

RESOLUTION NO. 2014-145

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING AND APPROVING LANDSCAPE AND STORMWATER FACILITIES
MAINTENANCE AGREEMENTS FOR THE AMY'S KITCHEN PROJECT**

WHEREAS, the City Council the City of Rohnert Park approved the Development Area Plan and Conditional Use Permit for the Amy's Kitchen restaurant project (the "Project") on May 13, 2014 (Resolution No. 2014-047); and

WHEREAS, the conditions of approval for the Project require that the right-of-way be improved with landscaping and be maintained pursuant to the execution of a Landscape Maintenance Agreement; and

WHEREAS, the Final Standard Urban Stormwater Mitigation Plan for the Project requires that Amy's Kitchen enter into a Declaration of Covenants Regarding Maintenance of Storm Water BMP Facilities (a "Stormwater Facilities Maintenance Agreement"); and

WHEREAS, Amy's Kitchen, has executed said Landscape and Stormwater Facilities Maintenance Agreements, providing for the ongoing maintenance of landscape and storm water improvements; and

WHEREAS, the City Council considered approval of the Landscape and Storm Water Maintenance Agreements at its duly noticed regular meeting of November 10, 2014;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby approve the Landscape Maintenance Agreement and Stormwater Facilities Maintenance Agreement.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Landscape Maintenance Agreement and accept the Stormwater Facilities Maintenance Agreement, in substantially similar form to those agreements attached hereto and incorporated by this reference as Exhibits A and B, respectively, subject to minor modification by the City Manager or City Attorney.


DULY AND REGULARLY ADOPTED this 10th day of November, 2014.



CITY OF ROHNERT PARK

Joseph T. Callinan, Mayor

ATTEST:


JoAnne M. Buergler, City Clerk

Exhibits A and B

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

Exhibit A to Resolution

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Rohnert Park)
130 Avram Avenue)
Rohnert Park,, California 94928)
Attention: City Clerk)
)
)

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

LANDSCAPE MAINTENANCE AGREEMENT

Amy's Kitchen Restaurant Holdings LLC

THIS LANDSCAPE MAINTENANCE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2014, ("Effective Date"), by and between **Amy's Kitchen Restaurant Holdings LLC**, a limited liability corporation ("Developer"), and the **CITY OF ROHNERT PARK**, a California municipal corporation ("City") with reference to the following facts:

RECITALS

A. Reference is made to that certain real property situated in the City of Rohnert Park, County of Sonoma, State of California, known as the Amy's Drive Thru site, and described on **Exhibit "A"**, attached hereto and incorporated by this reference as if fully set forth herein (the "Property"). The Property is being developed as a commercial (restaurant) project.

B. In connection with its development of the Property, the Developer submitted to the City a grading permit application, which include, inter alia, landscaping plans for along the Property frontage ("Plans"), all of which Plans have been approved by the City. The Plans provide for installation of certain landscaping (including water quality planting) and irrigation ("Improvements") within the Redwood Drive and Golf Course Drive West Public Right-of-Way ("Maintenance Area") as the Improvements and Maintenance Area are more specifically shown on **Exhibit "B"** attached hereto and by this reference made a part hereof.

C. The Developer recognizes that the City's approval of the Grading Permit is based on the Developer's commitment to the long-term maintenance, repair, care and, if and when Improvements are in poor health or cause a safety hazard, replacement of the Improvements, and that the Grading Permit would not have been approved without the assurance that this Agreement would be executed by the Developer.

D. The City and the Developer desire to enter into an agreement pursuant to which the Developer will maintain the Improvements within the Maintenance Area as both are depicted on **Exhibit "B"**.

AGREEMENT

NOW, THEREFORE, the City and the Developer (together, the "Parties") hereby agree as follows:

1. PURPOSE OF AGREEMENT. The purpose of this Agreement is to assure the maintenance, periodic inspection, repair, safe operation and, if and when necessary, replacement of the Improvements by the Developer at its expense in accordance with the standards, including the Maintenance Standards (defined in Section 4 below), set forth herein.

2. IMPROVEMENTS AS A BENEFIT. The Developer agrees that the Improvements will materially benefit the Property and that Developer's maintenance, repair, safe operation and, if and when necessary, replacement thereof in accordance with this Agreement is necessary for approval of the Developer's Parcel Map.

