intended use, the physical condition of the Property, an inspection and examination of soils, environmental factors, including testing, geotechnical factors, and Hazardous Materials, if any, relating to the Property. In the event City reasonably determines that a Phase II environmental analysis is required, City may, at its sole cost and expense, conduct such Phase II analysis, and the termination of the Feasibility Period with respect to such Phase II analysis only will be extended for an additional 30 days. If City disapproves of any of the results of its inspection, investigation and review, City shall have the right to terminate this Agreement by giving written notice of termination to C.B. Properties within 5 days following the end of the Feasibility Period (or within 5 days following the end of the Feasibility Period as extended with respect to a Phase II environmental analysis). Upon any termination of this Agreement pursuant to the terms of this Section 6.2, both City and C.B. Properties shall be relieved of all further obligation and liability to each other under this Agreement, except for such as have accrued prior to the date of termination, and all the funds and documents deposited with Escrow Agent shall be promptly refunded or returned, as the case may be, by Escrow Agent to the depositing party.

4.3 Access to the Property during the Feasibility Period shall be given to City and its authorized representatives upon 1 business day's prior notice to C.B. Properties. Any environmental investigation of the Property beyond a so-called "Phase 1 Site Assessment" must first be approved by C.B. Properties in writing, which approval shall not be unreasonably withheld or delayed. C.B. Properties' approval may be conditioned on City providing C.B. Properties with split samples from any environmental investigation. The plans for any inspection requiring any physical penetration of the surface or subsurface of the Property must first be delivered to and approved by C.B. Properties, which approval shall not be unreasonably withheld or delayed, and following the completion of any such inspection City shall promptly restore the Property to its prior condition. City agrees to indemnify, protect and defend C.B. Properties against and hold C.B. Properties harmless from all losses, costs, damages, liabilities, liens and expenses, including reasonable attorney fees, arising in connection with City's or its authorized representatives' inspection, investigation or review of the Property. Such indemnification obligation shall survive any termination of this Agreement.

5. Escrow. The City and C.B. Properties will open an escrow for the conveyances described in this Agreement ("**Escrow**") at Stewart Title of California, Inc., 2850 Cordelia Road, Suite 100, Fairfield, CA 94534, attn. Sandy Veveiros ("**Escrow Agent**"). This Agreement, together with any supplementary escrow instructions prepared by Escrow Agent and executed by the City and C.B. Properties, constitutes the joint escrow instructions of the City and C.B. Properties, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The Parties agree to do all acts necessary to close this Escrow in the shortest possible time.

5.1 Documents. Prior to Close of Escrow C.B. Properties shall execute, acknowledge and deliver into Escrow the Grant Deed and Public Utility Easement and Temporary Construction Easement. Certificates of Acceptance, prepared pursuant to the

requirements of California Government Code Section 27281 (“**Certificates of Acceptance**”) shall be executed, acknowledged and delivered into Escrow by the City on or before Close of Escrow. The City and C.B. Properties agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.

5.2 Escrow Account. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any state or national bank doing business in the State of California. All disbursements shall be made by check from such account.

6. Escrow Agent Authorization. Escrow Agent is authorized to, and shall:

6.1 Pay and Charge the City. Pay and charge the City for any Escrow fees, recording fees, title insurance premium and any endorsements thereto, and other costs and expenses of Escrow payable under Section 9, below.

6.2 Disbursement; Recordation and Delivery of Documents. Disburse funds; record the Grant Deed and Public Utility Easement and Temporary Construction Easement in that order; deliver the title policy to the City; and deliver conformed copies of the Grant Deed and Public Utility Easement, Temporary Construction Easement when conditions of the Escrow have been fulfilled by the City and C.B. Properties.

7. Time Limits. All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.

8. Time of the Essence. TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND, EXCEPT AS OTHERWISE PROVIDED BELOW, ESCROW IS TO CLOSE 60 DAYS AFTER ESCROW IS OPENED AS SET FORTH IN SECTION 5 OF THIS AGREEMENT OR AT SUCH EARLIER OR LATER TIME AS MAY BE AGREED UPON IN WRITING BY THE CITY AND C.B. PROPERTIES, UNLESS SAID DATE IS EXTENDED BY THE MUTUAL WRITTEN AGREEMENT OF THE PARTIES. If this Escrow is not in condition to close by such date, then any party who has fully complied with this Agreement may, in writing, demand the return of its money or property; provided, however, no demand for return shall be recognized until five days after Escrow Agent shall have mailed copies of demand to the other party at the addresses shown in the notice provisions below, and if any objections are raised within such five-day period, Escrow Agent is authorized to hold all money, papers and documents until instructed by a court of competent jurisdiction or mutual instructions.

9. Escrow Agent Responsibility. The responsibility of the Escrow Agent under this Agreement is expressly limited to Sections 1 through 12 of this Agreement and to its liability under any policy of title insurance issued in regard to this Escrow.

10. Escrow Fees, Charges and Costs. Recording fees and all usual fees, charges, and costs which arise in this Escrow shall be paid by the City.

11. Transfer Taxes. No transfer tax shall be due because the City is a public entity.

12. Conditions Precedent to Close of Escrow.

12.1 The City's Conditions Prior to Closing. The obligation of the City to acquire the Right of Way, the Public Utility Easement and the Temporary Construction Easement is subject to the satisfaction of the following conditions:

(a) C.B. Properties shall deliver through Escrow the executed, acknowledged and recordable Grant Deed and Public Utility Easement and Temporary Construction Easement.

(b) C.B. Properties shall deliver through Escrow such other documents as are necessary to comply with C.B. Properties' obligations under this Agreement.

(c) C.B. Properties shall not be in default of any of its obligations under the terms of this Agreement.

(d) All of C.B. Properties' representations and warranties made as of the date of this Agreement shall continue to be true and correct as of Close of Escrow.

(e) Escrow Agent shall have committed to deliver to the City an owner's title insurance policy as required by Section 3 hereof.

On failure of any of the conditions set forth above, the City may terminate its obligations under this Agreement with no further liability to C.B. Properties by giving notice to C.B. Properties on or before the expiration of the time allowed for each condition. The City's failure to elect to terminate its obligations shall constitute a waiver of the condition by the City.

12.2 C.B. Properties' Conditions Precedent to Closing. The obligation of C.B. Properties to convey the Right of Way, the Public Utility Easement and the Temporary Construction Easement is subject to the satisfaction of the following conditions:

(a) The City shall not be in default of any of its obligations under the terms of this Agreement.

(b) The City shall have deposited with the Escrow Agent duly executed and acknowledged Certificates of Acceptance and other documents required to close Escrow, closing costs, and all other funds required for closing.

(c) The City shall have deposited with the Escrow Agent the Compensation.

On failure of any of the conditions set forth above, C.B. Properties may terminate its obligations under this Agreement with no further liability to the City by giving notice to the City on or before the expiration of the time allowed for each condition. C.B. Properties' failure to elect to terminate its obligations shall constitute a waiver of the condition by C.B. Properties.

