

RESOLUTION NO. 2015-009

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING AND APPROVING CONVEYANCE OF AN EMERGENCY EXIT
ACCESS EASEMENT AGREEMENT TO PROPERTY LOCATED AT 5000 ROBERTS
LAKE ROAD (APN 161-01-031)**

WHEREAS; the property owner of 5000 Roberts Lake Road, APN 160-010-031, has requested the City grant an Emergency Exit Access Easement Agreement over the golf course property; and

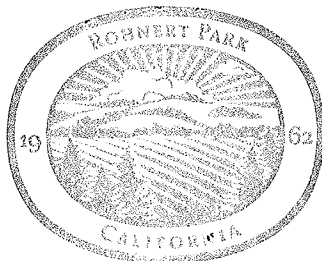
WHEREAS, the proposed easement is necessary to formalize a historical emergency exit path of travel.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve granting the proposed Emergency Exit Access Easement Agreement.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute all documents in substantially similar form as shown on the attached Emergency Exit Access Easement Agreement, which is attached hereto and incorporated by this reference as Exhibit A, for and on behalf of the City of Rohnert Park.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized and directed to record the Emergency Exit Access Easement Agreement with the Sonoma County Recorder's office.

DULY AND REGULARLY ADOPTED this 13th day of January, 2015.



CITY OF ROHNERT PARK

Amy O. Ahanotu, Mayor

ATTEST:

JoAnne M. Buergler, City Clerk

Attachment: Agreement

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

EXHIBIT A TO RESOLUTION

This Document is Recorded
For the Benefit of the
City of Rohnert Park
and is Exempt from Fee
Per Government Code
Sections 61032 and 27383

When Recorded, Mail to:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF EMERGENCY EXIT ACCESS EASEMENT AGREEMENT

This EMERGENCY EXIT ACCESS EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into effective as of this ____ day of January, 2015, by and between the City of Rohnert Park, a municipal corporation (the “**Grantor**”), and, the owner of real property located at 5000 Roberts Lake Road, Rohnert Park, California (APN 160-010-031), who is more particularly described in “Exhibit A” (the “**Grantee**”).

RECITALS

A. Grantee is the owner of that certain real property located in the City of Rohnert Park, County of Sonoma, State of California, as more particularly described as 5000 Roberts Lake Road, Rohnert Park, California (APN 160-010-031) (the “**Property**”); and

B. A historical emergency exit path of travel exists from the improvements on the Property over property owned by Grantor and operated as the Foxtail Golf Course; and

C. Grantee has requested the City grant an emergency exit access easement over the golf course property to formalize this path of egress; and

D. Grantor is willing to grant to Grantee and Grantee is willing to accept a non-exclusive easement over those certain portions of the Foxtail Golf Course, as more particularly described in the legal description attached hereto as Exhibit “B” (the “**Easement Area**”), for the purpose of emergency exit access on the terms and conditions as provided herein.

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

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a non-exclusive easement over and across the Easement Area for the purpose of enabling

pedestrians access to an emergency exit from the Property (the “**Easement**”) on the terms and conditions set forth herein.

2. Restrictions on Use of Easement Area. The Easement Area shall not be used for any purpose other than as an emergency exit access easement. The Parties agree that no wall, fence or barrier of any kind which impairs or impedes access to, or use of, any of the Easement shall be constructed or maintained on to the Easement Area, nor shall the Parties do anything which shall prevent, impair or discourage the use of the Easement or the free access and pedestrian movement across the Easement Area.

3. Maintenance of the Easement Area. Grantee and its successors and assigns shall, at Grantee’s sole cost and expense without reimbursement, be obligated to maintain, repair, reconstruct, and care for the Easement Area in perpetuity in accordance with this Agreement. Any damage caused by Grantee, or by any of Grantee’s lessees, licensees, permittees, agents, employees, contractors and/or successors and assigns to the Easement Area shall be promptly repaired by Grantee, at its sole cost and expense.

