

RESOLUTION NO. 5491

A RESOLUTION CONCERNING THE PRESERVATION PLAN PROPOSED BY SECOND STREET VENTURES, LIMITED PARTNERSHIP, CASCADE TERRA MANAGEMENT, LLC., AND ROBERT A. LUND TRUST.

WHEREAS, Second Street Ventures Limited Partnership, Cascade Terra Management, LLC, and Robert A. Lund (hereinafter referred to as "Property Owners") own or claim an interest in real property described as Lots 1 and 2, Block 17, City of Albany, more commonly known as the Old City Hall; and

WHEREAS, on or about December 10, 2005, Property Owners caused to be erected on the roof of the Old City Hall a communication tower(s); and

WHEREAS, the City holds a façade easement over the Old City Hall which gives the Albany City Council discretionary approval concerning construction in the air space above the Old City Hall; and

WHEREAS, a lawsuit for injunction was filed by the City against Property Owners on or about May 17, 2006, which ultimately resulted in a stipulated settlement under the terms of which the Albany City Council, following a hearing, was granted complete discretion to determine what antennae and/or towers it would allow on the roof of the Old City Hall, subject to the limitation that at least one amateur radio tower not more than 15 feet above roof height be permitted; and

WHEREAS, a hearing was held on October 8, 2007, in compliance with the terms of the stipulated settlement; and

WHEREAS, City staff presented information for the Council's consideration and Property Owners did not appear but instead submitted an email communication via the City Attorney accepting a limitation of one 15-foot-high amateur radio tower, measured from roof top.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that pursuant to the terms of the stipulated settlement, the City Council concludes that only one amateur radio antenna shall be permitted on the roof of the Old City Hall and that the antenna shall be limited to not more than 15 feet above roof height. Property Owners shall be required to obtain all applicable building permits required by law for the placement or retention of a 15-foot-high amateur radio antenna. Property Owners may submit future preservation plans proposing other changes to the Old City Hall including antennae pursuant to the terms of the façade easement and those applications shall be considered in due course.

DATED AND EFFECTIVE THIS 8TH DAY OF OCTOBER, 2007.



Mayor

ATTEST:



City Clerk

FACADE EASEMENT

Claude F. Breshears and Phyllis J. Breshears, (hereinafter referred to as "Grantor") hereby grant to the City of Albany, Oregon, a municipal corporation, (hereinafter referred to as "Grantee"), a facade easement on the terms and conditions described below.

1. **The Property.** Grantor is the owner in fee simple of the improved real estate described as Lots 1 and 2, Block 17, City of Albany, Linn County, Oregon. Grantor warrants that the improvement on the property is a Certified Historic Structure within the meaning of Internal Revenue Code Section 170(h)(4)(B).

2. **Grant of Easement.** Grantor hereby agrees that the easement granted by this document shall apply to and encumber all original exterior historic architectural elements of the building.

3. **Restrictions on Alteration.** Except with the prior written consent of Grantee or as otherwise expressly permitted herein, Grantor shall not in any way alter, remodel, replace, or damage any of the Historic Elements of the building, nor may Grantor perform any act which would adversely affect the structural soundness of the building. All renovations or alterations of the building shall be done pursuant to a Preservation Plan submitted by Grantor and approved by Grantee. The restrictions described above shall include, but shall not be limited to:

(a) Any painting of the Historic Elements of the building; however, Grantee shall be deemed to have consented to any repainting of the Historic Elements using the quality and color of paint presently existing if prior written notice was given to Grantee, and Grantee shall not unreasonably refuse to consent to any proposed painting which is in keeping with the historic character of the building.

(b) Any sandblasting or other destructive or damaging cleaning of any of the Historic Elements.

(c) The installation of any signs; however, Grantee shall not unreasonably refuse to consent to the installation of small signs or other dignified signs in keeping with the historic character of the building.

(d) Any construction in the airspace above the

building, or any increase in the height, width or depth of the building.

(e) Any repairs, renovation, rehabilitation, reconstruction, alteration, expansion or demolition which would adversely affect the appearance or integrity of the Historic Elements or the structural portions of the building supporting the Historic Elements.

(f) Regardless of the provisions of this paragraph 3, Grantor shall be authorized to reconstruct, repair or refinish the Historic Elements of the building without the prior written consent of Grantee in the event of damage due to casualty loss, deterioration, or wear and tear, so long as such reconstruction, repair, or refinishing by Grantor uses in-kind materials and workmanship and restores the Historic Elements to their character and condition as of the date of this Easement. However, Grantor may make no alterations or changes to the appearance of the Historic Elements without obtaining the prior written consent of Grantee.

4. **Maintenance.** Grantor agrees to maintain the building and its Historic Elements in good condition, and in no event allow it to deteriorate beyond its present condition.

5. **Standards for Repair and Maintenance.** Grantor agrees that all work performed on the Historic Elements of the building shall conform with the then current Standards for Historic Preservation adopted by the Secretary of the Interior.

