

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Authorizing the Transfer of a Tax Foreclosed Property to a Non Profit, Oregon Sustainable Agriculture Land Trust (OSALT), for Perpetual Public Use

The Multnomah County Board of Commissioners Finds:

- a. MCC § 7.409 and ORS 271.330(3) allows for transfer of real property to a nonprofit corporation for the creation of open space, parks, or natural areas, for perpetual public use. OSALT, a nonprofit corporation, has requested transfer of a certain tax foreclosed property located in Multnomah County, Oregon described as follows: Tract “A”, Tessa Court; (the “Property”)
- b. The County in compliance with ORS 271.330(3) and MCC 7.410 has prepared a deed with the requisite reservation of rights if the Property is not used for the authorized purposes; a copy of the proposed deed is attached identified as Exhibit A.
- c. Based on the agreement format the County uses in the Affordable Housing Development Program for properties donated for low income housing purposes; the County developed a “Performance Agreement” between the County and OSALT that covers OSALT’s use of the property after the transfer to ensure the Property is used for the intended and required purposes. A copy of the Performance Agreement is attached as Exhibit B.
- d. The Board finds that use of the Property for a community garden qualifies as the creation of open space for perpetual public use as required by ORS 271.330 and MCC §7.409.
- e. On December 22, 2011, the Board scheduled a public hearing for January 12, 2012, for consideration of the proposed transfer and directed County staff to publish notice of the hearing. The notice was published as required by ORS 271.330 (5) and MCC § 7.410 (B).
- f. After holding the public hearing, the Board determined the Property is no longer needed by the County and is eligible for transfer for perpetual public use; the transfer will serve the public interest, and will be without monetary consideration.

The Multnomah County Board of Commissioners Resolves:

1. Upon the payment by OSALT of the \$200 fee authorized under MCC 7.410(C) to the County, the transfer of the Property to OSALT without any additional monetary consideration is approved, subject to the requirements of ORS 271.330(3) and MCC 7.410(E) regarding the restriction on the use of the Property and that title shall revert back to the County if the Property is not used in conformance with the restriction.
2. The Chair is directed to execute the deed for the Property substantially in conformance with the form of the deed attached as Exhibit A.

3. The Chair is directed to execute the Performance Agreement substantially in conformance with form of said Agreement attached as Exhibit B.

ADOPTED this 12th day of January, 2012.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Jeff Cogen, Chair

REVIEWED:

JENNY M. MORF, ACTING COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:
Katie Lynd, Food Policy Coordinator, Office of Sustainability

Grantor's Address:

Multnomah County Special Programs
501 SE Hawthorne Blvd
Portland, OR 97202

Grantee's Address:

OSALT, Attention: Will Newman
PO Box 1106
Canby, OR 97013

Until a change is requested, all tax statements

Shall be sent to the following address:

OSALT, Attention: Will Newman
PO Box 1106
Canby, OR 97013

After recording return to:

Multnomah County Special Programs
501 SE Hawthorne Blvd
Portland, OR 97202

Deed 122258 For R487336

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to OREGON SUSTAINABLE AGRICULTURE LAND TRUST (OSALT), a nonprofit corporation of the State of Oregon, Grantee, the following described real property, located in Multnomah County, Oregon:

Tract "A", Tessa Court

PROVIDED, Grantee's use of the above described property shall be restricted and limited to the creation of open space, parks or natural areas for perpetual public use, and if any time said property is not used in conformance with this restriction, the interests of the Grantee under this conveyance shall immediately and automatically terminate and title shall revert to the Grantor.

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. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, 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.

The true consideration for this conveyance is \$200.

IN WITNESS WHEREOF, the Multnomah County Board of Commissioners, by authority of a Resolution of the Board entered of record, has caused this deed to be executed by the Chair of the Board.