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

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

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

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

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

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

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

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

If to Grantee: Sherlyn Joyce Rogers
5000 Roberts Lake Road, Suite B
Rohnert Park, CA 94928
Attn: Joyce Rogers
Phone: 707-586-0370
Email: jrogers3@pacbell.net

With a copy to: Beyers Costin Simon
Michael P. Garcia
200 Fourth Street Suite 400
P.O. Box 878
Santa Rosa, CA 95401
Phone: 707-547-2000
Email: mgarcia@beyerscostin.com

Cyrus I. and Geraldine Goldin

Phone: _____
Email: _____

If to Grantor:

City of Rohnert Park
130 Avram Ave.
Rohnert Park, CA 94928
Attn: City Manager
Phone: 707-588-2227
Email: admin@rpcity.org

With a copy to:

Michelle Marchetta Kenyon
Rohnert Park City Attorney
Burke, Williams & Sorensen
1901 Harrison Street, Suite 900
Oakland, CA 94612
Phone: 510-273-8780
Email: mkenyon@bwslaw.com

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

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

[Signatures on the Following Page]

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

GRANTEE:

Marital Trust Under the Jimmie W. and Sherlyn Joyce Rogers Trust Agreement dated December 20, 1989

By: _____
Name: Sherlyn Joyce Rogers
Title: Trustee

Surviving Grantor's Trust Under the Jimmie W. and Sherlyn Joyce Rogers Trust Agreement dated December 20, 1989

By: _____
Name: Sherlyn Joyce Rogers
Title: Trustee

Goldin Family 2011 Trust, U.A.D. September 8, 2011

By: _____
Name: Cyrus I. Goldin
Title: Trustee

By: _____
Name: Geraldine Goldin
Title: Trustee

GRANTOR:

City of Rohnert Park,
a municipal corporation

By: _____
Name: _____
Title: _____

Attest:

By: _____
JoAnne Buergler
City Clerk

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

On _____ before me, _____
Notary Public, personally appeared _____

_____ personally known to me
or
_____ 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.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

(S E A L)

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

On _____ before me, _____
Notary Public, personally appeared _____

_____ personally known to me
or
_____ 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.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

(S E A L)

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

On _____ before me, _____
Notary Public, personally appeared _____

_____ personally known to me
or
_____ 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.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

(S E A L)

EXHIBIT A

OWNER OF PROPERTY

Sherlyn Joyce Rogers, as Trustee of the Marital Trust under the Jimmie W. and Sherlyn Joyce Rogers Trust Agreement dated December 20, 1989, as to an undivided 25% interest, and Sherlyn Joyce Rogers, as Trustee of the Surviving Grantor's Trust under the Jimmie W. and Sherlyn Joyce Rogers Trust Agreement dated December 20, 1989, as to an undivided 25% interest; and Cyrus I. Goldin and Geraldine Goldin, Trustees of the Goldin Family 2011 Trust, U.A.D. dated September 8, 2011 as to an undivided 50% interest.

EXHIBIT B

LEGAL DESCRIPTION OF THE EMERGENCY EXIT ACCESS EASEMENT AREA

That certain parcel of land situated in the City of Rohnert Park, County of Sonoma, State of California, being a portion of the lands of The City of Rohnert Park as recorded Book 3300, Page 345 of the Official Records, in the Office of the County Recorder of said Sonoma County and being a more particularly described as follows:

Commencing at the northeast corner of Parcel 1, as shown on Rohnert Park Parcel Map 173, recorded in Book 652 of Maps, Pages 15 & 16, Sonoma County Records; thence from said point of commencement southerly along the easterly boundary of said Lot 1 South 05°42'00" East, 57.00 feet to the point of beginning; thence from said point of beginning, leaving said easterly boundary of Lot 1, North 84°18'00" East 7.00 feet; thence southerly and parallel to said easterly boundary of Lot 1, South 05°42'00" East 140.00 feet; thence South 84°18'00" West 7.00 feet more or less to said easterly boundary of said Lot 1; thence northerly along easterly boundary of said Lot 1, North 05°42'00" West 140.00 feet to the point of beginning.