3. DEVELOPER'S RESPONSIBILITIES. Developer, at its sole expense, shall maintain, safely operate, periodically inspect, repair and, if and when necessary, replace the Improvements identified in Exhibit "B", as well as perform all necessary service on maintenance equipment, in order to ensure the attractive and healthy appearance of the landscaping, the attractive appearance, condition and safety of any and all structures, and the efficient operation of all of the Improvements, including paying the electrical expense of operating the irrigation controller, said electrical expense to be paid by the Developer upon the direct receipt of invoices for electrical service from Pacific Gas and Electric, all in accordance with the Maintenance Standards described in Section 4 below, and industry and City standards applicable to similar improvements.

4. MAINTENANCE STANDARDS. The Developer and its maintenance staff, contractors and subcontractors shall comply with the following standards (collectively, "Maintenance Standards") in connection with the required maintenance of the Improvements:

a. The Improvements shall be maintained in compliance with the Improvement Plans, in good condition, and in accordance with the custom and practice generally applicable to public rights-of-way within the City of Rohnert Park..

b. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; periodic trimming, mowing, and/or edging of grass and lawn areas; pruning of trees, shrubs, and other vegetation; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, safe road conditions and visibility, and irrigation coverage; removal and replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

c. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas excluding roadway and curbs in clean and weed-free condition;

maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

d. All maintenance work shall be performed in a good and workman like manner and shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

e. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governmental requirements. Reasonable precautionary measures shall be employed recognizing that all areas are open to public access.

5. CITY'S RIGHT TO PERFORM MAINTENANCE. In the event that the Developer fails to repair, periodically inspect, maintain, care for and, if and when necessary, replace the Improvements on and about the Property in the manner set forth herein, the City may enter upon the Property and take whatever steps it deems reasonably necessary to maintain, repair, periodically inspect, care for, and replace such Improvements, or to contract for the correction of such deficiencies, after written notice to the Developer. By executing this Agreement, Developer knowingly and willfully provides consent to the City to enter on the Property and perform such maintenance work as it deems necessary to maintain the standards of this agreement. It is expressly understood that the City is under no obligation to maintain or repair the Improvements, and in no event shall this Agreement be construed to impose such an obligation on the City.

a. NOTICE TO DEVELOPER. Prior to taking any such corrective action, the City agrees to notify the Developer in writing if the condition of said Improvements does not conform to the standards and requirements set forth herein, including without limitation the Maintenance Standards, and to specify the deficiencies and the actions required to be taken by the Developer to cure the deficiencies. Upon notification of any deficiency, the Developer shall have thirty (30) days from the date of the notice within which to correct, remedy, contest the notice of deficiency or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then the Developer shall have twenty-four (24) hours to rectify the problem.

b. Lien for Costs of Required Maintenance. In the event that Developer fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such deficiency after notification and after expiration of any applicable cure period, then the City may enter upon the Property and maintain, repair, care for and, if and when necessary, replace such Improvements at the Developer's expense. The Developer agrees to reimburse the City within 60 days of the date of a notice identifying all charges and costs incurred by the City for such maintenance, repair and replacement work. Until so paid, the City shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Property. This lien shall affect all parcels jointly if portions of the Property have been sold. Any lien in favor of the City created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien, and

no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgagee or beneficiary thereunder expressly subordinates its interest, of record, to such lien. No lien in favor of the City created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien.

c. Legal Action. The City may bring legal action to collect the sums due as the result of expending public monies to maintain, repair and, if and when necessary, replace any Improvements which are the responsibility of the Developer as provided herein. The Developer agrees that if the City is the prevailing party in legal action to enforce its rights under this Section 5, the Developer shall pay the City all costs incurred by it, including attorneys' fees and court costs, together with interest from the date the City provided notice under Section 5.a, at the rate of seven percent (7%) per annum.

d. Additional Remedies. The Developer acknowledges and agrees that the City may also pursue any and all other remedies available in law or equity in the event of a breach of the Developer's obligations and agreements set forth herein.

e. Intention of City. Nothing in this Section 6 shall be construed, either expressly or by implication, as indicating an intention of the City to exercise dominion or control over the Improvements.

