

**RESOLUTION NO. 2015- 080**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK  
ACCEPTING A GRANT OF PUBLIC ACCESS AND UTILITY EASEMENT  
AGREEMENT WITH THE RESERVE LLC AND AUTHORIZING THE CITY  
MANAGER TO SIGN**

**WHEREAS**, The Reserve LLC development located in the Stadium Lands Planned Development Area has been required to design its public water and recycled water laterals across its private property in order to accommodate the construction of Dowdell Avenue; and

**WHEREAS**, the maintenance of the public water and recycled water lateral is the responsibility of the City; and

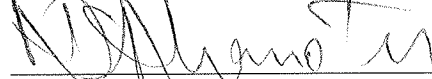
**WHEREAS**, the Developer of the Reserve at Dowdell has executed a public access and utility easement agreement to allow for these future maintenance activities.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that it does hereby accept the Grant of Public Access and Utility Easement Agreement with the Reserve at Dowdell LLC for the purpose of maintaining the service laterals.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to execute documents pertaining to same for and on behalf of the City of Rohnert Park in substantially similar form to Exhibit A.

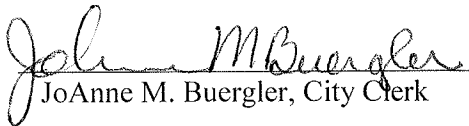
**DULY AND REGULARLY ADOPTED** this 28<sup>th</sup> day of April, 2015.

**CITY OF ROHNERT PARK**



Amy O. Ahanotu, Mayor

**ATTEST:**



JoAnne M. Buergler, City Clerk

CALLINAN: ABSTAIN MACKENZIE: AYE STAFFORD: AYE BELFORTE: AYE AHANOTU: AYE  
AYES: ( 4 ) NOES: ( 0 ) ABSENT: ( 0 ) ABSTAIN: ( 1 )

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

Exhibit A to Resolution

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 PUBLIC ACCESS AND UTILITY EASEMENT AGREEMENT

This PUBLIC ACCESS AND UTILITY EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into effective as of this 3<sup>rd</sup> day of February, 2015, by and between The Reserve, LLC (the “**Grantor**”), and the City of Rohnert Park, a municipal corporation (the “**Grantee**”), with reference to the following facts and intentions:

### RECITALS

A. Grantor is the owner of that certain real property located in the City of Rohnert Park, County of Sonoma, State of California, as more particularly described as The Reserve, Rohnert Park, California (APN 143-040-131 and 143-040-127) (the “**Property**”); and

B. The Grantor has approvals to develop its property that are conditioned upon providing public access and utility easements in favor of the Grantee; and

C. Grantor is willing to grant to Grantee and Grantee is willing to accept easements over those certain portions of the Property more particularly described in the legal description attached hereto as Exhibit “A” (the “**Easement Area**”), for the purpose of public access and utilities on the terms and conditions as provided herein.

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

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a non-exclusive, perpetual easement in, on, over, under, across, and through the Easement Area for public access and public utilities uses on the Property (the “**Easement**”), together with all necessary and convenient means of ingress and egress to and from said Easement at all times, on the terms and conditions set forth herein.

For the purposes of this Agreement, the right to use the Easement Area for public access shall include the installation, construction, repair, replacement, maintenance, operation, inspection, restoration, modernization and use of interior travel lanes and sidewalks and any other activity reasonably related to providing public access. For the purposes of this Agreement, the right to use the Easement Area for public utilities shall include the installation, construction, repair, replacement, maintenance, operation, inspection, restoration, modernization and use of public utilities including water, recycled water, sewer, drainage improvements, gas, electrical, and other utilities and associated improvements including pipelines and conduits and overhead utilities including electrical utilities and associated improvements including poles, wires and antenna and any other activity reasonably related to maintaining public utilities.

