

RESOLUTION NO. 5874

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A DONATION OF REAL PROPERTY AND AUTHORIZING THE RECORDING OF RESTRICTIVE COVENANTS FOR PARK PURPOSES.

WHEREAS, the City has previously accepted land from Oak Creek Park, LLC in conjunction with the development of real property off of 53rd Avenue; and

WHEREAS, the owners of Oak Creek Park, LLC have offered to donate additional property to the City of Albany subject to restrictive covenants limiting development activities on the donated property (Attachment 1, "Addendum to Mitigation Agreement"); and

WHEREAS, a condition of this donation is the placement of an additional restrictive covenant on land previously donated by Oak Creek Park, LLC to the City of Albany; and

WHEREAS, the aforesaid restrictions are unlikely to interfere with any anticipated park activities on any of the donated parcels.

NOW, THEREFORE, BE IT RESOLVED that the Albany City Council hereby authorizes the City Manager or Director of Parks and Recreation to execute such documents as maybe necessary to accept a gift of land from Stew Stone, et al; and

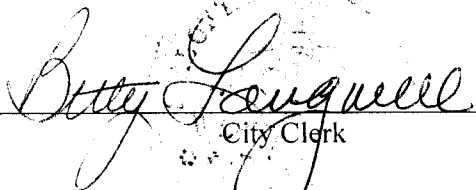
BE IT FURTHER RESOLVED, that the Council authorizes the City Manager or the Director of Parks and Recreation to execute and record restrictive covenants on tracks H, K, and J of the Spring Meadows Addition, Linn County, Oregon; and

BE IT FURTHER RESOLVED, that the Council authorizes the City Manager or the Director of Parks and Recreation to execute an addendum to a mitigation agreement previously executed between the City and Oak Creek Park, LLC whereby the City obligates its self to impose some restrictions in question.

DATED AND EFFECTIVE THIS 16th DAY OF DECEMBER, 2009.


Mayor

ATTEST:


City Clerk

ATTACHMENT 1

ADDENDUM TO MITIGATION AGREEMENT

This Addendum supplements and modifies that Mitigation Agreement entered into on the 30th day of May, 2001, by and between the City of Albany, hereinafter called the "**City**," by and through its Parks and Recreation Department, and Oak Creek Park LLC, an Oregon limited liability company, hereinafter called "**OCP**."

RECITALS

- A. OCP and the City entered into a Mitigation Agreement on May 30, 2001 (the "**Mitigation Agreement**") to provide for the transfer of land and for compensatory mitigation in connection with the development of OCP's subdivision.
- B. Subsequent to the Mitigation Agreement, OCP donated certain properties from the subdivision, more particularly described as: **Tract "H," Tract "K," and Tract "J" of Spring Meadow Sixth Addition, Linn County, Oregon** (hereinafter the "**Properties**"), to the City under separate agreements, free of any restrictive covenants or development restrictions.
- C. The City now desires to subject the Properties to certain restrictive covenants.

TERMS

Based on the foregoing recitals, the parties agree as follows:

1. Restrictive Covenant: The Properties shall be encumbered with the covenants set forth in "**Exhibit A**," "**Exhibit B**," and "**Exhibit C**" attached hereto and incorporated herein.
- ~~2. Department of State Lands: The City agrees to mitigate the Properties to the satisfaction of the Department of State Lands.~~
- 3.2 Attorney Fees: Should it be necessary to bring suit or action to enforce this Addendum or seek damages for its breach, the prevailing party shall be entitled to an award of its reasonable attorney's fees, including those on appeal.
- 4.3 Release: The parties hereto agree to release each other from any claim which may have arisen out of the Mitigation Agreement prior to the execution date of this Addendum. ~~However, nothing in this release shall be construed as relieving either party of performing, but not from any obligations it continues to have under claims that may arise after the Mitigation Agreement or execution date of this Addendum.~~
- 5.4 Indemnity: The parties hereto shall defend and indemnify each other, and their respective members individually, and save each other, and their respective members individually, harmless from and against any and all claims, demands, liabilities, damages, costs, or expenses, including attorneys' fees, arising from any act, omission, or negligence of the other party, or the officers, contractors,

licensees, agents, servants, employees, guests, invitees, or visitors of either party in connection with this Addendum.

It is the intent of the parties that this Addendum shall control as to any conflicting terms or conditions set forth in the Mitigation Agreement. Except as expressed herein, all the terms and conditions of the Mitigation Agreement shall remain in full force and effect. No other amendment or modification of the Mitigation Agreement is intended or may be implied from the provisions set out in this Addendum.

DATED this _____ day of ~~November~~December, 2009.

OAK CREEK PARK, LLC:

THE CITY OF ALBANY:

Gary D. Williamson, Member and
Individually as to the land donation

City Manager

Patricia E. Williamson, Member and
Individually as to the land donation

Counsel for the City of Albany

Stewart W. Stone, Member and
Individually as to the land donation

Denise E. Stone, Member and
Individually as to the land donation

THE FOWLER FAMILY, LLC

By: _____
James W. Fowler, Trustee of the
Fowler Living Trust, Manager

By: _____
Candace Fowler, Trustee of the
Fowler Living Trust, Manager