End lines shall be lengthened or shortened so as to terminate on easterly boundary of said Lot 1.

Containing 890 Square Feet more or less.

APN 160-010-032

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

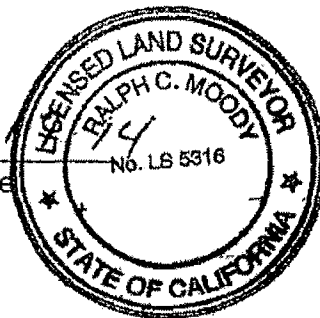
Prepared by Baechtel Hudis Inc.

By: _____

Ralph Moody, LS 5316

My License Expires December 31, 2015

9 - _____
Date

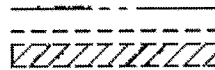


LEGEND:

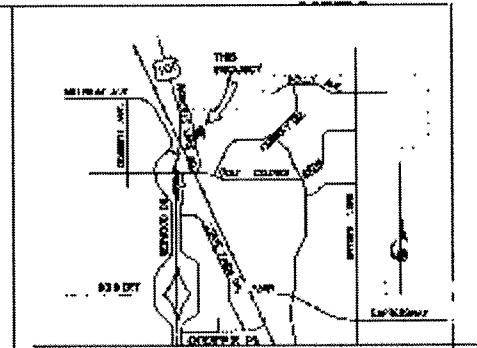
PROPERTY BOUNDARY

EASEMENT

EASEMENT AREA

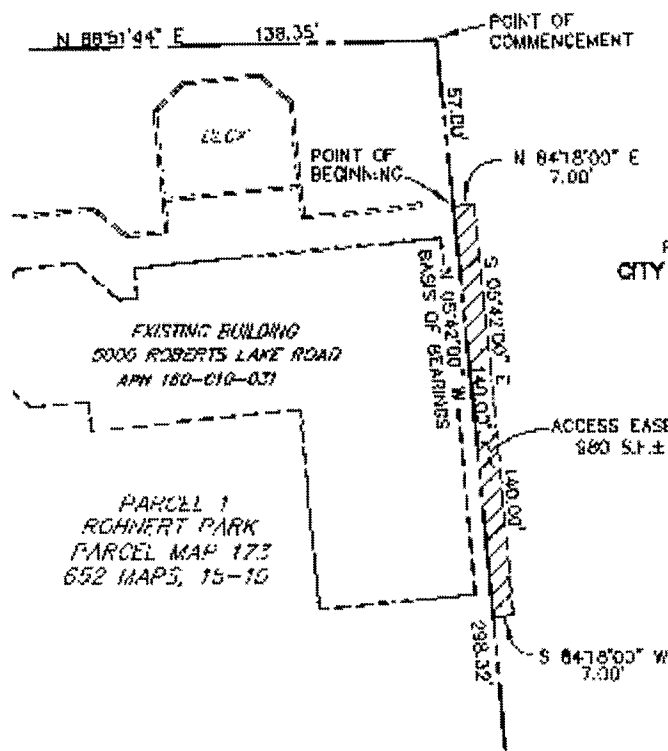


SCALE: 1" = 50'



LOCATION MAP

VS 5047



REMAINING LANDS OF
CITY OF ROHNERT PARK

APN 180-010-032

3300 O.R. 245



EXHIBIT "C"

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

BASIS OF BEARINGS:
AS SHOWN ON Rohnert Park Parcel
Map 173 in Book 652 Maps, Page 15 &
16, Sonoma County Records.

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR EMERGENCY EXIT ACCESS EASEMENT,
LANDS OF THE CITY OF ROHNERT PARK,
BOOK 3300, AT PAGE 345, OFFICIAL
RECORDS OF SONOMA COUNTY.
AUGUST 2014

PREPARED BY
BAECITEL HUDIS
CONSULTING CIVIL ENGINEERS & PLANNERS

101 STONY CIRCLE, SUITE 100D
SANTA ROSA, CALIF. 95401
(707) 542-0793