6. NO IMPAIRMENT OF LIEN. No violation or breach of the agreements, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Developer to the Site or any portion thereof shall be bound by such agreements, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

7. ENCROACHMENT PERMIT; RIGHT OF ENTRY. The Developer and the City acknowledge that, to the extent that the Improvements are located within the City rights-of-way, the Developer shall obtain a single on-going revocable encroachment permit from the City in order for the Developer to perform its obligations under this Agreement. Such an encroachment permit shall set forth the terms and provisions upon which the Developer has a right to enter onto such rights-of-way in order to perform maintenance, inspection, repair and, if and when necessary, replacement services (collectively, "Maintenance Services"). The encroachment permit shall be issued on the terms and conditions of this Agreement.

The Developer shall obtain and deliver to the City, at no cost to the City, certificates of commercial general liability insurance which indicate that the City, its elective and appointive boards, commissions, officers, agents and employees are covered as additional insureds under all insurance policies maintained for performance of the Maintenance Services and other Activities by (i) the Developer or (ii) any contractor or subcontractor directly or indirectly employed by the Developer to perform any Maintenance Services or other Activities. Each of these policies shall also provide that no cancellation, major change in coverage, or expiration may be affected by the insurance company or the insured during

the time of performance of the Maintenance Services and other Activities, without first giving to the City thirty (30) days' written notice prior to the effective date of such cancellation or change in coverage. The Developer shall not permit any contractor or subcontractor to commence or continue performing Maintenance Services or other Activities until the certificates or any substitute certificates have been approved by the City's Risk Manager.

8. PERMITS AND APPROVALS. To the extent that performance of the Maintenance Services or other Activities requires permits or governmental approvals, the Developer shall, at its sole cost and expense, obtain such permits and approvals. The City shall issue encroachment permits, from time to time, on the terms set forth in Section 7 above.

9. TERM. This Agreement shall commence immediately upon the Effective Date and shall continue in perpetuity until and unless terminated, with or without cause, by the City upon ten (10) days written notice to Developer.

10. INDEMNIFICATION. Developer shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the City and its Council, boards, offices, commissions, officials, agents and employees, from and against any liability, (including, but not limited to, liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, damages, losses, expenses or costs of any kind, including reasonable attorneys' fees, that may be asserted by any person or entity, including Developer, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same relates to, or arises out of, any work performed or services provided under this Agreement by the Developer, or the Developer's contractors, subcontractors, agents or employees, including, but not limited to, the performance of the Maintenance Services or other Activities, excepting only that resulting from the negligence or intentional misconduct of the City, its employees, officials, or agents. Developer's duty to defend and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code Section 2778. This indemnification obligation shall survive termination of this Agreement and is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the Developer or its agents under insurance policies or workers' compensation acts, disability benefits acts or other employees' benefits acts. If any judgment or claim for which Developer is responsible pursuant to this Section 10 shall be entered against the City, its officials, agents, or employees, Developer shall pay all cost and expenses in connection therewith.

11. DEFAULT. The failure to maintain the Improvements will constitute an event of default. Upon such event of default, the City shall provide written notice to the Developer. Upon receipt of the written notice, the Developer shall have thirty (30) days to remedy such event of default (or such longer period of time as may reasonably be required, provided that the Developer shall commence to remedy such default within thirty (30) days period and thereafter diligently prosecute such remedy to completion). If the Developer fails to remedy the event of default within the prescribed time period, the City shall have the right to do all work necessary to remedy the event of default and charge the Developer actual costs incurred by the City for such work.

12. ASSIGNMENT BY CITY. The City shall have the right at its option to assign its rights and obligations under this Agreement to a municipal services district or other public agency without consent of the Developer.

13. AGREEMENT ATTACHES TO LAND AND BINDS DEVELOPER'S SUCCESSORS AND ASSIGNS. This Agreement attaches to and runs with the Property in perpetuity, and shall be recorded against the Property. This Agreement binds the assigns and successors-in-interest of the Developer. Upon Developer's sale or other transfer of the Property, Developer's obligations hereunder shall cease, except for those obligations that accrued prior to the date of transfer. The City and its successors and assigns, in the event of any breach of this Agreement, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings against the Developer or its permitted successors and assigns to enforce the curing of such breach.