13. Closing Statement. C.B. Properties instructs Escrow Agent to release a copy of C.B. Properties' closing statement to the City.

14. Warranties, Representations, and Covenants of C.B. Properties. C.B. Properties hereby makes the following warranties, representations, and/or covenants to the City, which shall survive the Close of Escrow:

14.1 Pending Claims. To the best of C.B. Properties' knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Right of Way, Public Utility Easement Area or Temporary Construction Easement Area or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

14.2 Encroachments. To the best of C.B. Properties' knowledge, there are no encroachments onto the Right of Way, the Public Utility Easement and the Temporary Construction Easement by improvements on any adjoining property, nor do any improvements located on the Right of Way, the Public Utility Easement and the Temporary Construction Easement encroach on other properties.

14.3 Title. Until Close of Escrow, C.B. Properties shall not intentionally do anything which would impair C.B. Properties' title to any of the Property.

14.4 Condition of Land. To the best of C.B. Properties' knowledge without inquiry, there are no substances, materials or conditions on the Right of Way, Public Utility Easement Area or Temporary Construction Easement Area that qualify as a Hazardous Material (as defined below) or otherwise violate any Environmental Law (as defined below). For the purposes of this Agreement, the following items have the following meanings:

(i) "Environmental Law" means any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980) and RCRA (Resources Conservation and Recovery Act of 1976).

(ii) "Hazardous Material" means any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products.

14.5 Conflict with Other Obligations. To the best of C.B. Properties' knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which C.B. Properties or the Right of Way, Public Utility Easement Area or Temporary Construction Easement Area may be bound.

14.6 Authority. C.B. Properties is the owner of and has the full right, power, and authority to sell, convey, and grant the Right of Way, Public Utility Easement and Temporary Construction Easement to the City as provided herein and to carry out C.B. Properties' obligations hereunder. Each party executing this Agreement on behalf of C.B. Properties represents and warrants that such person is duly and validly authorized to do so on behalf of C.B. Properties.

14.7 Bankruptcy. Neither C.B. Properties nor any related entity is the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for C.B. Properties to be able to transfer the Right of Way, Public Utility Easement and Temporary Construction Easement as provided herein.

14.8 Governmental Compliance. To the best of C.B. Properties' knowledge, C.B. Properties has not received any notice from any governmental agency or authority alleging that the Right of Way, Public Utility Easement Area or Temporary Construction Easement Area is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by C.B. Properties following the date this Agreement is signed by the City, C.B. Properties shall notify the City within ten days of receipt of such notice. C.B. Properties then, at its option, may either elect to perform the work or take the necessary corrective action prior to Close of Escrow or refuse to do so, in which case C.B. Properties shall notify the City of such refusal and the City shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement.

14.9 No Tenancies. There are no leases, tenancies, sublease or any other forms of occupancy agreements granting any other party a possessory interest in the Right of Way, Public Utility Easement Area or Temporary Construction Easement Area. C.B. Properties acknowledges that the City is relying on C.B. Properties' representation and warranty herein. In the event that this representation is untrue, then without limiting the City's recourse for C.B. Properties' breach, if such other tenants or occupants shall be entitled to relocation or other benefits, C.B. Properties shall have the sole and exclusive responsibility for providing all such benefits and paying all costs required to comply with all applicable federal and state laws, rules, and regulations and satisfying all claims of such parties. C.B. Properties hereby agrees to indemnify, defend, protect and hold the Released Parties harmless from and against any claims asserted against or sustained by the Released Parties arising from its breach of this representation.

14.10 Change of Situation. Until Close of Escrow, C.B. Properties shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 13 not to be true as of the Conveyance, immediately give written notice of such fact or condition to the City.

15. Waiver of Property Rights and Interests. C.B. Properties for itself and for its agents, successors and assigns fully releases, acquits and discharges the City and its officers, officials, council members, employees, attorneys, accountants, other professionals, insurers, and agents, and all entities, boards, commissions, and bodies related to any of them (collectively, the "**Released Parties**") from all claims that C.B. Properties and its agents, successors and assigns has or may have against the Released Parties arising out of or related to City's acquisition of the Right of Way, Public Utility Easement and Temporary Construction Easement, including, without limitation, all of C.B. Properties' property rights and interests therein, including but not limited to (i) any improvements, including improvements pertaining to the realty, furniture, fixture, and equipment, (ii) business goodwill, (iii) lost income (past or future); (iv) relocation benefits, (v) severance damages, if any, (vi) economic or consequential damages, (vii) professional consultant fees and attorney's fees and costs, (viii) precondemnation damages, (ix) any right to repurchase, leaseback from City, or receive any financial gain from, the sale of

any portion of the Property; (x) any right to enforce obligation(s) placed upon City pursuant to Code of Civil Procedure sections 1245.245 and 1263.615; (xi) any rights conferred upon C.B. Properties pursuant to Code of Civil Procedure sections 1245.245 and 1263.615 and 1263.025; and (xii) all other costs, and any and all compensable interests, and/or damages, and/or claims, of any kind and nature, claimed or to be claimed, suffered or to be suffered, by C.B. Properties, its agents, successors and assigns by reason of the City's acquisition of the Right of Way, Public Utility Easement and Temporary Construction Easement, provided that nothing herein shall release claims of C.B. Properties for any liability resulting from the City's breach of any agreement, warranty, or covenant for which it is responsible under this Agreement. This waiver does not apply to any claims for damage or injury to any person or property arising from the construction of the Project due to the negligence or willful misconduct of the City's agents or contractors constructing the Project. This paragraph shall survive the Close of Escrow.

16. Waiver of Civil Code Section 1542. C.B. Properties, on behalf of itself and its agents, successors and assigns, expressly waives all rights under Section 1542 of the Civil Code of the State of California ("Section 1542"), or any other federal or state statutory rights or rules, or principles of common law or equity, or those of any jurisdiction, government, or political subdivision thereof, similar to Section 1542 (hereinafter referred to as a "Similar Provision"). Thus, C.B. Properties and its agents, successors and assigns, and any business, enterprise, or venture in which they are involved, may not invoke the benefits of Section 1542 or any Similar Provision in order to prosecute or assert in any manner the matters released in Section 14 above. Section 1542 provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR 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."

City's Initials: _____

C.B. Properties' Initials: BDS

17. Environmental Costs. The City shall be responsible for all costs of constructing the Project on the Property, including any required environmental mitigation for impacts of the Project on the Property or the Temporary Construction Easement Area under the United States Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, or other laws, orders, rules and regulations pertaining to the protection of natural resources and endangered species. The City shall not be responsible for any costs of environmental mitigation of impacts related to the future development of the C.B. Properties Remainder Property by C.B. Properties or its successors.

18. Survival. Any warranties, representations, promises, covenants, agreements, and indemnifications that this Agreement does not require to be fully performed prior to Close of Escrow shall survive Close of Escrow and shall be fully enforceable after Close of Escrow in accordance with their terms.