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

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

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

upon written notice from Grantee shall defend such action or proceeding at Grantor's sole expense by counsel reasonably acceptable to 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 Grantor:

The Reserve, LLC  
855 Lakeville St. Suite 200  
Petaluma, CA 94952  
Attn: Chris Scerri  
Phone: 707.206.4041  
Email: chris@absconstruct.com

With a copy to: Hedstrom & Coopersmith  
855 Lakeville St. Suite 200  
Petaluma, CA 94952  
Attn: Brian Hedstrom  
Phone: 707.206.4109  
Email: bhedstrom@handclawfirm.com

If to Grantee: City of Rohnert Park  
130 Avram Ave.  
Rohnert Park, CA 94928  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

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

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

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

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

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

*[Signatures on the Following Page]*

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


**GRANTEE:**

City of Rohnert Park,  
a municipal corporation

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTOR:**

The Reserve, LLC

By:  \_\_\_\_\_  
Name Chris Scerri  
Title: Vice President

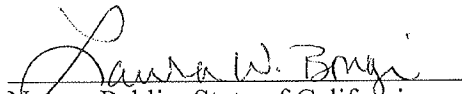
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

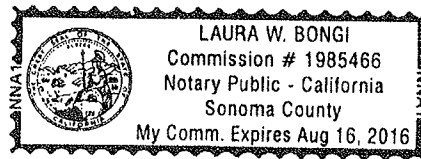
State of California     )  
                                      ) ss.  
County of Sonoma     )

On February 5, 2015, before me, Laura W. Bongi, a notary public, personally appeared CHRIS SCERRI, 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.

  
Notary Public, State of California





STATE OF CALIFORNIA )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared \_\_\_\_\_,  
Name of Signer(s)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(S E A L)

STATE OF CALIFORNIA )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared \_\_\_\_\_,  
Name of Signer(s)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(S E A L)

STATE OF CALIFORNIA )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared \_\_\_\_\_,  
Name of Signer(s)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(S E A L)

Exhibit "A"  
LEGAL DESCRIPTION FOR  
PUBLIC WATER SERVICE EASEMENT  
Lands of Bellwether Properties, Inc. a California Corporation  
Rohnert Park, California

Lying within the City of Rohnert Park, County of Sonoma, State of California and being a portion of Lots 3 and 4 as shown upon that certain Parcel Map entitled "Parcel Map 180" filed December 11, 2009 in Book 736 of Maps, at Pages 30 through 32, Sonoma County Records, said portion is more particularly described as follows:

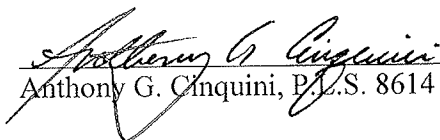
COMMENCING at the southwest corner of said Lot 3, said corner being marked with a 3/4 inch iron pipe tagged "LS 4760" from which the a 3/4 inch iron pipe tagged "LS 4760" on the south line of said Lot 3 bears South 90°00'00" East 489.95 feet; thence along the westerly line of said Lot 3, said line being the easterly right of way of Dowdell Avenue, North 00°00'00" West 17.88 feet; thence along a curve to the right, through a central angle of 36°21'45", with a radius of 266.00 feet, for a distance of 168.82 feet to the POINT OF BEGINNING; thence continuing along said curve to the right, through a central angle of 4°19'26", with a radius of 266.00 feet, for a distance of 20.07 feet; thence North 40°41'11" East 32.92 feet; thence along a curve to the left, through a central angle of 2°25'56", with a radius of 334.00 feet, for a distance of 14.18 feet; thence leaving said easterly right of way of Dowdell Avenue South 49°18'49" East 10.06 feet; thence North 40°41'11" East 117.12 feet; thence South 49°18'49" East 16.90 feet; thence South 40°41'11" West 84.27 feet; thence North 49°18'49" West 25.90 feet to the POINT OF BEGINNING.

Containing 2,076 square feet more or less.

APN 143-040-131, 143-040-127

For graphical representation of the above described land see Exhibit B attached hereto and made a part hereof.

Prepared by Cinquini & Passarino, Inc.

  
Anthony G. Cinquini, P.L.S. 8614



Jan 27 2015  
Date