14. ASSIGNMENT BY DEVELOPER. The Developer may assign its obligations under this Agreement only with the prior written approval of the City which shall not be unreasonably withheld. In connection with any such assignment, the Developer and its assignee shall execute and deliver to the City a written assignment and assumption agreement in a form acceptable to the City Attorney. No written assignment or City consent shall be necessary for assignments that result from the sale or transfer of Property as described in Section 13 above.

15. NOTICES. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or three (3) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

To the Developer: Amy's Kitchen Restaurant Holdings LLC
1660 Corporate Circle, Suite 200
Petaluma, CA 94956
Attn: Mr. Mark Rudolph, CFO

With a copy to the City: City of Rohnert Park
130 Avram Avenue
Rohnert Park, California 94928
Attn: City Manager

With a copy to: Michelle Marchetta Kenyon
Rohnert Park City Attorney
1901 Harrison Street
Oakland, California 94612

16. MISCELLANEOUS.

a. Entire Agreement, Amendments. This Agreement contains the entire understanding and agreement of the parties. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement.

b. Paragraph Headings. Paragraph headings as used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning hereof.

c. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California. Venue shall be the County of Sonoma.

d. Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the Parties.

e. Exhibits. Any and all exhibits and schedules attached or to be attached hereto are hereby incorporated and made a part of the Agreement by reference.

f. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect.

g. Authority. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

h. No Agency Relationship. Neither the Developer nor any of the Developer's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of any of the Developer's obligations under this Agreement. Nor shall City and Developer, be deemed to have become a partner of each other in the conduct of their respective business or otherwise a joint venture.


i. Attorneys' Fees and Costs. Either party may bring a lawsuit to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party's reasonable costs and expenses, including attorneys' fees.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

DEVELOPER

Amy's Kitchen Restaurant Holdings, LLC

Limited Liability Corporation by:



Mark Rudolph, CFO

[Signature must be notarized]

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

) ss.

COUNTY OF SONOMA)

On _____ 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)

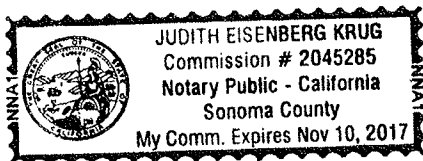
See attached

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sonoma

On 9/22/2014 before me, Judith Eisenberg Krug
Date Here Insert Name and Title of the Officer
personally appeared Mark Nelson Rudolph
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(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.

Place Notary Seal Above

Signature Judith Eisenberg Krug
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Landscape Maintenance Agreement

Document Date: _____ Number of Pages: 11

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Mark Nelson Rudolph

- ☐ Individual
☒ Corporate Officer — Title(s): CEO
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: Group Kitchen

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here



Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

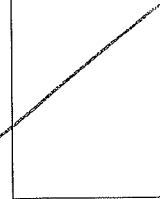


EXHIBIT "A"

Legal Description for

**Lands of Amy's Kitchen Restaurant Holdings, LLC
Per Documents Number 2012-130786 and 2012-
128180**

September 15, 2014

That certain parcel of land situated in the City of Rohnert Park, County of Sonoma, State of California, being a portion of Lot 161, Santa Rosa Farms No. 2, filed on March 7, 1910 in Book 21 of Maps, at page 14, in the Office of the County Recorder of said Sonoma County and being a portion of Lot 161 as described in the Grant Deeds to Amy's Kitchen Restaurant Holdings, LLC., recorded on December 13, 2012, as Document Number 201218180 and December 19, 2012, as Document Number 2012130786, of Official Records of said County Recorder's Office, more particularly described as follows:

BEGINNING at the southwesterly corner of Parcel One of said Lands of Amy's Kitchen Restaurant Holdings, LLC, recorded in Document Number 2012130786; thence, northerly along the westerly line of said lands North 00°13'36" East 320.10 feet to the southern right of way line of Golf Course Drive West (formerly Wilfred Avenue, 102' wide); thence easterly along said right of way line South 89°34'56" East 267.81 feet; thence South 00°04'24" West, 10.38 feet; thence South 44°55'36" East, 28.28 feet; thence South 00°04'24" West 289.86 feet; thence North 89°34'44" West, 288.67 feet to the POINT OF BEGINNING.

Containing 91,861 Square Feet more or less.