19. Waiver, Consent and Remedies. Each provision of this Agreement to be performed by the City and C.B. Properties shall be deemed both a covenant and a condition and shall be a material consideration for C.B. Properties' and the City's performance hereunder, as appropriate, and any breach thereof by the City or C.B. Properties shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

20. Attorneys' Fees. In the event any declaratory or other legal or equitable action is instituted between C.B. Properties and the City in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

21. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by reputable overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, three business days after the date of posting by the United States post office; or (iii) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day. Notice of change of address shall be given by written notice in the manner described in this Section 20. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to C.B. Properties:	C.B. Properties Investments, LLC
	2375 Hardies Lane
	Santa Rosa, CA 95403
	Attention: Steve Falk
	Telephone: (707) 526-8563

with a copy to: Anderson, Zeigler, Disharoon, Gallagher & Gray
50 Old Courthouse Square
Santa Rosa, CA 95404
Attention: Wendy D. Whitson, Esq.
Telephone: (707) 545-4910

If to the City: City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928
Attention: City Engineer
Telephone: (707) 588-2226

with a copy to: Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612-3501
Attention: Rafael Mandelman
Telephone: (510) 273-8780

22. Default. Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within ten (10) days from the date of the notice. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within such ten-day period.

23. Interpretation. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate. The words "include" and "including" shall be interpreted as though followed by the words "without limitation." This Agreement shall be interpreted as though jointly prepared by both parties.

24. Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

25. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

26. Governing Law. This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California without reference to its choice of laws rules.

27. Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by the City and C.B. Properties.

28. Counterparts. This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document. This Agreement may be executed by signatures transmitted by facsimile, adobe acrobat or other electronic image files and these signatures shall be valid, binding and admissible as though they were ink originals.

29. Time of Essence. Time is of the essence of each provision of this Agreement.

30. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "**holiday**" shall mean all holidays as specified in sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

31. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

32. Cooperation. Each Party agrees to cooperate with the other in the closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

33. Conveyance Not a Subdivision of Land. The Parties agree and acknowledge that the transfer of the Right of Way, Public Utility Easement and Temporary Construction Easement to the City shall not be considered a division of land under California Government Code section 66428(a)(2).

34. Effective Date. This Agreement shall become effective upon the full execution by the Parties (the "**Effective Date**").

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

[SIGNATURES ON FOLLOWING PAGE]

C.B. PROPERTIES:

C.B. PROPERTIES, INC., a California
corporation

By: Barbara D. Gallagher
Name: Barbara D. Gallagher
Its: VICE President

CITY:

CITY OF ROHNERT PARK, a
California municipal corporation

By: _____
Pam Stafford, Mayor

ATTEST:

By: _____
JoAnne Buergler, City Clerk

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon,
City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lying within the City of Rohnert Park, County of Sonoma, State of California and being a portion of the lands of C.B. Properties, Inc., a California corporation as described by Grant Deed recorded under Document Number 2006-078736, Official Records of Sonoma County, also being a portion of Lot 2 as shown on the map of Rohnert Business Park Subdivision, filed in Book 375 of Maps, Pages 10 and 11, Sonoma County Records, said portion is more particularly described as follows:

Right of Way Dedication

Being all of said lands of C.B. Properties, Inc. lying easterly of the following described line:

Beginning at a ½" iron pipe tagged PLS 7935 marking the northwest corner of Dowdell Avenue Extension, also being the northeast corner of Lot 2 as shown on Parcel Map Number 180, filed in Book 736 Maps, Page 30 through 32, Sonoma County Records, and from which a ½" iron pipe tagged PLS 7935 marking the northeast corner of said Dowdell Avenue Extension bears North 89°58'40" East 68.01 feet; thence northerly along the extension of Dowdell Avenue as shown on said Parcel Map, North 01°03'25" East 1.28 feet; thence on a curve to the right through a central angle of 14°42'20", with a radius of 534.00 feet, for an arc length of 137.06 feet; thence along a curve to the left, through a central angle of 14°42'20", with a radius of 820.00 feet, for an arc length of 210.46 feet; thence North 01°03'25" East 373.50 feet; thence North 54°55'30" West 30.38 feet to the common line between Business Park Drive and said lands of C.B. Properties, Inc., and being the point of terminus of the herein described line.

Containing 0.44 Acres more or less.

Excepting therefrom any portion lying within Parcel "C", said parcel being shown and dedicated to the City of Rohnert Park on said map of Rohnert Business Park Subdivision on August 12, 1985, in Book 375 of Maps, Pages 10 and 11.

Basis of Bearings: North 89°58'40" East between found ½" iron pipes along the northerly line of the lands of Lot 4 as shown on Parcel Map Number 160, filed in Book 736 of Maps, Pages 30 and 32, Sonoma County Records.

EXHIBIT B

**LEGAL DESCRIPTION OF THE
PUBLIC UTILITY EASEMENT AREA**

Lying within the City of Rohnert Park, County of Sonoma, State of California and being a portion of the lands of C.B. Properties, Inc., a California corporation as described by Grant Deed recorded under Document Number 2006-078736, Official Records of Sonoma County, also being a portion of Lot 2 as shown on the map of Rohnert Business Park Subdivision, filed in Book 375 of Maps, Pages 10 and 11, Sonoma County Records, said portion is more particularly described as follows:

Public Utility Easement

Being a 5.00 foot wide strip of land, the easterly line of said strip being the same as the westerly line of the above-described 0.48 acre parcel of land.

The sidelines of said 5.00 foot strip shall be lengthened or shortened so as to terminate at the southerly boundary line of said lands of C.B. Properties, Inc., and to the north at said common line.

Containing 3,268 Square Feet more or less.

Excepting therefrom any portion lying within Parcel "C", said parcel being shown and dedicated to the City of Rohnert Park on said map of Rohnert Business Park Subdivision on August 12, 1985, in Book 375 of Maps, Pages 10 and 11.

Being a portion of APN 143-040-064.

Basis of Bearings: North 89°58'40" East between found ½" iron pipes along the northerly line of the lands of Lot 4 as shown on Parcel Map Number 160, filed in Book 736 of Maps, Pages 30 and 32, Sonoma County Records.

EXHIBIT C

LEGAL DESCRIPTION OF THE TEMPORARY CONSTRUCTION EASEMENT AREA

Lying within the City of Rohnert Park, County of Sonoma, State of California and being a portion of the lands of C.B. Properties, Inc., a California corporation as described by Grant Deed recorded under Document Number 2006-078736, Official Records of Sonoma County, also being a portion of Lot 2 as shown on the map of Rohnert Business Park Subdivision, filed in Book 375 of Maps, Pages 10 and 11, Sonoma County Records, said portion is more particularly described as follows:

A 10.00 foot wide strip of land, the easterly line of said strip being described as follows:

Beginning at a ½" iron pipe tagged PLS 7935 marking the northwest corner of Dowdell Avenue Extension, also being the northeast corner of Lot 2 as shown on Parcel Map Number 180, filed in Book 736 Maps, Page 30 through 32, Sonoma County Records, and from which a ½" iron pipe tagged PLS 7935 marking the northeast corner of said Dowdell Avenue Extension bears North 89°58'40" East 68.01 feet; thence northerly along the extension of Dowdell Avenue as shown on said Parcel Map, North 01°03'25" East 1.28 feet; thence on a curve to the right through a central angle of 14°42'20", with a radius of 534.00 feet, for an arc length of 137.06 feet; thence along a curve to the left, through a central angle of 14°42'20", with a radius of 820.00 feet, for an arc length of 210.46 feet; thence North 01°03'25" East 373.50 feet; thence North 54°55'30" West 30.38 feet to the common line between Business Park Drive and said lands of C.B. Properties, Inc., and being the point of terminus of the herein described line.

