

RESOLUTION NO. 6596

A RESOLUTION TERMINATING THE ALBANY SENIOR ENDOWMENT FUND AND REPEALING ORDINANCE NO. 4997.

WHEREAS, pursuant to City Council Ordinance 4997, effective May 8, 1992 (“Ordinance”), the Albany Senior Center Endowment Fund (“Fund”) was established to hold and invest funds donated to the Parks and Recreation Department and the Senior Center Endowment Committee (“Committee”) was established to provide advice and recommendations to the City Council concerning the expenditure of income of the Fund; and

WHEREAS, the Fund currently has a balance of approximately \$52,000. The Fund is not, and has not been, generating enough interest to cover the Albany Senior Center’s (“Center”) planned expenditures and the cost of administration; and

WHEREAS, Albany Area Seniors, Inc. (“AASI”) is an Oregon nonprofit corporation exempt from taxation under Internal Revenue Code Section 501(c)(3), formed to enhance the ability of the City of Albany’s Parks and Recreation Department to provide excellent recreational experiences and socialization opportunities for older adults in the Albany, Oregon community; and

WHEREAS, the Committee, after consulting with legal counsel and the Oregon Department of Justice Charitable Activities Division (“DOJ”), has determined that, due to the minimal income and relatively small corpus of the Fund and the relatively high cost of administration, it is in the best interest of the Fund and its intended beneficiaries to terminate the Fund and distribute its corpus to AASI for AASI to use for the exclusive benefit of the Center, rather than to expend funds towards continued administration of the Fund according to the Ordinance; and

WHEREAS, the Board of Directors of AASI is willing and able to accept a distribution of the corpus of the Fund to hold, use and expend such funds exclusively in furtherance of the operations of the Center; and

WHEREAS, the DOJ is willing to consent to the termination of the Trust and transfer of the corpus of the Trust to AASI to be used and expended for such purposes based on the terms and conditions of the Plan of Termination attached hereto as Exhibit A and the Termination and Distribution Agreement (“Termination Agreement”) attached hereto as Exhibit B; and

NOW, THEREFORE BE IT RESOLVED, Ordinance 4997 is hereby repealed; and

NOW, THEREFORE BE IT RESOLVED:

Section 1: Plan of Termination

BE IT FURTHER RESOLVED, that the Plan of Termination attached hereto as Exhibit A is hereby adopted; and

BE IT FURTHER RESOLVED , that the Committee, or any member thereof, is hereby authorized, empowered and directed to execute the Plan of Termination and take all action necessary or required to implement the Plan of Termination; and

Section 2: Termination Agreement

BE IT FURTHER RESOLVED, that the Termination Agreement attached hereto as Exhibit B is hereby adopted; and

BE IT FURTHER RESOLVED, that the Committee, or any member thereof, is hereby authorized, empowered and directed to execute the Termination Agreement and take all action necessary or required to implement the Termination Agreement; and

Section 3: Closing Matters

BE IT FURTHER RESOLVED; that the adopted Plan of Termination and Termination Agreement be submitted to the Oregon Attorney General of Oregon for approval; and

BE IT FURTHER RESOLVED, that the Committee, any member thereof, is hereby authorized and directed to take any and all actions reasonably necessary or advisable to terminate the Fund in accordance the Plan of Termination, including causing closing forms to be prepared and filed with the Oregon Department of Justice; causing all necessary tax returns to be prepared and filed with applicable tax authorities; causing any taxes due to taxing authorities to be paid; causing any amounts due to creditors of the Fund to be paid; and arranging for the transfer of the remaining assets of the Trusts to AASI.

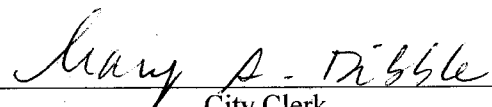
The law firm of Garvey Schubert Barer (“GSB”) has prepared these resolutions, the Plan of Termination and the Termination Agreement (the “Termination Documents”) on behalf of the City Council. GSB shall present such drafts to representatives of the DOJ for the purpose of obtaining the advance consent of the DOJ to the form and content of the Termination Documents and, if necessary, GSB shall, thereafter, negotiate and draft modifications to the Termination Documents requested by the DOJ necessary to obtain the DOJ’s approval thereof.

DATED AND EFFECTIVE THIS 24th DAY OF MAY, 2017.



Mayor

ATTEST:



City Clerk

**PLAN OF TERMINATION
OF THE ALBANY SENIOR CENTER ENDOWMENT FUND**

This Plan of Termination (“Plan”) was adopted this _____ day of _____, 2017, by the Senior Center Endowment Committee (“Committee”) of the Albany Senior Center Endowment Fund (“Fund”) under the authority and at the direction of the City Council (“City Council”) of the City of Albany, Oregon (“City”).