APN: 045-075-017, 045-075-011, 045-075-003, 045-075-012

BASIS OF BEARINGS: The bearings and distances contained herein are based upon the Record of Survey filed in Book 688 of Maps, at Page 31, in said County Recorders Office.

EXHIBIT "B" attached and by this reference made a part hereof.

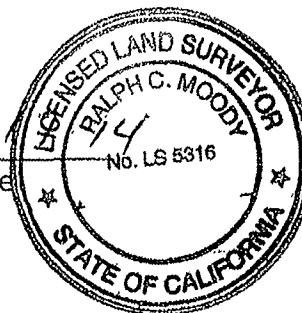
Prepared by Baechtel Hudis Inc.

By: _____

Ralph Moody, LS 5316

My License Expires December 31, 2015

9 - _____
Date

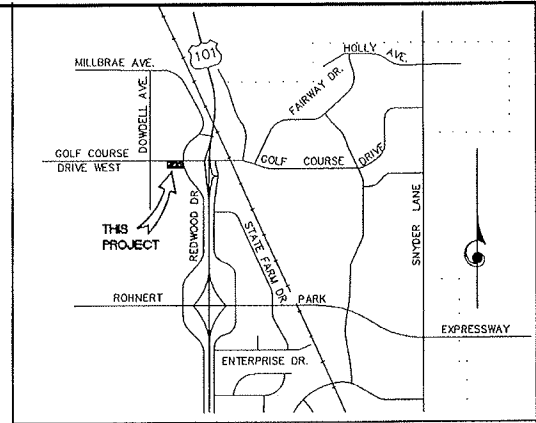


THIS DIAGRAM IS FOR GRAPHIC PURPOSES ONLY, ANY ERRORS OR OMISSIONS SHALL NOT EFFECT THE LEGAL DESCRIPTION.

BASIS OF BEARINGS:
THE BEARINGS AND DISTANCES CONTAINED HEREIN ARE BASED UPON THE RECORD OF SURVEY FILED IN BOOK 688 OF MAPS AT PAGES 31, IN SONOMA COUNTY RECORDER'S OFFICE.

LEGEND:

PROPERTY BOUNDARY	— — — — —
EASEMENT	— — — — —
CENTERLINE	— — — — —
ADJACENT PROPERTY	— — — — —
MAINTENANCE AREA	▨ ▨ ▨ ▨ ▨



LOCATION MAP

NOT TO SCALE

GOLF COURSE DRIVE WEST

(FORMER WILFRED AVENUE)
(114' WIDE)

FACE OF CURB

SIDEWALK

S89°34'56"E 267.81'

N00°04'24"E 10.38'

N44°55'36"W 28.28'

LANDS OF

**AMY'S KITCHEN
RESTAURANT HOLDINGS, LLC**

045-075-017
DN 2012-128180

89.86'

N 89°34'44" W 288.16'

N00°13'36"E 320.10'

130.10'

REDWOOD DRIVE
(102' WIDE)

89.86'

289.86'

N00°04'24"E

LANDS OF

Exhibit B to Resolution

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Rohnert Park)
130 Avram Avenue)
Rohnert Park,, California 94928)
Attention: City Engineer)
)
)

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

Project Property: Amy's Drive Thru, 58 Golf Course Drive West, Rohnert Park, CA

APN(s): **045-075-017**

**DECLARATION OF COVENANTS REGARDING MAINTENANCE OF
STORM WATER BMP FACILITIES**

This Declaration of Covenants Regarding Maintenance of Storm Water BMP Facilities ("Agreement") is
made on this _____ day of _____, 20__, by