Containing 6,547 Square Feet more or less.

Excepting therefrom any portion lying within Parcel "C", said parcel being shown on and dedicated to the City of Rohnert Park on said map of Rohnert Business Park Subdivision on August 12, 1985, in Book 375 of Maps, Pages 10 and 11.

The sidelines of said 10.00 foot wide strip shall be lengthened or shortened so as to terminate at the northerly and southerly boundary line of said lands of C.B. Properties, Inc., and at the northerly and southerly line of said Parcel "C."

END OF DESCRIPTION

Being a portion of APN 143-040-064

Basis of Bearings: North 89°58'40" East between found ½" iron pipes along the northerly line of the lands of Lot 4 as shown on Parcel Map Number 160, filed in Book 736 of Maps, Pages 30 and 32, Sonoma County Records.

EXHIBIT D

RECORDING REQUESTED BY:
Stewart Title of California
No recording fees due pursuant to Government
Code Section 6103
WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO:
City of Rohnert Park
Attn: Richard F. Pedroncelli
130 Avram Ave.
Rohnert Park, CA 94928

ORDER NO. 7931-415928
ESCROW NO. 7903-415928
APN. 143-040-064 (portion of)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED AND PUBLIC UTILITY EASEMENT

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX is: No consideration R & T 11922-Deed to a Public Agency

- ☐ Monument Preservation Fee is:
☒ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale.
☐ Unincorporated area: ☒ City of Rohnert Park, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
C.B. Properties, Inc., a California Corporation

hereby GRANT(S) to
City of Rohnert Park, a Municipal corporation

the following described real property in the City of Rohnert Park, County of Sonoma, State of California
LEGAL DESCRIPTION ON EXHIBIT A

DATE: July 31, 2013

C.B. Properties, Inc.

BY: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me,
_____ a 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)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

EXHIBIT D

Exhibit "A"

Legal Description

Right of Way Dedication and Public Utility Easement

Lying within the City of Rohnert Park, County of Sonoma, State of California and being a portion of the lands of C.B. Properties, Inc., a California corporation as described by Grant Deed recorded under Document Number 2006-078736, Official Records of Sonoma County, also being a portion of Lot 2 as shown on the map of Rohnert Business Park Subdivision, filed in Book 375 of Maps, Pages 10 and 11, Sonoma County Records, said portion is more particularly described as follows:

Right of Way Dedication

Being all of said lands of C.B. Properties, Inc. lying easterly of the following described line:

Beginning at a ½" iron pipe tagged PLS 7935 marking the northwest corner of Dowdell Avenue Extension, also being the northeast corner of Lot 2 as shown on Parcel Map Number 180, filed in Book 736 Maps, Page 30 through 32, Sonoma County Records, and from which a ½" iron pipe tagged PLS 7935 marking the northeast corner of said Dowdell Avenue Extension bears North 89°58'40" East 68.01 feet; thence northerly along the extension of Dowdell Avenue as shown on said Parcel Map, North 01°03'25" East 1.28 feet; thence on a curve to the right through a central angle of 14°42'20", with a radius of 534.00 feet, for an arc length of 137.06 feet; thence along a curve to the left, through a central angle of 14°42'20", with a radius of 820.00 feet, for an arc length of 210.46 feet; thence North 01°03'25" East 373.50 feet; thence North 54°55'30" West 30.38 feet to the common line between Business Park Drive and said lands of C.B. Properties, Inc., and being the point of terminus of the herein described line.

Containing 0.44 Acres more or less.

Excepting therefrom any portion lying within Parcel "C", said parcel being shown and dedicated to the City of Rohnert Park on said map of Rohnert Business Park Subdivision on August 12, 1985, in Book 375 of Maps, Pages 10 and 11.

Public Utility Easement

Being a 5.00 foot wide strip of land, the easterly line of said strip being the same as the westerly line of the above-described 0.48 acre parcel of land.

The sidelines of said 5.00 foot strip shall be lengthened or shortened so as to terminate at the southerly boundary line of said lands of C.B. Properties, Inc., and to the north at said common line.

Containing 3,268 Square Feet more or less.

1360 North Dutton Avenue, Suite 130, Santa Rosa, CA 95401
Tel: (707) 542-6268 Fax: (707) 542-2106
www.cinquinipassarino.com
CPI No.: 6478-12

EXHIBIT D

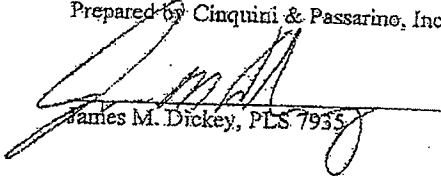
END OF DESCRIPTION

Excepting therefrom any portion lying within Parcel "C", said parcel being shown and dedicated to the City of Rohnert Park on said map of Rohnert Business Park Subdivision on August 12, 1985, in Book 375 of Maps, Pages 10 and 11.

Being a portion of APN 143-040-064

Basis of Bearings: North 89°58'40" East between found ½" iron pipes along the northerly line of the lands of Lot 4 as shown on Parcel Map Number 160, filed in Book 736 of Maps, Pages 30 and 32, Sonoma County Records.

Prepared by Cinquini & Passarino, Inc.


James M. Dickey, PLS 7935



7/26/2013
Date

1360 North Dutton Avenue, Suite 150, Santa Rosa, CA 95401
Tel: (707) 542-6268 Fax: (707) 542-2106
www.cinquinipassarino.com
CPI No.: 6478-12
Page 2 of 2

