

CLAIR MULLER
Hand Seal

04-R-1062

A RESOLUTION BY

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH HOWELL PLACE CONDOS HOMEOWNER'S ASSOCIATION, INC. PROVIDING FOR THE NON-STANDARD LOCATION OF WATER METERS ON PRIVATE PROPERTY LOCATED IN THE CITY OF ATLANTA, FULTON COUNTY, GEORGIA, TO WHICH THE CITY PROVIDES WATER SERVICES; AND FOR OTHER PURPOSES.

WHEREAS, Howell Place Condos Home Owner's Association, Inc. ("Howell Place Condos") wishes to convert its potable water service to be converted from a single meter to individual meters to allow individual home owner's to be billed directly; and

WHEREAS, the single-family homes in the subdivision are served with potable water from the City; and

WHEREAS, The City typically requires that water meters be located at the "service connection" location either on City property, in the right-of-way or within an easement or license granted to the City; and

WHEREAS, Section 154-116 of the City's Code of Ordinances regarding the City's water system provides that, upon request, individual meters can be located on private property if the certain conditions as outlined in the Section can be met; and

WHEREAS, Howell Place Condos proposes to locate fifty-three (53) water meters at locations different than the service connection location, to allow each meter to be located on private property on an individual lot in the Subdivision; and

WHEREAS, the Commissioner of the City's Department of Watershed Management, after determining that the City's right of way is not suitable for installation of the water meters, has reviewed the request submitted by Howell Place Condos for the installation of individual water meters within the Subdivision and has approved the request as conditioned upon compliance with the requirements of Paragraph (5) of Section 154-116 for installation of individual water meters on private property; and

WHEREAS, Howell Place Condos has, accordingly, agreed to meet the conditions required by 154-116 of the City's Code of Ordinances: and

WHEREAS, it is desirable and in the best interests of the City to enter into an Agreement with Howell Place Condos setting forth the terms between the parties concerning the installation of and responsibility for water system infrastructure, including meters, within the Subdivision.



NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA THAT, the Mayor is authorized to execute with Howell Place Condos an Agreement for the non-standard location of water meters on private property located within the Subdivision upon substantially the following conditions:

- 1) The Subdivision water meters and related appurtenances and infrastructure will be installed as required by City procedures and specifications, with the water meters located on private property.
- 2) The "service connection" will be located at the waterline saddle tap w/valves ("Valves"), as shown on Exhibit 1, so that the City's responsibility for the public portions of the water system includes the Valves.
- 3) The City or its representatives will read each water meter at the locations indicated on Exhibit 1.
- 4) Howell Place Condos agrees to obtain, in writings to be delivered to the City, from any residential owner, prior to water service being established: [i] an acknowledgement of the City's or its representatives' license to enter private property to read the meter; [ii] an acknowledgment that the water lines between the meter and the residence and between the meter and the Valves must be maintained by the resident or Howell Place Condos; [iii] an appropriate City easement for the water meter location; and [iv] an indemnification agreement indemnifying the City from all damage claims resulting from its or its representatives' installation, maintenance and access to the meter.

BE IT FURTHER RESOLVED, that the Commissioner of the Department of Watershed Management is authorized to accept on behalf of the City easements appropriate for the water meter locations on private property that comply with the specifications of the Department.

BE IT FURTHER RESOLVED, that the City Attorney is authorized to prepare an Agreement with Howell Place Condos for this transaction, as deemed necessary and appropriate or as required by law.

BE IT FURTHER RESOLVED, that the Agreement will not become binding upon the City and the City will not be liable or obligated under it until it has been duly executed by Howell Place Condos, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to Howell Place Condos.