RECITALS

A. The Committee administers the Fund pursuant to City Council Ordinance 4997, effective May 8, 1992 (“Ordinance”). The Ordinance requires the Fund’s corpus to remain intact and restricts the interest earned on the corpus to be used solely for the expenses of the Albany Senior Center (“Center”), or, in the event the City ceases to operate a senior center, for other services or programs designed to benefit people aged fifty (50) years or older.

B. The Fund currently has a balance of approximately \$52,000. The Fund is not, and has not been, generating enough interest to cover the Center’s planned expenditures and the cost of administration.

C. Albany Area Seniors, Inc. (“AASI”) is an Oregon nonprofit corporation that is exempt from taxation under Internal Revenue Code Section 501(c)(3). AASI was formed to enhance the ability of the City of Albany’s Parks and Recreation Department to provide excellent recreational experiences and socialization opportunities for older adults in the Albany, Oregon community.

D. The Committee, after consulting with legal counsel and the Oregon Department of Justice Charitable Activities Division (“DOJ”), has determined that, due to the minimal income and relatively small corpus of the Fund and the relatively high cost of administration, it is in the best interest of the Fund and its intended beneficiaries to terminate the Fund and distribute its corpus to AASI, to use for the exclusive benefit of the Center rather than to expend funds towards continued administration of the Fund according to the Ordinance.

E. The Committee has recommended the Fund be terminated and the corpus thereafter distributed to AASI pursuant to ORS 130.205 and 130.215, which authorize termination of a trust due to unanticipated circumstances; inability to administer the trust effectively; or uneconomic administrative costs.

F. The Board of Directors of AASI is willing and able to accept a distribution of the corpus of the Fund to hold, use and expend such funds exclusively in furtherance of the operations of the Center.

G. The DOJ is willing to consent to the termination of the Trust and transfer of the corpus of the Trust to AASI to be used and expended for such purposes under the direction of AASI based on the terms and conditions of this Plan of Termination and the Termination and Distribution Agreement (“Termination Agreement”) attached hereto as Exhibit B.

PLAN OF TERMINATION; IMPLEMENTATION STEPS

1) Prepare Termination Documents; Advance Consent of DOJ. The law firm of Garvey Schubert Barer (“GSB”) has prepared this Plan of Termination and the Termination Agreement (the “Termination Documents”) at the request of the City. GSB shall present such drafts to representatives of the DOJ for the purpose of obtaining the advance consent of the DOJ to the form and content of the Termination Documents and, if necessary, GSB shall, thereafter, negotiate and draft modifications to the Termination Documents requested by the DOJ necessary to obtain the DOJ’s approval thereof.

2) Execute Termination Agreement. Upon approval of the Termination Documents by all parties, including the DOJ, the Termination Documents shall be executed and the Fund shall be thereafter terminated.

3) Closing Matters. Thereafter, the Committee shall:

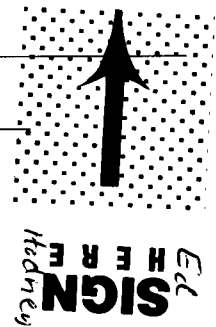
- a) Payment of Obligations.** Pay, satisfy and discharge, or make adequate provision to pay, satisfy and discharge, all liabilities and obligations, including taxes, of the Fund.
- b) Final Tax Returns.** Prepare and file the final tax returns of the Fund and pay any associated taxes.
- c) Transfer of Remaining Assets.** Transfer and convey the Fund’s remaining assets to AASI pursuant to the terms of the Termination Documents.
- d) Closing Documents.** Prepare and file any final documents with the DOJ necessary to report the termination of the activities of the Trusts.

4) The signatory who executes this document represents that he or she has authority to sign on behalf of the Committee and the City Council.

By: _____

Its: _____

Date: _____



GSB:8268332.3 [39134.00200]

TERMINATION AND DISTRIBUTION AGREEMENT

This Termination and Distribution Agreement (“Agreement”) is made and entered into this 23RD day of March, 2017, by and between the Senior Center Endowment Committee (“Committee”) of the Albany Senior Center Endowment Fund (“Fund”) under the authority and at the direction of the City Council (“City Council”) of the City of Albany, Oregon (“City”) and Albany Area Seniors, Inc. (“AASI”).