EXHIBIT D

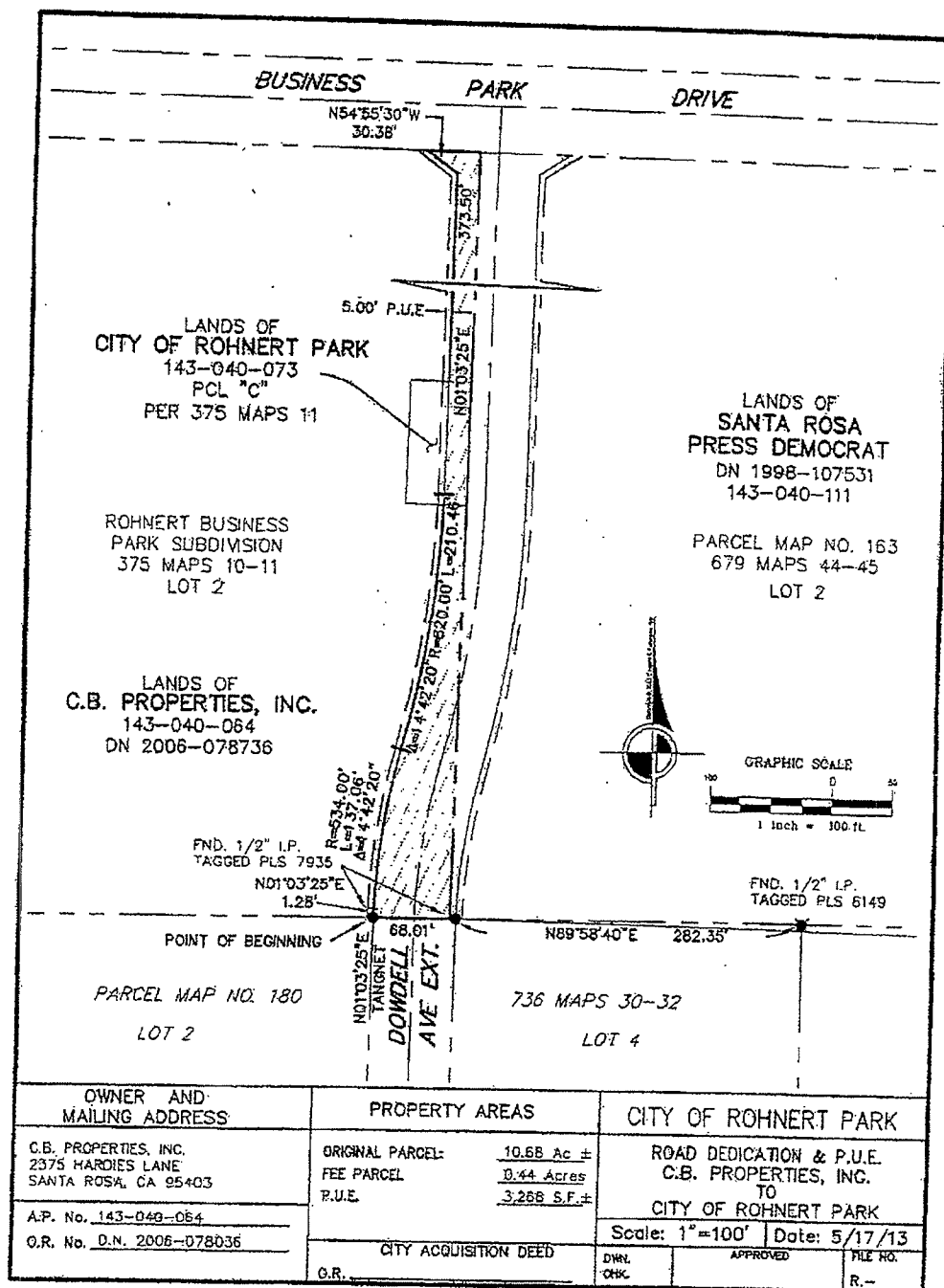


EXHIBIT E

Recording Requested by

and when Recorded, return to:

Department of Engineering
City of Rohnert Park
City Hall
6750 Commerce Blvd.
Rohnert Park, CA 94928-2411
Attn: Richard F. Pedroncelli

**EXEMPT FROM RECORDING FEES PER
GOVERNMENT**

CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

TITLE OF DOCUMENT

**THIS PAGE HERE TO PROVIDE ADEQUATE SPACE FOR RECORDING
INFORMATION**

(Government Code §§ 6103, 27361.6)

Recorded at the request of:

Department of Engineering
City of Rohnert Park
City Hall
6750 Commerce Blvd.
Rohnert Park, CA 94928-2411
Attn: Richard F. Pedroncelli

APN: 143-040-064 (portion)

Stewart Title of California
Order No.: 7931-415928
Escrow No.: 7903-415928

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

For good and valuable consideration pursuant to that certain Property Purchase Agreement executed by the parties hereto on or about _____ (AGREEMENT), the undersigned, C.B. PROPERTIES, INC., a California Corporation (GRANTOR), hereby grants to the CITY OF ROHNERT PARK, A MUNICIPAL CORPORATION (CITY), and its successors and assigns, a Temporary Construction Easement, over, across, under and through the real property situated in the City of Rohnert Park, County of Sonoma, State of California, described and depicted in Exhibits A and B attached hereto (TCE AREA) for public road construction and conformance purposes related to the **DOWDELL AVENUE EXTENSION PROJECT (PROJECT)**.

This Temporary Construction Easement is for a period of one (1) year, to commence upon fourteen (14) days written notice from the CITY to GRANTOR, and shall terminate one (1) year after such commencement. In the event the CITY occupies the TCE Area beyond one (1) year, the CITY shall pay GRANTOR, on a prorated month-to-month basis, an additional \$0.03 per square foot per year of use beyond the initial one-(1) year term. In no event shall this Temporary Construction Easement extend beyond the completion of construction of the PROJECT.

The rights and obligations contained in this Grant of Temporary Construction Easement will (a) run with the larger parcel of which the TCE AREA is a part, and burden, inure to, be for the benefit of and be binding on said property, GRANTOR and its successors and assigns, and shall be an equitable servitude of GRANTOR and its successors and assigns, and (b) constitute an easement in gross for the benefit of the CITY and its successors and assigns, and will be binding on the CITY and its successors and assigns.

IN WITNESS WHEREOF, the duly authorized representatives of the Grantor and Grantee have executed this Agreement as of the date first written above.

GRANTOR

C.B. Properties, a California corporation

By: _____
Print Name:

Title: _____

Date: _____

GRANTEE

CITY OF ROHNERT PARK,
a municipal corporation

By: _____
Gabriel A. Gonzalez, City Manager

Date: _____

Approved as to form:

By: _____
Michelle Marchetta Kenyon,
City Attorney

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in
real property conveyed above is
hereby accepted by order of the City
Council of the City of Rohnert Park
pursuant to City Council Resolution
No. _____ dated _____
and the Grantee consents to
recordation thereof by its duly
authorized officer.

CITY OF ROHNERT PARK,
a municipal corporation

By: _____

Dated: _____

STATE OF CALIFORNIA)

COUNTY OF)

On _____, 20____, before me, _____, (here insert name and title of the officer), 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)

STATE OF CALIFORNIA)

COUNTY OF)

On _____, 20____, before me, _____, (here insert name and title of the officer), 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

TEMPORARY CONSTRUCTION EASEMENT AREA

Exhibit "A"
Legal Description
Temporary Construction Easement

Lying within the City of Rohnert Park, County of Sonoma, State of California and being a portion of the lands of C.B. Properties, Inc., a California corporation as described by Grant Deed recorded under Document Number 2006-078736, Official Records of Sonoma County, also being a portion of Lot 2 as shown on the map of Rohnert Business Park Subdivision, filed in Book 375 of Maps, Pages 10 and 11, Sonoma County Records, said portion is more particularly described as follows:

A 10.00 foot wide strip of land, the easterly line of said strip being described as follows:

Beginning at a ½" iron pipe tagged PLS 7935 marking the northwest corner of Dowdell Avenue Extension, also being the northeast corner of Lot 2 as shown on Parcel Map Number 180, filed in Book 736 Maps, Page 30 through 32, Sonoma County Records, and from which a ½" iron pipe tagged PLS 7935 marking the northeast corner of said Dowdell Avenue Extension bears North 89°58'40" East 68.01 feet; thence northerly along the extension of Dowdell Avenue as shown on said Parcel Map, North 01°03'25" East 1.28 feet; thence on a curve to the right through a central angle of 14°42'20", with a radius of 534.00 feet, for an arc length of 137.06 feet; thence along a curve to the left, through a central angle of 14°42'20", with a radius of 820.00 feet, for an arc length of 210.46 feet; thence North 01°03'25" East 373.50 feet; thence North 54°55'30" West 30.38 feet to the common line between Business Park Drive and said lands of C.B. Properties, Inc., and being the point of terminus of the herein described line.