A true copy,

Florida Daughin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

JUN 07, 2004
JUN 14, 2004

SPRINGLAKE

TOPOGRAPHICAL & PROPERTY SURVEY

NOTE:

Item 1. Developer is to install shut-off valve at the demarcation line between private property and public right-of-way.
 Item 2. Install hydrants with magnetic tops, so that only the City Water and Fire Dept. can remove them.
 Item 3. Water line on the private property will be developed in accordance with EFD requirements and a dedication provided by the City of St. Louis.
 Item 4. The Home Owners Association will sign a written acknowledgment that the HOA will maintain water and sewer service to the shut-off valve at the demarcation line between private property and public right-of-way.
 Item 5. Agreement will be conditional upon approval by the City Council and that agreement between the City and the Developer.
 Item 6. Owner of each individual being purchased shall purchase a new meter to be installed by the City of St. Louis.

TABLETATION

1. SITE AREA: 6.79 ACRES
2. TOTAL LOT AREA: 4.17 ACRES
3. CONCRETE DRIVE TO 2nd STREET: 1.17 ACRES
4. LOT SUMMARY:

Tract 4	19
Tract 5	5
Tract 6	17
Tract 7	17
Tract 8	17
Tract 9	17
Tract 10	17
Tract 11	17
Tract 12	17
Tract 13	17
Tract 14	17
Tract 15	17
Tract 16	17
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Tract 97	17
Tract 98	17
Tract 99	17
Tract 100	17
5. COVERED AREA: 417.76 SQ. FT. (6.15 ACRES)
6. CONCRETE DRIVE TO 2nd STREET: 1.17 ACRES



LEGEND:
 - Building Footprint
 - Lot Boundary
 - Right-of-Way
 - Easement
 - Utility Line
 - Survey Point
 - Contour Line
 - Spot Elevation
 - Proposed Lot Lines

TOTAL: 54 Units (Total)
 15 Units in Bldg 1
 15 Units in Bldg 2
 15 Units in Bldg 3
 15 Units in Bldg 4
 15 Units in Bldg 5



STEVEN G. STENINGER, CONSTRUCTION SURVEYOR
 10000 MISSOURI LICENSE NO. 10000
 COMMISSION EXPIRES 12/31/2024
 7/13/24



[Space Above Reserved for Recording Data]

After Recording Return To:
Weissman, Nowack, Curry & Wilco, P.C.
One Alliance Center, Fourth Floor
3500 Lenox Road
Atlanta, Georgia 30326

Cross Reference:
The Amended and Restated Declaration
of Condominium for Howell Place Condominium
Deed Book 12126, Page 177
Attn: John Lueder, Esq.

STATE OF GEORGIA

COUNTY OF FULTON

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2004, by and between Howell Place Condominium Association, Inc. (“Association”), a Georgia nonprofit corporation, and the City of Atlanta (“City”), a Georgia municipal corporation.

RECITALS:

WHEREAS, Howell Place Condominium is located in the City of Atlanta, County of Fulton, State of Georgia; and

WHEREAS, the Declaration of Condominium for Howell Place Condominium was recorded on December 5, 1975, in Deed Book 6396, Page 448 of the Fulton County, Georgia property records ("Original Declaration"); and

WHEREAS, a plat for Howell Place Condominium was filed in Condominium Plat Book 5, Page 33 of the Fulton County, Georgia property records; and

WHEREAS, floor plans for the condominium units at Howell Place Condominium were filed in Condominium File Cabinet No 1, Folder No. 52 of the Fulton County, Georgia property records; and

WHEREAS, the Original Declaration has been completely amended and replaced by the Amended and Restated Declaration of Condominium for Howell Place Condominium on December 19, 1988, in Deed Book 12126, Page 177 of the Fulton County, Georgia property records ("Amended and Restated Declaration"); and

WHEREAS, the Association is the true and lawful condominium association existing and operating at Howell Place Condominium ("Condominium"); and

WHEREAS, the Condominium consists of common elements, limited common elements, and fifty-two (52) separate condominium units; and

WHEREAS, the common elements ("Common Elements") are defined under O.C.G.A. § 44-3-71(4) of the Georgia Condominium Act and under Paragraph 4 of the Amended and Restated Declaration as all portions of the Condominium not located within the boundaries of the units; and

