

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 11-43

A RESOLUTION APPROVING AN AGREEMENT WHICH CONVEYS TRACT H OF COLONY CREEK ESTATES NO. 2 TO THE CITY AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS ASSOCIATED WITH THE CONVEYANCE

WHEREAS, the Colony Creek Homeowners' Association ("HOA") has expressed a willingness to donate property, known as Tract H, to the City of Tigard ("City"); and

WHEREAS, the HOA has adopted a resolution turning the property over to the City; and

WHEREAS, a section of the Fanno Creek Trail crosses Tract H; and

WHEREAS, the City is interested in acquiring the property because this section of trail connects Fanno Creek Drive to the library and gives pedestrians access to the Fanno Creek Trail; and

WHEREAS, a Declaration between the HOA and the City specifies the property may be conveyed to the City, provided the property is used as open space or for recreation; and

WHEREAS, this provision is consistent with the City's plans to maintain the trail and small park area currently on the property.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

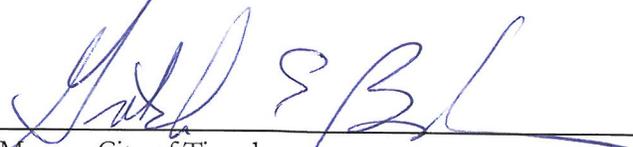
SECTION 1: The City Council approves the agreement (Exhibit A) with Colony Creek Estates Homeowners' Association to convey Tract H of Colony Creek Estates No. 2 to the City.

SECTION 2: The City intends to use the property as open space or for recreation.

SECTION 3: The City Council authorizes the city manager to execute all documents associated with the conveyance.

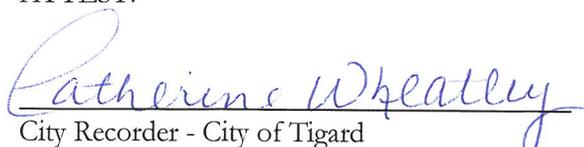
SECTION 4: This resolution is effective immediately upon passage.

PASSED: This 20th day of December 2011.



Mayor - City of Tigard
Council President

ATTEST:



City Recorder - City of Tigard

AGREEMENT

BETWEEN: Colony Creek Estates Homeowners' Association, Inc.,
 an Oregon nonprofit corporation ("Grantor")
 PO Box 230553
 Tigard, Oregon 97281
 Attn: _____
 Office: (_____) _____

AND: City of Tigard ("Grantee")
 13325 SW Hall Blvd.
 Tigard, Oregon 97223
 Attn: City Manager
 Office: (503) 718-2486

EFFECTIVE DATE: _____, 2011 ("Effective Date")

RECITALS

A. Colony Creek Estates (the "Planned Community") is a planned community located in the City of Tigard, Washington County, Oregon. The Planned Community was established and is governed by the following documents (collectively "Governing Documents") recorded, as indicated, in the Records of Washington County, Oregon:

(a) Declaration of Protective Covenants Colony Creek Estates (the "Declaration" recorded August 6, 1979 as Document No. 79031314, as amended or supplemented by:

(i) First Supplemental Amendment Declaration of Protective Covenants for Colony Creek Estates recorded May 4, 1981 as Document No. 81015019.

(ii) Amendment to the Declaration of Protective Covenants for Colony Creek Estates recorded May 19, 1982 as Document No. 82012592.

(iii) Annexation of Property to the Declaration of Protective Covenants for Colony Creek Estates recorded August 24, 1984 as Document No. 84033750.

(b) Bylaws of Colony Creek Estates Homeowners Association, Inc. (the "Bylaws").

(c) The following plats recorded in the Washington County Plat Records:

(i) Colony Creek Estates Recorded August 6, 1979 in Book 47, Page 19.

(ii) Colony Creek Estates No. 2 recorded August 14, 1984 in Book 57, Page 12.

(iii) Colony Creek Estates No. 3 recorded May 21, 1985 in Book 58, Page 34.

(iv) Colony Creek Estates No. 4 recorded May 21, 1985 in Book 58, Page 36.

B. Grantor is Colony Creek Estates Homeowners' Association, Inc., an Oregon nonprofit corporation (the "Association") formed to serve as the means through which the owners may take action with regard to the administration, management and operation of the Association and the Planned Community as provided under the Governing Documents.

C. As of January 1, 2002, Colony Creek Estates is a Class I Planned Community and subject to the provisions of the Oregon Planned Community Act, ORS 94.550 to 94.783 (the "Act") as provided in ORS 94.572.