Containing 6,547 Square Feet more or less.

Excepting therefrom any portion lying within Parcel "C", said parcel being shown on and dedicated to the City of Rohnert Park on said map of Rohnert Business Park Subdivision on August 12, 1985, in Book 375 of Maps, Pages 10 and 11.

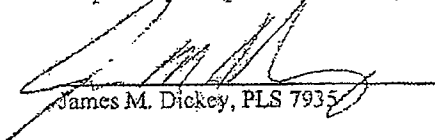
The sidelines of said 10.00 foot wide strip shall be lengthened or shortened so as to terminate at the northerly and southerly boundary line of said lands of C.B. Properties, Inc., and at the northerly and southerly line of said Parcel "C."

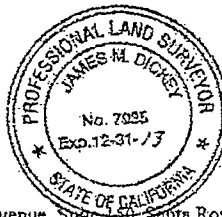
END OF DESCRIPTION

Being a portion of APN 143-040-064

Basis of Bearings: North 89°58'40" East between found ½" iron pipes along the northerly line of the lands of Lot 4 as shown on Parcel Map Number 160, filed in Book 736 of Maps, Pages 30 and 32, Sonoma County Records.

Prepared by Cinquini & Passarino, Inc.


James M. Dickey, PLS 7935



7/26/2013
Date

1360 North Dutton Avenue, Suite 100, Santa Rosa, CA 95401
Tel: (707) 542-6268 Fax: (707) 542-2106
www.cinquinipassarino.com
CPI No.: 6478-12
Page 1 of 1

Exhibit B

TEMPORARY CONSTRUCTION EASEMENT AREA - DIAGRAM

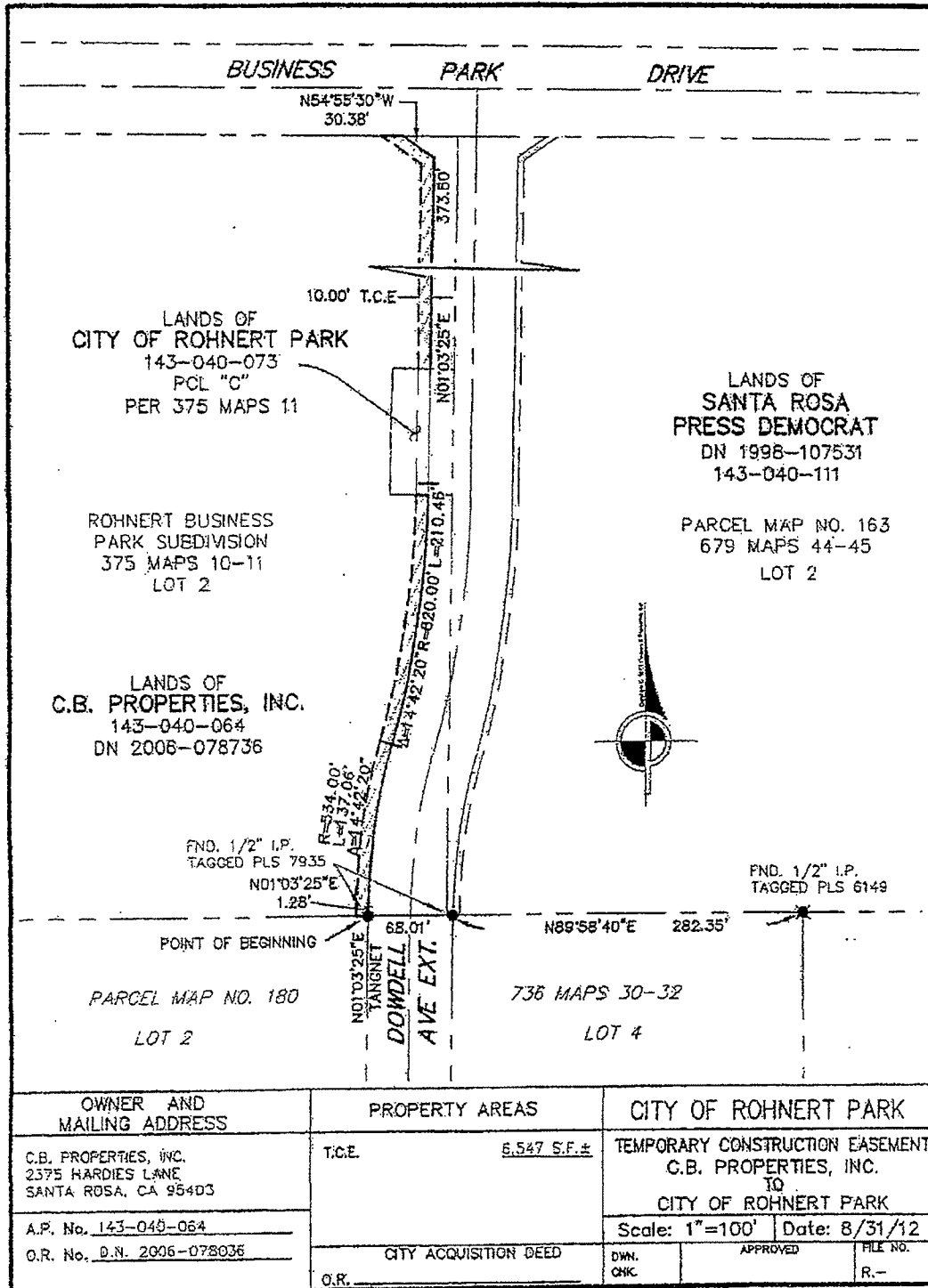


EXHIBIT B
TO
C.B. PROPERTIES
RESOLUTION

RECORDING REQUESTED BY:
Stewart Title of California
No recording fees due pursuant to Government
Code Section 6103
WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO:
City of Rohnert Park
Attn: Richard F. Pedroncelli
130 Avram Ave.
Rohnert Park, CA 94928

ORDER NO. 7931-415928
ESCROW NO. 7903-415928
APN. 143-040-064 (portion of)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED AND PUBLIC UTILITY EASEMENT

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX is: No consideration R & T 11922-Deed to a Public Agency

- ☐ Monument-Preservation Fee is:
☒ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale.
☐ Unincorporated area: ☒ City of Rohnert Park, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
C.B. Properties, Inc., a California Corporation

hereby GRANT(S) to
City of Rohnert Park, a Municipal corporation

the following described real property in the City of Rohnert Park, County of Sonoma, State of California
LEGAL DESCRIPTION ON EXHIBIT A

DATE: July 31, 2013

C.B. Properties, Inc.