Dated this 12th day of January 2012

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Jeff Cogen, Chair

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

This Deed was acknowledged before me this 12th day of January 2012, by Jeff Cogen, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners:

Marina A. Baker
Notary Public for Oregon
My Commission expires: 7/14/2014

REVIEWED:
JENNY M. MORF, ACTING COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Matthew O. Ryan, Assistant County Attorney

ACCEPTED:
OREGON SUSTAINABLE AGRICULTURAL
LAND TRUST

By _____
Will Newman

Exhibit B

PERFORMANCE AGREEMENT

DATE: January 12, 2012

TRANSFEROR: MULTNOMAH COUNTY, OREGON
501 SE Hawthorne Blvd
Portland, Oregon 97214

TRANSFeree: OREGON SUSTAINABLE AGRICULTURAL LAND TRUST
PO Box 1106
Canby, Oregon, 97013-1106

Recitals

- A. As allowed under ORS 271.330 and Multnomah County Code Sections 7.404-7.410, Transferor has the authority to transfer ownership in real property to qualified and eligible entities for open space use including agricultural uses.
- B. The Transferee is an Oregon non-profit corporation which is acquiring from the Transferor certain tax-foreclosed property located in Multnomah County, Oregon described as follows:

Tract "A", Tessa Court

(hereinafter "the Property"). The Tax Account number for the Property is: R487336. The Transferee applied for and was awarded the right to acquire the Property from the Transferor under the above cited statute and code.

- C. The purpose of this Performance Agreement ("the Agreement") is to establish the terms and conditions of the transfer.
- D. Of even date herewith Transferor has executed a deed to Transferee for the Property.

Agreement

THIS AGREEMENT is made and entered into between Transferee and Transferor upon the following terms and conditions.

- 1. Recitals. The above Recitals are contractual and incorporated into this Agreement by this reference.
- 2. Agreement to Transfer. Transferor hereby agrees to convey to Transferee and Transferee agrees to acquire from Transferor, the Property.
- 3. Consideration and Closing. The consideration for this transfer of the Property is Transferee's agreement to comply with the terms and conditions of this Agreement. At Closing the Transferee and Transferor shall execute this Agreement and the deed as further explained in Section 4.
- 4. Title. Transferor shall execute a deed to Transferee for the property which shall contain a provision regarding the right of reversion for the benefit of the Transferor in compliance with ORS 271.330(3) and MCC 7.410(E).
- 5. As-Is Transfer; Indemnification. Transferee is acquiring the Property in "AS-IS" condition, subject to the following:
 - a. Transferor disclaims the making of any representations or warranties, express or implied, regarding the Property or matters affecting the Property, including, without limitation, the physical condition of the Property, title to or boundaries of the Property, pest control matters, soil condition, hazardous waste, toxic substances or other environmental matters, compliance with building, health, safety, land use and zoning laws, regulations and orders, structural and other engineering characteristics, traffic patterns, and all other information pertaining to the Property.

- b. Transferee acknowledges that Transferee is (i) a sophisticated investor, knowledgeable and experienced in the financial and business risks attendant to an investment in real property and capable of evaluating the merits and risks of entering into this Agreement and purchasing the Property; and that (ii) Transferee has entered into this Agreement with the intention of making and relying upon its own (or its 'experts') investigation of the physical, environmental, economic and legal condition of the Property, including, without limitation, the compliance of the Property with laws and governmental regulations; and (iii) that Transferee is not relying upon any representations and warranties made by Transferor or anyone acting or claiming to act on Transferor's behalf concerning the Property.
 - c. Transferee further acknowledges that it has not received from Transferor any accounting, tax, legal, architectural, engineering, property management or other advice with respect to this transaction and is relying upon the advice of its own accounting, tax, legal, architectural, engineering, property management and other advisors.
 - d. Upon transfer on the Closing Date, Transferee assumes the risk that adverse physical, environmental, economic, or other legal conditions may not have been revealed by its investigations. It is the express intent of the parties to transfer to Transferee, as between Transferor and Transferee, any liability that may now or in the future exist under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976 ("RCRA") 42 U.S.C. § 6901 *et seq.*, The Oregon Superfund Law, ORS 465.00, The Oregon Hazardous Waste Law, ORS 466, or other similar environmental laws, for known or unknown environmental conditions on, under or relating to the Property. Transferee hereby agrees to defend, indemnify and hold Transferor harmless from any such liability following the closing date.
 - e. Transferee further agrees to defend, indemnify and hold the Transferor harmless against any and all claims arising out of the Transferee's performance of, or failure to perform, its obligations under this Agreement. Transferor shall have no liability for any subsequently discovered defects, whether latent or patent.
6. Transferee's Representations and Warranties. In addition to any express agreements of Transferee contained herein, the following constitute representations and warranties of Transferee to Transferor:
- a. The Transferee is (i) a duly organized non-profit corporation under the laws of the State of Oregon, (ii) qualified to transact business in the State of Oregon, (iii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iv) has the full legal right, power, and authority to execute and deliver this Agreement.
 - b. The execution and performance of this Agreement by the Transferee (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Transferee is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
 - c. The individuals executing this Agreement and the instruments referenced herein on behalf of Transferee have the legal power, right, and actual authority to bind Transferee to the terms and conditions hereof and thereof.
 - d. This Agreement and all documents required hereby to be executed by Transferee are and shall be valid, legally binding obligations of, and enforceable against Transferee in accordance with their terms except as the same may be limited by bankruptcy, insolvency, reorganization, or similar laws or general principals of equity affecting creditors' rights generally.
 - e. There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or to the knowledge of the Transferee, threatened against or affecting it, or any of its properties or rights, which if adversely determined, might materially adversely affect Transferee's ability to perform its obligations hereunder.