Amy's Kitchen Restaurant Holdings LLC

RECITALS

- A. Landowner is the fee simple owner of certain real property located in the City of Rohnert Park, Sonoma County, California, [INSERT lot numbers, and development description; APN 045-075-017 and more fully described in **Exhibit A** to this Agreement ("Property").
- B. The City's National Pollutant Discharge Elimination System ("NPDES") Municipal Separate Storm Sewer System ("MS4") Permit, Order Number No. 2013-0001-DWQ, issued by the State Water Resources Control Board, requires the City to implement and enforce specific requirements for the construction and maintenance of onsite storm water management facilities/best management practices (collectively, "BMP") for development, redevelopment, and other applicable projects with the goal of mitigating impacts to storm water quality and runoff volume discharges into the MS4. The City of Rohnert Park has elected to seek coverage as a co-permittee under the City of Santa Rosa's MS4 Phase 1 Permit, Order No. R1-2009-0050
- C. Provisions of Title 15 and other applicable sections of the Rohnert Park Municipal Code shall apply to the construction, inspection and maintenance of BMP facilities and the enforcement of MS4 Permit requirements.
- D. On July 11, 2014, Mary Grace Pawson, City Engineer approved Landowner's Improvement Plans, Grading Permit No. BDGR2014-00002 and a Final Standard Urban Stormwater Mitigation Plan ("SUSMP") for the Property which include provisions for the construction and maintenance of BMP facilities on the Property (the "BMP Facilities") by Landowner. The BMP Facilities required under the SUSMP may include both built and landscaping features. The Plan "Amy's Drive Thru", may be

inspected at the City of Rohnert Park Development Services Department, Engineering, 130 Avram Avenue, upon appointment.

E. The Plan requires that Landowner enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, Landowner hereby covenants, agrees and declares as follows:

1. Landowner shall, at its sole cost and expense, construct, inspect, and maintain the BMP Facilities on its property in accordance with the Plan and the SUSMP. BMP Facilities on adjacent property that share storm drain pipes shall be inspected and maintained by that property owner.
2. In the event Landowner fails to maintain the BMP Facilities in good working condition as solely determined by the City in its reasonable discretion, the City may enter upon the Property and take whatever steps it deems reasonably necessary to maintain and/or make in good working condition, such BMP Facilities. It is expressly understood that the City is under no obligation to maintain or repair the BMP Facilities, and in no event shall this Agreement be construed to impose such an obligation on the City.
3. In the event that the City performs work of any nature, or expends any funds in the performance of such work for labor, use of equipment, supplies, materials, or the like, due to failure of the Landowner to perform its maintenance obligations under this Agreement, as solely determined by City in its reasonable discretion, Landowner shall reimburse the City within sixty(60) days of receipt of notice for all costs incurred by the City to undertake such work. Costs shall include, but are not limited to, the actual cost of construction, maintenance and/or repair, and administrative costs directly related to such work.
4. Any violation of the Plan or SUSMP by Landowner shall be deemed a public nuisance under Chapter 1.24, Nuisance Abatement, of the Rohnert Park Municipal Code and City shall be entitled to the remedies available to it under Chapter 1.24, in addition to the remedies available to it under Chapters 1.16 and 1.25. The remedies identified herein shall be in addition to and cumulative of all other remedies, criminal or civil, which may be pursued by the City.
5. Landowner shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the City and its Council, boards, offices, commissions, officials, agents and employees, from and against any liability, (including, but not limited to, liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, damages, losses, expenses or costs of any kind, including reasonable attorneys' fees, that may be asserted by any person or entity, including Landowner, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same relates to, or arises out of, the construction, presence, existence, inspection, or maintenance of BMP Facilities on the Property or the performance of this Agreement by Landowner, its officers, employees, agents, contractors or sub-contractors, excepting only that resulting from the negligence or intentional misconduct of the City, its employees, officials, or agents. Landowner's duty to defend and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code Section 2778. This indemnification obligation shall survive termination of this Agreement and is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the

Landowner or its agents under insurance policies or workers' compensation acts, disability benefits acts or other employees' benefits acts. If any judgment or claim for which Landowner is responsible pursuant to this Section 5 shall be entered against the City, its officials, agents, or employees, Landowner shall pay all cost and expenses in connection therewith.

6. If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

7. This Agreement shall be governed according to the laws of the State of California. The parties hereto agree that the forum for the adjudication of any dispute related to this Agreement shall be brought exclusively and solely in Sonoma County, California.

8. Landowner shall not assign this Agreement to a third party without the express prior written consent of the City, provided that such consent will not be unreasonably withheld and that such consent shall not be required for Landowner to sell or lease the property to a third party. Notwithstanding the foregoing, no City consent shall be required for assignments that result from the sale or transfer of the Property as described in Section 10 below.

9. Landowner binds itself, its partners, successors, legal representatives and assigns to the City, and to the partners, successors, legal representatives and assigns of the City with respect to all promises and agreements contained herein.