BY: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me,
a 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)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the deed dated _____ from _____, to the City of Rohnert Park, a municipal corporation, is hereby accepted by the City Manager on behalf of the grantee pursuant to authority conferred by Resolution No. _____ of the City Council of the City of Rohnert Park adopted on _____ and the grantee consents to recordation thereof said deed.

Dated: _____, 20____

By: _____

Name: _____

Its: City Manager

Exhibit "A"
Legal Description
Right of Way Dedication and Public Utility Easement

Lying within the City of Rohnert Park, County of Sonoma, State of California and being a portion of the lands of C.B. Properties, Inc., a California corporation as described by Grant Deed recorded under Document Number 2006-078736, Official Records of Sonoma County, also being a portion of Lot 2 as shown on the map of Rohnert Business Park Subdivision, filed in Book 375 of Maps, Pages 10 and 11, Sonoma County Records, said portion is more particularly described as follows:

Right of Way Dedication

Being all of said lands of C.B. Properties, Inc. lying easterly of the following described line:

Beginning at a ½" iron pipe tagged PLS 7935 marking the northwest corner of Dowdell Avenue Extension, also being the northeast corner of Lot 2 as shown on Parcel Map Number 180, filed in Book 736 Maps, Page 30 through 32, Sonoma County Records, and from which a ½" iron pipe tagged PLS 7935 marking the northeast corner of said Dowdell Avenue Extension bears North 89°58'40" East 68.01 feet; thence northerly along the extension of Dowdell Avenue as shown on said Parcel Map, North 01°03'25" East 1.28 feet; thence on a curve to the right through a central angle of 14°42'20", with a radius of 534.00 feet, for an arc length of 137.06 feet; thence along a curve to the left, through a central angle of 14°42'20", with a radius of 820.00 feet, for an arc length of 210.46 feet; thence North 01°03'25" East 373.50 feet; thence North 54°55'30" West 30.38 feet to the common line between Business Park Drive and said lands of C.B. Properties, Inc., and being the point of terminus of the herein described line.

Containing 0.44 Acres more or less.

Excepting therefrom any portion lying within Parcel "C", said parcel being shown and dedicated to the City of Rohnert Park on said map of Rohnert Business Park Subdivision on August 12, 1985, in Book 375 of Maps, Pages 10 and 11.

Public Utility Easement

Being a 5.00 foot wide strip of land, the easterly line of said strip being the same as the westerly line of the above-described 0.48 acre parcel of land.

The sidelines of said 5.00 foot strip shall be lengthened or shortened so as to terminate at the southerly boundary line of said lands of C.B. Properties, Inc., and to the north at said common line.

Containing 3,268 Square Feet more or less.

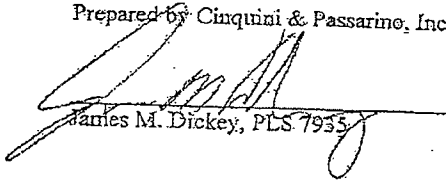
END OF DESCRIPTION

Excepting therefrom any portion lying within Parcel "C", said parcel being shown and dedicated to the City of Rohnert Park on said map of Rohnert Business Park Subdivision on August 12, 1985, in Book 375 of Maps, Pages 10 and 11.

Being a portion of APN 143-040-064

Basis of Bearings: North 89°58'40" East between found ½" iron pipes along the northerly line of the lands of Lot 4 as shown on Parcel Map Number 160, filed in Book 736 of Maps, Pages 30 and 32, Sonoma County Records.

Prepared by Cinquini & Passarino, Inc.


James M. Dickey, PLS 7935



7/26/2013
Date

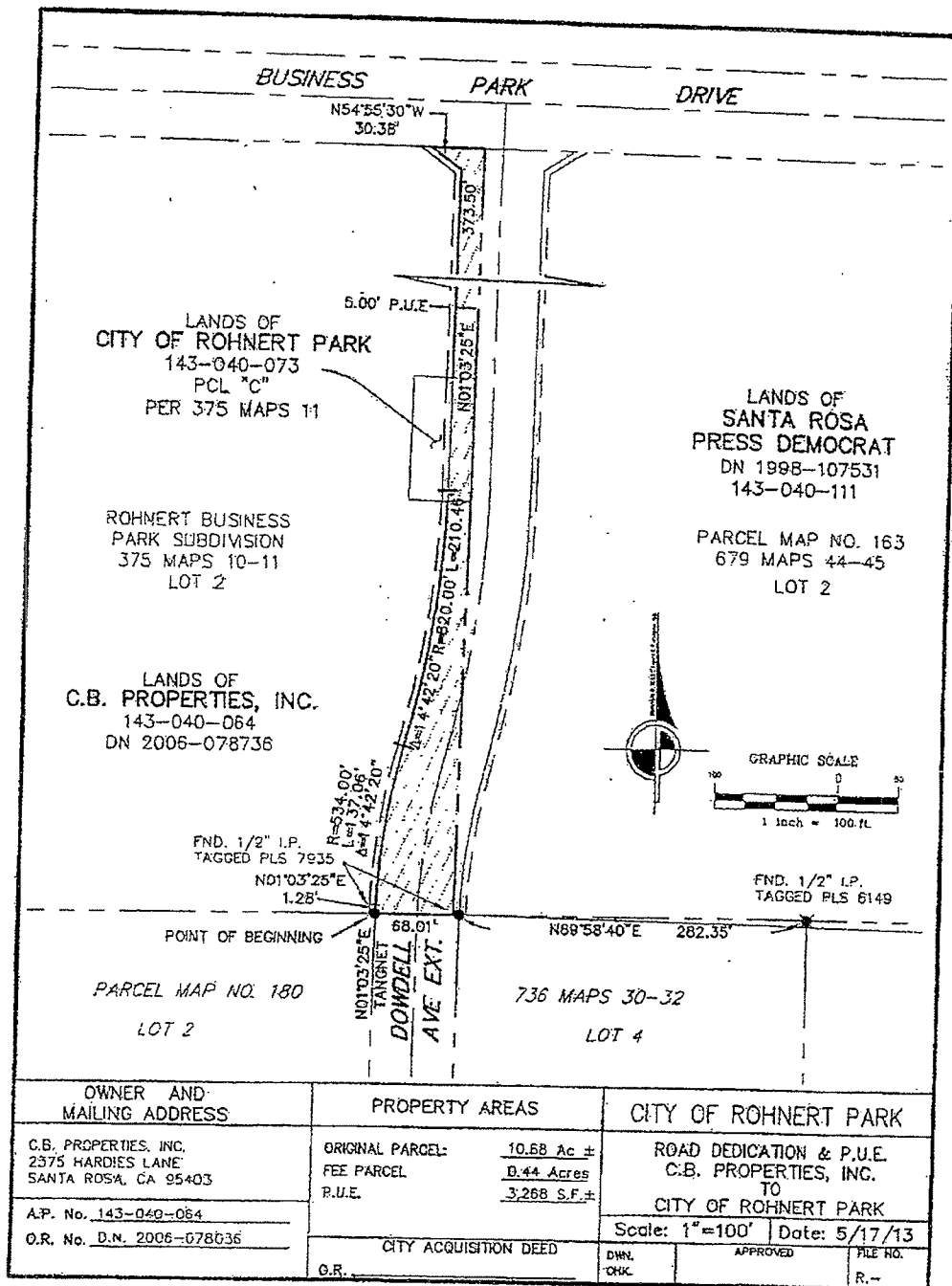
1360 North Dutton Avenue, Suite 150, Santa Rosa, CA 95401