6. **Consent Procedure.** The written consent of Grantee, as required in paragraph 3 above, may be requested by Grantor by submitting a reasonably detailed written proposal to the City Manager of the City of Albany. If the proposal is not accepted or rejected within thirty (30) days of its submission, Grantor may proceed with the proposed alteration. If Grantor reasonably believes that an emergency exists, and the written proposal specifically states that an emergency exists, the reply period shall be forty-eight (48) hours. If the emergency threatens to damage any portion of the building any action necessary to prevent such damage may be taken without first obtaining written consent if notice is immediately given to Grantee that work is being performed. All work performed pursuant to the previous sentence shall be consistent with the historic character of the property.

7. **Annual Inspections.** Grantee, at its option, shall have the right to make annual inspections of the building as a whole, and the Historic Elements in particular, upon thirty days' notice

to Grantor, unless Grantor agrees to shorter notice. In the event Grantee reasonably believes that the terms of this easement may have been violated, or are about to be violated, Grantee may inspect the building at any time provided that reasonable notice, under the circumstances, is given to Grantor. Any inspection authorized by this paragraph shall be conducted solely for the purpose of determining whether the condition of the building and its Historic Elements comply with the terms of this easement, and shall not in any way give Grantee the right to conduct public tours of the building.

8. **Destruction.** If the property is destroyed by fire or other casualty to the extent of 50% of the value of the building, and reconstruction of the building using a majority of its salvaged Historic Elements is not practicable, then the rights granted to Grantee by this easement shall extinguish, and this easement shall be of no further effect, with the exception that Grantee may claim salvage rights to any Historic Elements which are not incorporated into a reconstruction of the building. If the building is not so damaged, the Grantor shall proceed to restore and rehabilitate the building to a condition which is as close as reasonably possible to its condition prior to the casualty, after obtaining Grantee's approval of the restoration and rehabilitation plans, as provided above.

9. **Term and Successor Interests.** The term of this easement shall be in perpetuity. The easement shall be binding upon Grantor and any successors to Grantor's interest in the property, but Grantor shall have no personal liability arising out of any acts or events occurring after any transfer or conveyance of Grantor's interest in the building and the land on which it stands, provided that Grantor is not in default of the terms of this easement at the time of the transfer. Grantor may convey its interest in the building if notice is given to Grantee prior to, or at the same time as, the conveyance. Grantee may convey its interest in the property any time, but any conveyance of the Grantee's interest must (1) be to an organization described in Sections 170(b)(1)(A)(vi) and 509(a)(1) of the Internal Revenue Code, (2) require that the purpose of this easement continue to be carried out, and (3) receive the acceptance of the successor grantee. In the event Grantee ceases to exist, then this Easement shall be transferred to an entity described in the previous sentence as determined by the presiding judge of the Linn County Circuit Court.

10. **Enforcement.** In the event that Grantor violates or threatens to violate any of the terms of this easement, Grantee shall have the following rights which shall be cumulative:

- (a) To obtain a temporary or permanent injunction

restraining Grantor from committing a violation, ordering Grantor to comply with the terms of the easement, or ordering Grantor to restore the building to the condition required by this easement;

(b) To receive damages from Grantor to compensate Grantee for the decreased value of this easement or to compensate Grantee for any irreparable damage to the property caused by any breach of this easement; and

(c) Any other rights afforded by law.

11. **Liability.** Grantor agrees to indemnify and hold Grantee harmless for any liability, damages, or claims that may arise out of Grantor's ownership, operation, or use of the building. No inspection of, or inspection report on, the building by Grantee shall be construed as a determination by Grantee that the building is in safe condition, habitable, or fit for any particular purpose.

12. **Attorney's Fees.** In case suit or action is instituted to enforce any of the rights or provisions expressed in this easement, the party not prevailing agrees to pay the prevailing party's costs and disbursements related to said proceedings and such sum as the court may adjudge reasonable for the attorney's fees at trial and/or on appeal of said suit or action.

13. **Recording.** Grantor and Grantee agree that Grantor shall record this easement in the records of the county in which the property is located.

DATED this 8th day of July, 1993.

GRANTOR:


Claude F. Breshears


Phyllis J. Breshears

STATE OF OREGON)
) ss.
County of Linn)

Personally appeared the above named Claude F. Breshears

and acknowledged the foregoing to be his voluntary act and deed.

SUBSCRIBED AND SWORN TO before me this 9TH day of July, 1993.



Susan C. Reed
NOTARY PUBLIC FOR OREGON
My Commission Expires: 6-21-96

STATE OF OREGON)
) ss.
County of Linn)

Personally appeared the above named Phyllis J. Breshears and acknowledged the foregoing to be her voluntary act and deed.

SUBSCRIBED AND SWORN TO before me this 12TH day of July, 1993.



Susan C. Reed
NOTARY PUBLIC FOR OREGON
My Commission Expires: 6-21-96

The foregoing Facade Easement is hereby accepted by Grantee this 8TH day of July, 1993.

CITY OF ALBANY, OREGON

By *Steve Bryant*
Steve Bryant, City Manager

ATTEST:

By *Norm Withrow*
Norm Withrow, Deputy City Recorder



STATE OF OREGON
County of Linn

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I hereby certify that the attached
was received and duly recorded
by me in Linn County records.

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STEVE DRUCKENMILLER
Linn County Clerk

MF 849

By RV, Deputy PAGE 483