RECITALS

A. The Committee administers the Fund pursuant to City Council Ordinance 4997, effective May 8, 1992 (“Ordinance”). The Ordinance requires the Fund’s corpus to remain intact and limits the interest earned on the corpus to be used solely for the expenses of the Albany Senior Center (“Center”), or, in the event the City ceases to operate a senior center, for other services or programs designed to benefit people aged fifty (50) years or older.

B. Albany Area Seniors, Inc. (“AASI”) is an Oregon nonprofit corporation that is exempt from taxation under Internal Revenue Code Section 501(c)(3). AASI was formed to enhance the ability of the City of Albany’s Parks and Recreation Department to provide excellent recreational experiences and socialization opportunities for older adults in the Albany, Oregon community. Membership in AASI is open to any individual who participates in the programs, services, and activities offered by the Center.

C. The Committee has recommended the Fund be terminated and the corpus thereafter distributed to AASI pursuant to ORS 130.205 and 130.215, which authorize termination of a trust due to unanticipated circumstances; inability to administer the trust effectively; or uneconomic administrative costs.

D. AASI is willing and able to accept a distribution of the corpus of the Fund and to hold, use and expend such Fund exclusively to further the charitable and educational purposes of AASI by using and expending such funds exclusively in furtherance of the operations of the Center.

E. In consideration of the foregoing, and after consulting with legal counsel and the Oregon Department of Justice Charitable Activities Division (“DOJ”), the Committee, as authorized by the City Council, has adopted a Plan of Termination pursuant to which the Fund will be terminated and its remaining corpus will be distributed to AASI to be held, used and expended at the direction of AASI’s board of directors exclusively to further the charitable and educational purposes of AASI.

F. The DOJ is willing to consent to the termination of the Fund and transfer of the corpus of the Fund to AASI to be held, used and expended for such purposes at the direction of the AASI board of directors based on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Termination of Fund. Effective as of the Effective Date (defined below), the Fund shall be deemed terminated pursuant to the aforementioned statutory provisions.

2. Assignment and Transfer of Remaining Trust Assets. Effective as of the Effective Date, the assets of the Fund remaining after all liabilities and obligations of the Fund have been satisfied (the “Residual Assets”), are hereby assigned, transferred, and conveyed, to be held, used and expended by AASI, at the direction of its board of directors, exclusively to further the operations of Albany Senior Center, subject to the limitations set forth in Section 3 below.

3. Acceptance of Fund Assets; Limitations on Use. AASI hereby accepts the foregoing assignment and transfer of the Residual Assets and hereby agrees to the following limitations on their use:

a. The Residual Assets shall be used solely and exclusively by AASI for charitable and educational purposes, all within the meaning of Internal Revenue Code Section 501(c)(3) (or the corresponding section of any future federal internal revenue laws).

b. No part of the Residual Assets shall inure, directly or indirectly, to the benefit of, or be distributable to AASI’s directors, officers, its Board or other private persons; provided that AASI may use the Residual Assets to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its exempt purposes.

c. In accordance with Code Section 501(c)(3): (a) no substantial part of the activities of AASI shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and AASI shall not participate in, or intervene in any political campaign on behalf of or in opposition to any candidate for public office; (b) AASI shall not engage in any activities not permitted to be carried on (i) by an organization exempt from federal income tax under Code Section 501(c)(3) (or the corresponding section of any future federal internal revenue laws) or (ii) by an organization, contributions to which are deductible under Code Section 170(c)(2) (or the corresponding section of any future federal internal revenue laws); (c) upon the dissolution of AASI, any surplus assets in excess of amounts necessary to satisfy the obligations of AASI shall be distributed to one or more other not-for-profit organizations qualifying as exempt from federal income tax under Code Section 501(c)(3) (or the corresponding section of any future federal internal revenue laws), which organizations (i) are engaged in charitable or educational activities similar to AASI’s tax-exempt activities and (ii) shall use such assets exclusively for charitable or educational purposes within the meaning of Section 501(c)(3) of the Code (or the corresponding section of any future federal internal revenue laws); and (d) any such assets not so disposed of shall be disposed of by the court of appropriate jurisdiction of the county in which the principal office of AASI is then located, exclusively for such purposes or to such organization or organizations, as that court shall determine that are organized and operated exclusively for such purposes.

4. Consent of DOJ. The Oregon Attorney General, as represented by the signature of an authorized representative of the Oregon Department of Justice Charitable Activities Division (“DOJ”), hereby consents to the termination of the Fund and the transfer of the Residual Assets to AASI, as provided herein.

5. Effective Upon Execution. This Agreement shall be effective only upon execution by all parties hereto and the consent of the DOJ described in Section 4 (“Effective Date”).