D. Tract H, Colony Creek Estates No. 2, Washington County, Oregon (the "Subject Property") is common property and is designated as "Open Space" on the Colony Creek Estates No. 2 Plat.

E. The Subject Property includes any improvements, fixtures, structures, timber, water and minerals located thereon, and any and all rights appurtenant thereto owned by Grantor, including but not limited to development rights, timber rights, water rights, grazing rights, access rights and mineral rights.

F. Grantor wishes to convey the Subject Property to Grantee and Grantee wishes to receive the Subject Property on the terms and conditions set forth in this Agreement (the "Agreement").

G. Section 6.1 of the Declaration specifies, with the approval of the City of Tigard, and approval in writing of the owners of a majority of the lots subject to the Governing Documents, the Association may dedicate or convey any portion of the common areas to a park district or other public body for open space or recreational use.

H. In January, 2011, pursuant to Section 6.1 of the Declaration, the Grantor's Board of Directors requested and received the written approval from the owners of at least a majority of the lots subjected to the Governing Documents to convey Tract H to the City pursuant to Section 6.1 of the Declaration. Specifically, the owners of sixty-four (64) of the one hundred ten (110) lots approved the conveyance.

I. ORS 94.665 governs conveyance of common property and specifies:

Except as otherwise provided in the declaration, a homeowners association may sell, transfer, convey or subject to a security interest any portion of the common property if 80 percent or more of the votes in the homeowners association, including 80 percent of the votes of lots not owned by a declarant at the time of the vote, are cast in favor of the action. (Emphasis added)

J. ORS 94.665 further provides, an instrument that sells, transfers, conveys or encumbers common property must:

(a) State that the action of the homeowners association was approved in accordance with this section; and

(b) Be executed by the president and secretary of the association and acknowledged in the manner provided for acknowledgment of the instruments by the officers.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals set forth above, which are contractual, and for other good and valuable consideration described in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as set forth below.

SECTION 1 General Provisions

1.1 Conveyance and Acceptance. Grantor agrees to convey to Grantee and Grantee agrees to accept from Grantor the Subject Property on the terms and conditions set forth herein.

1.2 Consideration. There shall be no cash consideration for the Subject Property; provided, however, as consideration for the Subject Property, Grantee shall assume the obligations of maintaining the Subject Property as required by the Declaration and will incorporate the Subject Property into its park system.

1.3 Possession. Except as specifically set forth in this Agreement, there are no leases, licenses or other agreements permitting, nor has Grantor entered any course of conduct that would permit any person or entity to occupy or use any portion of the Subject Property. Grantor shall deliver immediate and exclusive possession of the entire Subject Property to Grantee at closing.

1.4 Condition. The Subject Property is being sold "AS-IS". Grantee has inspected the Subject Property and is satisfied with its physical condition.

SECTION 2 Conditions Precedent to Closing

2.1 Title Policy. Grantee may procure, at Grantee's sole cost and expense, an ALTA standard or extended coverage owner's policy of title insurance for the Subject Property.

2.2 Environmental. Grantee has reviewed an environmental assessment of the Subject Property by a qualified environmental professional following ASTM E 1527-05, which assessment was dated June 15, 2010, with reference number 7806. Said assessment indicated no "recognized environmental conditions" as defined by the standard. Grantee's approval of any change to the environmental condition of the Subject Property subsequent to the date of assessment, based on its due diligence and inspections, is a condition to closing.

2.3 Contingency Failure. In the event any of the contingencies set forth in Section 2 are not timely satisfied or waived, for a reason other than the default of the Grantee or the Grantor under this Agreement, this Agreement and the rights and obligations of the Grantee and the Grantor shall terminate, except as otherwise provided.

SECTION 3 Grantor's Representations

Grantor makes the following representations:

3.1 Authority. Subject to Section 3.3 below, Grantor, pursuant to the Declaration and ORS 94.665, has full power and authority to enter into this Agreement.

3.2 No Other Obligations. Grantor has not entered into any other contracts for the conveyance of the Subject Property or any portion thereof, nor do there exist any rights of first refusal or options to purchase the Subject Property.

3.3 No Other Proceedings. Grantor acknowledges that some confusion exists over whether Grantor has sole and legal beneficial fee title to the Subject Property. Other than this recognized issue, to the best of Grantor's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property or pending or threatened against Grantor which could subject an owner of the Subject Property to liability. The representations of Grantor contained in this Agreement shall be effective through the close of escrow.

3.4 Pending Transactions, Suits or Proceedings. To Grantor's knowledge, there are no transactions, suits, proceedings, litigation (including zoning or other land use regulation proceedings), condemnation, or investigations pending or threatened against or affecting the Property or Grantor as the owner of the Property in any court at law or in equity, or before or by any governmental department, commission, board, agency or instrumentality.