Tel: (707) 542-6268 Fax: (707) 542-2106

www.cinquinipassarino.com

CPI No.: 6478-12

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Recording Requested by

and when Recorded, return to:

Department of Engineering
City of Rohnert Park
City Hall
6750 Commerce Blvd.
Rohnert Park, CA 94928-2411
Attn: Richard F. Pedroncelli

**EXEMPT FROM RECORDING FEES PER
GOVERNMENT**
CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

TITLE OF DOCUMENT

**THIS PAGE HERE TO PROVIDE ADEQUATE SPACE FOR RECORDING
INFORMATION**

(Government Code §§ 6103, 27361.6)

Recorded at the request of:

Department of Engineering
City of Rohnert Park
City Hall
6750 Commerce Blvd.
Rohnert Park, CA 94928-2411
Attn: Richard F. Pedroncelli

APN: 143-040-064 (portion)

Stewart Title of California
Order No.: 7931-415928
Escrow No.: 7903-415928

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

For good and valuable consideration pursuant to that certain Property Purchase Agreement executed by the parties hereto on or about _____ (AGREEMENT), the undersigned, C.B. PROPERTIES, INC., a California Corporation (GRANTOR), hereby grants to the CITY OF ROHNERT PARK, A MUNICIPAL CORPORATION (CITY), and its successors and assigns, a Temporary Construction Easement, over, across, under and through the real property situated in the City of Rohnert Park, County of Sonoma, State of California, described and depicted in Exhibits A and B attached hereto (TCE AREA) for public road construction and conformance purposes related to the **DOWDELL AVENUE EXTENSION PROJECT (PROJECT)**.

This Temporary Construction Easement is for a period of one (1) year, to commence upon fourteen (14) days written notice from the CITY to GRANTOR, and shall terminate one (1) year after such commencement. In the event the CITY occupies the TCE Area beyond one (1) year, the CITY shall pay GRANTOR, on a prorated month-to-month basis, an additional \$0.03 per square foot per year of use beyond the initial one-(1) year term. In no event shall this Temporary Construction Easement extend beyond the completion of construction of the PROJECT.

The rights and obligations contained in this Grant of Temporary Construction Easement will (a) run with the larger parcel of which the TCE AREA is a part, and burden, inure to, be for the benefit of and be binding on said property, GRANTOR and its successors and assigns, and shall be an equitable servitude of GRANTOR and its successors and assigns, and (b) constitute an easement in gross for the benefit of the CITY and its successors and assigns, and will be binding on the CITY and its successors and assigns.

IN WITNESS WHEREOF, the duly authorized representatives of the Grantor and Grantee have executed this Agreement as of the date first written above.

GRANTOR

C.B. Properties, a California corporation

By: _____
Print Name:

Title: _____

Date: _____

GRANTEE

CITY OF ROHNERT PARK,
a municipal corporation

By: _____
Gabriel A. Gonzalez, City Manager

Date: _____

Approved as to form:

By: _____
Michelle Marchetta Kenyon,
City Attorney

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed above is hereby accepted by order of the City Council of the City of Rohnert Park pursuant to City Council Resolution No. _____ dated _____ and the Grantee consents to recordation thereof by its duly authorized officer.

CITY OF ROHNERT PARK,
a municipal corporation

By: _____

Dated: _____

STATE OF CALIFORNIA)

COUNTY OF)

On _____, 20__, before me, _____, (here insert name and title of the officer), 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)

STATE OF CALIFORNIA)

COUNTY OF)

On _____, 20__, before me, _____, (here insert name and title of the officer), 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

TEMPORARY CONSTRUCTION EASEMENT AREA

Exhibit "A"
Legal Description
Temporary Construction Easement

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A 10.00 foot wide strip of land, the easterly line of said strip being described as follows:

Beginning at a ½" iron pipe tagged PLS 7935 marking the northwest corner of Dowdell Avenue Extension, also being the northeast corner of Lot 2 as shown on Parcel Map Number 180, filed in Book 736 Maps, Page 30 through 32, Sonoma County Records, and from which a ½" iron pipe tagged PLS 7935 marking the northeast corner of said Dowdell Avenue Extension bears North 89°58'40" East 68.01 feet; thence northerly along the extension of Dowdell Avenue as shown on said Parcel Map, North 01°03'25" East 1.28 feet; thence on a curve to the right through a central angle of 14°42'20", with a radius of 534.00 feet, for an arc length of 137.06 feet; thence along a curve to the left, through a central angle of 14°42'20", with a radius of 820.00 feet, for an arc length of 210.46 feet; thence North 01°03'25" East 373.50 feet; thence North 54°55'30" West 30.38 feet to the common line between Business Park Drive and said lands of C.B. Properties, Inc., and being the point of terminus of the herein described line.

Containing 6,547 Square Feet more or less.

Excepting therefrom any portion lying within Parcel "C", said parcel being shown on and dedicated to the City of Rohnert Park on said map of Rohnert Business Park Subdivision on August 12, 1985, in Book 375 of Maps, Pages 10 and 11.

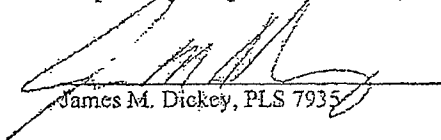
The sidelines of said 10.00 foot wide strip shall be lengthened or shortened so as to terminate at the northerly and southerly boundary line of said lands of C.B. Properties, Inc., and at the northerly and southerly line of said Parcel "C."

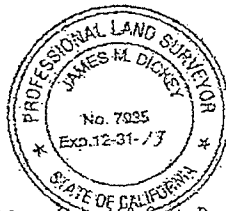
END OF DESCRIPTION

Being a portion of APN 143-040-064

Basis of Bearings: North 89°58'40" East between found ½" iron pipes along the northerly line of the lands of Lot 4 as shown on Parcel Map Number 160, filed in Book 736 of Maps, Pages 30 and 32, Sonoma County Records.

Prepared by Cinquini & Bassarino, Inc.


James M. Dickey, PLS 7935



7/26/2013
Date

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CPI No.: 6478-12
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TEMPORARY CONSTRUCTION EASEMENT AREA - DIAGRAM