WHEREAS, the Common Elements are private property; and

WHEREAS, the Association has the irrevocable power under O.C.G.A. § 44-3-106(b) of the Georgia Condominium Act and to grant easements and licenses through and over the Common Elements; and

WHEREAS, the fifty-two (52) separate condominium units located at the Condominium are owned by individual unit owners; and

WHEREAS, the Association wishes to convert its potable water service from a single meter to individual meters to allow individual condominium unit owners to be billed directly and further wishes to grant the City an easement through and over the Common Elements to install, maintain and access individual water meters to the fifty-two (52) separate condominium units; and

WHEREAS, the fifty-two (52) separate condominium units located at the Condominium are served with potable water from the City; and

WHEREAS, the City typically requires that water meters be located at the "service connection" location either on City property, in the right-of-way, or within an easement or license granted to the City; and

WHEREAS, Section 154-116 of the City's Code of Ordinances regarding the City's water system provides that, upon request, individual meters can be located on private property if the certain conditions as outlined in the Section can be met; and

WHEREAS, the Association proposes to locate fifty-two (52) water meters at locations different than the service connection location, to allow each meter to be located on the Common Elements of the Condominium; and

WHEREAS, the Association further proposes three additional water meters on the Common Elements (one (1) of which will be for the swimming pool and two (2) of which will be for irrigation hose-bibs);

WHEREAS, the Commissioner of the City's Department of Watershed Management, after determining that the City's right of way is not suitable for installation of the water meters, has reviewed the request submitted by the Association for the installation of individual water meters on the Common Elements of the Condominium and has approved the request as conditioned upon compliance with the requirements of Paragraph (5) of Section 154-116 for installation of individual water meters on private property; and

WHEREAS, the Association has, accordingly, agreed to meet the conditions required by 154-116 of the City's Code of Ordinances; and

WHEREAS, the City has consented to the change to individual meters and, by legislation adopted on _____, 2004, by the City's Council and approved by the City's Mayor on _____, 2004, attached hereto as Exhibit "A," authorized the City to execute with the Association an agreement pertaining to the proposed non-standard locations of the water meters; and

NOW, THEREFORE, for and in consideration of the mutual agreements and promises set forth herein, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto agree as follows:

1. **Grant of Easement.** The Association does hereby grant and convey to the City a permanent non-exclusive easement and license through and over the Common Elements for the installation, maintenance and access to the fifty-five (55) water meters.
2. **Installation and Location of Meters.** As a condition precedent to installation of the water meters, all appurtenances and pipes associated with the potable water services located on the Common Elements of the Condominium must meet City specifications and design requirements. The water meters will be installed on the Common Elements of the Condominium by the City, with all costs of installation borne by the Association, in accordance with the City's specifications and requirements. The water system for the Condominium will contain individual water meters at the locations shown on Exhibit "B" attached hereto. The City agrees that each individual water meter will be read by the City or its representatives at the locations set forth on Exhibit "B" for the purposes of rendering bills to each individual condominium unit owner for such owner's respective and independent water use. The Association agrees that, to the extent that the City or its representatives have to enter the Common Elements to read any meter, this Agreement constitutes an easement, license and agreement by the Association that the City or its representatives are authorized to enter such private property and that entry will not constitute a trespass.



3. **Representations of Association.** The Association represents, acknowledges and agrees to the following:

- a. that the City or its representatives hereby have authority under this Agreement, and the easement and license contained herein, to enter the Common Elements, as private property, to read meters;
- b. that the City's Code of Ordinances shall apply with respect to water services provided to the Condominium and water infrastructure located within the Condominium;
- c. that the water services provided to the Condominium are governed, in addition to the City's Code of Ordinances and applicable law, by this Agreement; and
- d. that the Association shall indemnify the City from all damage claims resulting from the installation, maintenance and access to the meters located on the Common Elements.