f. Transferee is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

7. Conditions to Closing. Prior to Closing, the following conditions shall be satisfied by Transferee:

- a. Receipt by Transferor from Transferee of a binder for a policy of “all perils” hazard insurance with extended coverage from an insurance company acceptable to the Transferor, naming Transferor as an additional insured, together with public liability insurance with coverage in a minimum amount of \$1,000,000 and property damage and rent loss in amounts satisfactory to Transferor.
- b. Receipt by Transferor of a copy of the determination letter received by Transferee from the Internal Revenue Service, in full force and effect as of the date hereof, determining that such party is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.
- c. Fees and Costs. Transferee shall be responsible for the payment of the premium of any Title Insurance Policy and for any of the transfer tax or documentary stamps required to record the deed. All other Closing expenses shall be paid by the Transferee. Transferee shall pay all costs associated with any loan, including recording and tax service fees. Transferee shall not be entitled to reimbursement from the Transferor for any cost or expense of Transferee in connection with the acquisition of the Property.
- d. General Proration. In general, all credit or debit items to be prorated shall be prorated as of the Closing.
- e. No Tax Proration. Transferee shall pay all general taxes, assessments, and special assessments on the Property which are due and payable prior to, on, or after the closing date.
- f. Sales, Use, Privilege Taxes. Notwithstanding any other provisions of this Agreement, Transferee shall be liable for and shall pay all sales, use, intangibles, privilege or similar or related taxes resulting from or assessed with respect to the Property or any of the transactions contemplated by this Agreement. Transferee hereby agrees to hold Transferor harmless from and agrees to indemnify and defend Transferor against any and all claims by anyone at any time regarding any such taxes or assessment.
- g. Further Documents. The parties agree to execute all additional documents, papers and instruments and to take such further actions which are necessary or appropriate or reasonably required to complete this transaction.

8. Transferee Obligation and Operation Plan.

- a. Transferee will do the following:
 - 1. Comply with all of the covenants, terms and conditions set forth in this Agreement.
 - 2. Transferee will develop a sustainable operation plan to operate and use the property as an open space or public garden for the benefit of the community (“Operation Plan”).
 - 3. Transferee shall provide a draft of the Operation Plan to Transferor for review and approval as provided under Subsection 8b.
 - 4. Upon receipt of Transferor’s approval of the Operation Plan, Transferee shall implement and abide by the Operation Plan for the term of this Agreement.
- b. Transferor shall review and approve such Operation Plan in good faith in furtherance of the purpose(s) of this Agreement. In the event Transferor denies the Operation Plan, Transferor must provide Transferee with specific reasons for such denial and Transferee shall have 120 days, or other mutually agreed time, to revise and resubmit the Operation Plan.

c. In the event Transferor denies the resubmitted proposed Operation Plan, Transferee or Transferor shall have the right to mutually elect to mediate any remaining disagreement over the terms of such Plan. The parties shall bear their own costs of any mediation and shall comply with the following:

1. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this Section through this mediation process.

2. If one party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court upon the request of either party.

9. Events of Default. The occurrence of any one or more of the following shall be an event of default under this Agreement:

a. Transferee fails to perform or comply with any term, covenant or condition of this Agreement or the Declaration within 30 days after written notice from Transferor to Transferee to perform or satisfy the covenant or condition, or if the performance or compliance cannot be completed within such 30-day period through the exercise of reasonable diligence, the failure to commence the required performance or compliance with diligence to completion.

b. Transferee fails to comply with any requirement of any governmental authority having jurisdiction over the Property within 30 days after receipt of notice in writing of such requirement, or if such compliance cannot be completed within such 30-day period through the exercise of reasonable diligence, the failure to commence the required performance or compliance with diligence to completion.