3.5 Effective Period. The representations of Grantor contained in this Agreement shall be effective through the close of escrow.

SECTION 4 Grantee's Representations

Grantee makes the following representations:

4.1. Authority. Grantee has all requisite authority and power to enter into this Agreement.

4.2. No Violations. Neither Grantee's execution of this Agreement nor its taking any of the actions contemplated hereunder will violate any City, County, State or Federal Codes or Ordinances, or other governmental regulations.

4.3. Title; Acceptance by Deed. Grantee acknowledges that some confusion exists over whether Grantor has sole and legal beneficial fee title to the Subject Property, and agrees to accept Grantor's conveyance of the Subject Property via the form of Deed specified in Section 5.2.1 hereof.

4.4. Effective Period. The representations of Grantee contained in this Agreement shall be effective through the close of escrow.

SECTION 5 Closing and Escrow

5.1. Closing. Closing on the purchase and sale of the Subject Property shall occur on or about December 30, 2011.

5.2. Grantor to Deliver at Closing.

5.2.1. Title. Title shall be conveyed to Grantee, via quitclaim deed (the "Deed") at the close of escrow, Grantor shall cause the Deed to be recorded in the official property records of Washington County and shall subsequently deliver conformed copies of the Deed to the parties.

5.2.2. Proof of Authority. Such proof of the Grantor's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Grantor to act for or bind the Grantor, as may be reasonably required by the Title Company and/or the Grantee.

5.2.3. Nonforeign Certification. The Grantor represents that it is not a "foreign person" as defined in IRC §1445. If required by the Grantee, Grantor will give an affidavit to the Grantee to this effect in the form required by that statute and related regulations.

5.2.4. Closing Expenses and Fees. The escrow fee shall be paid by Grantee. Real estate taxes, if any, on the Subject Property shall be prorated between the Grantor and Grantee as of the close of escrow based upon the latest available tax bill. Other fees and charges shall be allocated in accordance with the customary practices of Washington County, Oregon.

5.2.5. Title Insurance. Grantee acknowledges that Grantor has no obligation to provide title insurance to Grantee for the Subject Property.

SECTION 6 Defaults and Remedies

6.1. Grantee's Default and Grantor's Remedies. If Grantee breaches this Agreement, which breach Grantee fails to cure within twenty (20) days after receipt of written notice thereof from Grantor, Grantee shall be in default under this Agreement and Grantor shall be entitled to any and all remedies at law or equity.

6.2. Grantor's Default and Grantee's Remedies. If Grantor breaches this Agreement, which breach Grantor fails to cure within twenty (20) days after receipt of written notice thereof from Grantee, Grantor shall be in default under this Agreement and Grantee shall be entitled to any and all remedies at law or equity.

SECTION 7 Miscellaneous

7.1. Notices. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, courier service or express mail, or by first class mail, postage prepaid, at the addresses set forth on the first page of this Agreement. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified, or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

7.2. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.

7.3. Time of the Essence. Time is of the essence under this Agreement.

7.4. Binding on Successors. This Agreement shall be binding not only upon the parties but also upon their assigns, and other successors in interest. Neither party shall assign its rights and/or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

7.5. Additional Documents. Grantor and Grantee agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

7.6. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between Grantor and Grantee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

7.7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

7.8. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

7.9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

7.10. Statutory Notice under ORS 93.040. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

7.11. Damage or Destruction; Condemnation. Until the transfer of legal title, the risk of loss shall be retained by the Grantor. The Grantor shall keep the Subject Property fully insured until the transfer of legal title. In the event of any material portion of the Subject Property is damaged, destroyed, or condemned or threatened with condemnation before the transfer of legal title, the Grantee may terminate this Agreement. In such event, this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Subject Property is destroyed then Grantee is obligated to close this transaction as provided for under this Agreement. In such event, the Grantee shall be assigned all insurance proceeds or condemnation proceeds payable to or for the account of the Grantor.

7.12. Attorneys' Fees. If any action is instituted between Grantor and Grantee in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including, without limitation, attorneys' fees and costs, as fixed by the court therein, at trial or on appeal. In addition, if either party incurs attorneys' fees or costs in successfully enforcing any right under this Agreement, such attorneys' fees and costs shall be recoverable from the other party hereto.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

GRANTEE

GRANTOR

City of Tigard

Colony Creek Estates Homeowners'
Association, Inc.

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: President

Approved as to Form:

By: _____

By: _____

Name: _____

Its: Secretary

Title: City Attorney

Date: _____