4. **"Service Connection;" Infrastructure Responsibilities.** The "service connection" location for the Condominium will not be located where any water meter is located. Instead, the "service connection" location will be at the point of the water system saddle tap w/valves ("Valves"), as shown on Exhibit "B," so that the City's responsibility for the public portions of the water system includes the Valves. The Association agrees that it is entirely responsible, at its expense, for the construction, operation, maintenance and repair of all water services infrastructure located immediately after the "cutoff valve" and Meter Box and throughout the Common Elements. Further, the City's approval of the location of the individual water meters as identified as Exhibit "B" does not encompass an approval that the materials installed in the Condominium in the form of water services infrastructure, except for materials identified on the Exhibit as being installed per City or County requirements or regulations, are fit or appropriate for their intended use (e.g. non-standard pvc pipe, etc.).

5. **Miscellaneous:**

- a. **Binding Effect.** This Agreement will inure to the benefit of and be binding upon Association and the City, their legal representatives and permitted successors and assigns.
- b. **Severability.** In the event any provision in this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, that will not effect the remainder of this Agreement, and the remaining provisions of this Agreement will continue in force and effect to the extent as would

have been the case had the invalid or unenforceable provisions of this Agreement had never been a part of this Agreement.

- c. **Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Georgia.
- d. **Forum Selection Clause.** The City and Association agree that any judicial review of any claim arising under or concerning this Agreement must be brought in Fulton County, Georgia. Accordingly, the parties fix venue and jurisdiction for any claim concerning this Agreement in Fulton County, Georgia.
- e. **Ethics: Gratuities And Kickbacks.**
 - i. **Gratuities and Kickbacks.** The right of the Association to proceed under this Agreement may be terminated if, after notice and hearing, the City determines that the Association:
 - 1) offered or gave a gratuity or kick-back (e.g. an entertainment, fee, commission, compensation of any kind or gift) to an officer, official, or employee of the City; and
 - 2) intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
 - ii. **Rights and Remedies.** The rights and remedies of the City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- f. **Contingent Fees.** The Association warrants that it has not employed or retained any company or person, other than a bona fide employee working for it to solicit or secure this Agreement; and that Association has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for it, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, and upon a finding after notice and hearing, the City will have the right to terminate this Agreement, and collect from the Association the full amount of such fee, commission, percentage, gift or consideration.
- g. **Further Acts.** The Association agrees to perform any additional acts and execute and deliver any additional documents as may reasonably be

necessary in order to carry out the provisions and effectuate the intent of this Agreement.



CITY:

**HOWELL PLACE CONDOMINIUM
ASSOCIATION, INC.**

MAYOR

Name: _____
Title: _____

ATTEST:

ATTEST:

MUNICIPAL CLERK (Seal)

**SECRETARY/ASSISTANT
SECRETARY (Seal)**

APPROVED:

APPROVED AS TO FORM:

**COMMISSIONER, DEPARTMENT OF
WATERSHED MANAGEMENT**

CITY ATTORNEY

APPROVED:

RECOMMENDED:

CHIEF FINANCIAL OFFICER

**CHIEF PROCUREMENT OFFICER
DEPARTMENT OF PROCUREMENT**

CHIEF OPERATING OFFICER

RCS# 5806
6/07/04
4:16 PM

Atlanta City Council

Regular Session

PERSONAL

AGRMNT W/HOWELL PLACE CONDOS

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

Y Smith	Y Winslow	Y Shook	Y Martin	Y Mitchell
B Starnes	NV Archibong	Y Muller	Y Maddox	Y Norwood
Y Young	Y Fauver	Y Moore	Y Mosley	Y Willis