10. This Agreement shall be recorded by Landowner, and shall: a) constitute a "covenant running with the land;" b) be binding upon Landowner and Landowner's successors, heirs, and assigns in perpetuity; and, 3) benefit the City of Rohnert Park, its successors, and assigns. Any breach of this Agreement shall render Landowner or Landowner's heirs, successors or assigns liable pursuant to the provisions of the Rohnert Park Municipal Code. Upon Landowner's sale or other transfer of the Property, Landowner's obligations hereunder shall cease, except for those obligations that accrue prior to the date of transfer. Including but not limited to the duty to defend, indemnify, and hold harmless pursuant to Paragraph 5.

11. Any notice, submittal or communication required or permitted to be served on Landowner or City may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

City Representative:

City of Rohnert Park
Development Services Department
Engineering Section
Attn: City Engineer
130 Avram Avenue
Rohnert Park, CA 94928

Landowner Representative:

Amy's Kitchen Restaurant Holdings, LLC
Attn: Mark Rudolf
1660 Corporate Circle, Suite 200
Petaluma, CA 94956

Executed as of the day and year first above stated.

LANDOWNER:

Name: Amy's Kitchen Restaurant Holdings LLC

Signatures of Authorized Persons:

By:

Mark Rudolph

Print Name: Mark Rudolph

Title: CFO

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

) ss.

COUNTY OF SONOMA)

On _____ 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)

See attached

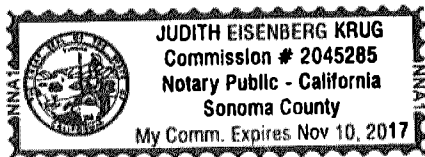
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sonoma

On 9/29/2014 before me, Judith Eisenberg Krug
Date Here Insert Name and Title of the Officer

personally appeared Mark Nelson Rudolph
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(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.

Place Notary Seal Above

Signature Judith Eisenberg Krug
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration of Covenants

Document Date: _____ Number of Pages: 6

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

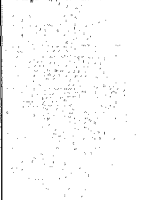
Signer's Name: Mark Nelson Rudolph

- ☐ Individual
☒ Corporate Officer — Title(s): CFO
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Amep Kichen

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here



Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

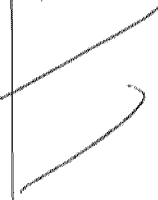


EXHIBIT "A"

Legal Description for Lands of Amy's Kitchen Restaurant Holdings, LLC Per Documents Number 2012-130786 and 2012-128180

September 17, 2014

That certain parcel of land situated in the City of Rohnert Park, County of Sonoma, State of California, being a portion of Lot 161, Santa Rosa Farms No. 2, filed on March 7, 1910 in Book 21 of Maps, at page 14, in the Office of the County Recorder of said Sonoma County and being a portion of Lot 161 as described in the Grant Deeds to Amy's Kitchen Restaurant Holdings, LLC., recorded on December 13, 2012, as Document Number 2012128180 and December 19, 2012, as Document Number 2012130786, of Official Records of said County Recorders Office, more particularly described as follows:

BEGINNING at the southwesterly corner of Parcel One of said Lands of Amy's Kitchen Restaurant Holdings, LLC, recorded in Document Number 2012130786; thence, northerly along the westerly line of said lands North 00°13'36" East 320.10 feet to the southern right of way line of Golf Course Drive West (formerly Wilfred Avenue, 102' wide); thence easterly along said right of way line South 89°34'56" East 267.81 feet; thence South 00°04'24" West, 10.38 feet; thence South 44°55'36" East, 28.28 feet; thence South 00°04'24" West 289.86 feet; thence North 89°34'44" West, 288.67 feet to the POINT OF BEGINNING.

Containing 91,861 Square Feet more or less.

APN: 045-075-017, 045-075-011, 045-075-003, 045-075-012

BASIS OF BEARINGS: The bearings and distances contained herein are based upon the Record of Survey filed in Book 688 of Maps, at Page 31, in said County Recorders Office.

EXHIBIT "B" attached and by this reference made a part hereof.

Prepared by Baechtel Hudis Inc.

By:

Ralph Moody, LS 5316

My License Expires December 31, 2015

Date