6. **Authority of Signatory.** Each of the undersigned individuals signs on behalf of, and represents and warrants that he or she has the authority and authorization to sign on behalf of and bind, the applicable party or organization identified immediately above his or her signature, and upon such execution by such individuals, this Agreement shall be a valid and binding with respect to such party or organization.

7. **Miscellaneous Provisions.**

a. **Recitals.** The recitals are hereby incorporated into this Agreement.

b. **Entire Agreement.** This Agreement is the entire, final, and complete agreement and understanding of the parties with respect to the subject matter herein, and supersedes and replaces all written and oral agreements and understandings heretofore made or existing by and between the parties or their representatives with respect thereto, except where definitions and other terms have been expressly incorporated herein by reference.

c. **Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument and all of which together shall constitute one and the same agreement. This Agreement may be executed by facsimile signatures.

d. **Binding Effect.** This Agreement shall be binding and insure to the benefit of the parties and their respective successors and assigns.

e. **Governing Law.** This Agreement, shall be governed, construed, performed, and enforced in accordance with the laws of the State of Oregon, without regard to its conflict of law principles.

f. **Restriction on Assignment.** This Agreement shall not be assignable by any party hereto. Any attempted assignment in violation of this paragraph shall be null and void.

g. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.


h. **Severability.** In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

i. **Amendment.** No supplement, modification, or amendment of this Agreement shall be valid, unless the same is in writing and signed by all parties hereto.

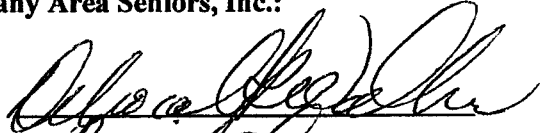
j. **Legal Representation.** This Agreement was prepared by Garvey Schubert Barer as attorneys for the City of Albany. The parties acknowledge that Garvey Schubert Barer acted as attorneys for the City of Albany and did not represent any other party or any individual trustee or board member in this transaction.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

Senior Center Endowment Committee:

By: 
Its: Chair
Date: 3-23-2017.

Albany Area Seniors, Inc.:

By: 
Its: President
Date: 3-23-2017

AGREED AND CONSENTED TO:

OREGON DEPARTMENT OF JUSTICE,
CHARITABLE ACTIVITIES SECTION

By: _____
Printed Name: _____
Title: _____
Date: _____

GSB:8269746.4

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

Senior Center Endowment Committee:

Albany Area Seniors, Inc.:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

AGREED AND CONSENTED TO:

OREGON DEPARTMENT OF JUSTICE,
CHARITABLE ACTIVITIES SECTION

By: Susan A Bower

Printed Name: Susan A. Bower

Title: Assistant Attorney General

Date: 3/28/17

GSB:8269746.4

RESOLUTION

OF THE BOARD OF ALBANY AREA SENIORS, INC.

Effective: March 23, 2017

WHEREAS, the Board of Directors ("Board") has been approached by the Senior Center Endowment Committee ("Committee") of the Albany Senior Center Endowment Fund ("Fund"), about whether the Board would be willing and able to accept a distribution of the corpus of the Fund upon the planned termination thereof to hold, use and expend such assets exclusively in furtherance of the operations of the Albany Senior Center ("Center");

WHEREAS, Albany Area Seniors, Inc. ("AASI") is a nonprofit corporation under the laws of Oregon that is exempt from taxation under Internal Revenue Code Section 501(c)(3) with the purpose of enhancing the City of Albany Parks and Recreation Department's ability to provide excellent recreational experiences and socialization opportunities for older adults in the community;

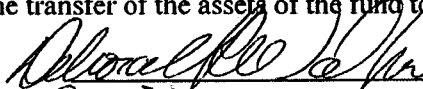
WHEREAS, AASI is willing and able to accept a distribution of the corpus of the Fund and to hold, use and expend such funds exclusively to further the charitable and educational purposes of the Center; and

WHEREAS, the Oregon Department of Justice ("DOJ") Charitable Activities Division is willing to consent to the termination of the Fund and transfer of the residual assets of the Fund to AASI to be used and expended for such purposes the terms and conditions of the Termination and Distribution Agreement ("Termination Agreement") attached hereto as Exhibit A.

NOW THEREFORE, BE IT

RESOLVED, that the Termination Agreement attached hereto as Exhibit A is hereby adopted; and

RESOLVED FURTHER, that the President is hereby authorized, empowered and directed to execute the Termination Agreement and take all action necessary or required to implement the Termination Agreement on behalf of the Board and to arrange for and implement the transfer of the assets of the fund to AASI.

 President

 Secretary

Dated: 3/23/17