PERSONAL

6-07-04 Council Meeting		
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 04-O-0802	43. 04-R-1023	83. 04-R-0975
2. 04-O-0803	44. 04-R-1024	84. 04-R-0976
3. 04-O-0804	45. 04-R-1025	85. 04-R-0977
4. 04-O-0877	46. 04-R-0979	86. 04-R-0978
5. 04-O-0930	47. 04-R-0980	
6. 04-O-0924	48. 04-R-0981	
7. 04-O-0929	49. 04-R-0982	
8. 04-O-0787	50. 04-R-0983	
9. 04-O-0654	51. 04-R-0984	
10. 04-O-0655	52. 04-R-0985	
11. 04-O-0817	ITEMS ADVERSED	
12. 04-O-0818	ON CONSENT	
13. 04-O-0819	53. 04-R-0944	
14. 04-O-0820	54. 04-R-0945	
15. 04-O-0939	55. 04-R-0946	
16. 04-R-1002	56. 04-R-0947	
17. 04-R-1003	57. 04-R-0948	
18. 04-R-1004	58. 04-R-0949	
19. 04-R-1005	59. 04-R-0950	
20. 04-R-1010	60. 04-R-0951	
21. 04-R-1011	61. 04-R-0952	
22. 04-R-1012	62. 04-R-0953	
23. 04-R-1015	63. 04-R-0954	
24. 04-R-0935	64. 04-R-0955	
25. 04-R-1008	65. 04-R-0956	
26. 04-R-1000	66. 04-R-0957	
27. 04-R-1001	67. 04-R-0958	
28. 04-R-0942	68. 04-R-0959	
29. 04-R-0927	69. 04-R-0960	
30. 04-R-0943	70. 04-R-0962	
31. 04-R-1019	71. 04-R-0963	
32. 04-R-0635	72. 04-R-0964	
33. 04-R-0989	73. 04-R-0965	
34. 04-R-0991	74. 04-R-0966	
35. 04-R-0993	75. 04-R-0967	
36. 04-R-0814	76. 04-R-0968	
37. 04-R-0926	77. 04-R-0969	
38. 04-R-0994	78. 04-R-0970	
39. 04-R-0995	79. 04-R-0971	
40. 04-R-0996	80. 04-R-0972	
41. 04-R-0997	81. 04-R-0973	
42. 04-R-0998	82. 04-R-0974	

#24

04-1062
(Do Not Write Above This Line)

Handwritten initials

A RESOLUTION BY
Blair Mueller

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH HOWELL PLACE CONDOS HOMEOWNER'S ASSOCIATION, INC. PROVIDING FOR THE NON-STANDARD LOCATION OF WATER METERS ON PRIVATE PROPERTY LOCATED IN THE CITY OF ATLANTA, FULTON COUNTY, GEORGIA, TO WHICH THE CITY PROVIDES WATER SERVICES; AND FOR OTHER PURPOSES.

Adopted 6/7/04

ADMITTED BY

- CONSENT REFER JUN 07 2004
- REGULAR REPORT REFER
- ADVERTISE & REFER COUNCIL
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER ~~REFER~~ ADOPTED

Date Referred _____

Referred To: _____

Date Referred _____

Referred To: _____

Date Referred _____

Referred To: _____

First Reading

Committee _____

Date _____

Chair _____

Referred To _____

Committee _____ Date _____ Chair _____ Action Fav, Adv, Hold (see rev. side) Other _____ Members _____ Refer To _____	Committee _____ Date _____ Chair _____ Action Fav, Adv, Hold (see rev. side) Other _____ Members _____ Refer To _____
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Committee _____ Date _____ Chair _____ Action Fav, Adv, Hold (see rev. side) Other _____ Members _____ Refer To _____	Committee _____ Date _____ Chair _____ Action Fav, Adv, Hold (see rev. side) Other _____ Members _____ Refer To _____
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FINAL COUNCIL ACTION

2nd 1st & 2nd 3rd

Readings

Consent V Vote RC Vote

CERTIFIED

JUN 07 2004

Blair Mueller

COUNCIL PRESIDENT PRO TEM

CERTIFIED

JUN 07 2004

Renee Douglas Adams

MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

JUN 14 2004

Handwritten signature

MAYOR