c. Any representation or warranty herein or in any agreement executed pursuant hereto or in connection with this transaction shall prove to have been false or misleading in any material respect.

d. The occurrence of a default under any lien instrument secured by the Property or any agreement imposing restrictive covenants with respect to the Property which is not cured within any cure period provided in such lien instrument or agreement.

e. The filing by Transferee of a petition for relief under the Federal Bankruptcy Code, or any other applicable federal or state law or regulation, or the consent by it to the filing of any such petition or the consent to the appointment of a receiver, liquidator, assignee, trustee, or other similar official, of Transferee, or of any substantial part of its property, or the making by Transferee of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due or the taking of corporate action by Transferee in furtherance of any such action.

f. The commencement of an action against Transferee seeking any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar relief under any applicable federal or state law or regulation, which action is not dismissed within 60 days after commencement, or the appointment without the consent or acquiescence of Transferee of any trustee, receiver or liquidator of Transferee, or of all or any substantial part of the properties of Transferee, which appointment is not vacated within 60 days after such appointment.

10. Remedies. If an event of default occurs, Transferor may, but shall not be required to, exercise any remedies authorized by law. Provided, if the default shall be the result of the Transferee's failure to use the property for the open space purposes as required herein, in addition to any other remedies available to Transferor, the Title to the property shall revert automatically to the Transferor.

11. Notices. Any notices required or permitted to be given by this Agreement shall be mailed via regular mail, forwarded via facsimile or shipped via “next day” courier service to the parties at the addresses first set forth above. Notice shall be deemed given: 1) three calendar days following mailing via certified mail, return receipt requested, or 2) one business day after deposit with courier for “next day” delivery, or 3) upon actual receipt of notice, whichever is earlier. The parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.
12. Delivery of Possession. Possession of the Property shall be delivered to Transferee at time of Closing.
13. Risk of Loss. Risk of loss from fire or other hazards shall remain with Transferor until the Closing.
14. Survival of Obligations. All covenants, warranties, representations, agreements, and indemnities contained in this Agreement shall be made as of the date of the execution hereof, unless otherwise specified herein. All representations and warranties made pursuant to the terms of this Agreement, and any cause of action resulting from the breach of such representations and warranties, whether at law or equity, shall survive the Closing of this transaction. All terms, covenants, and conditions to be performed or to exist after Closing shall survive the Closing and transfer of title to Transferee.
15. Actions Through Agents. Any action or exercise of rights or duties required or permitted to be taken or done by Transferor hereunder or under the Declaration relative hereto may be taken by an agent, officer, attorney, employee, or other person duly designated and authorized by Transferor in writing or otherwise under Transferor’s customary policies and procedures to take such action in its behalf. This section shall not be construed to delegate authority to any such person or to entitle Transferee or any other person to rely upon any purported authority exercised by any person purporting to represent Transferor, but shall solely be interpreted as permitting Transferor to so delegate its actions, exercise of rights, and exercise of duties as provided above.
16. Severability. The use of headings and sections in this document is for convenience only and is not intended to create a severable contract.
17. Time is of the Essence. Time is of the essence in the performance of all terms and conditions herein set forth to be performed.
18. Governing Law. The performance and interpretation of this Agreement shall be governed by the laws of the State of Oregon from time-to-time in force.
19. Illegality. In the event any provision of this Agreement shall be deemed illegal or unenforceable, the remaining provisions shall nevertheless be carried into effect and the defective provision shall be deemed amended to comply with such rule, law, or statute rendering same illegal or unenforceable.
20. Waiver. The waiver by any party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Agreement.
21. Successors and Assigns.
 - a. This Agreement shall benefit and burden each party’s legal successors including any individual party’s heirs, administrators, and personal representatives.
 - b. Notwithstanding the foregoing, Transferee may not assign any rights under this Agreement without the consent of Transferor, which consent may not be unreasonably denied.
22. Final Agreement. Transferor and Transferee agree that this Agreement states their entire agreement and declare that no promises, representations, or agreements other than those herein contained have been made or relied upon. Any changes or amendments hereto must be made in writing, signed by both parties.

23. The Transferor shall be entitled to make reasonable and periodic inspections of the Property for the purpose of determining compliance with the terms and conditions of this Agreement by the Transferee.

IN WITNESS WHEREOF, Transferee and Transferor have executed this Agreement as of the date first set forth above.

FOR TRANSFEEE:
OREGON SUSTAINABLE AGRICULTURAL LAND TRUST

By: _____

Print Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of _____)

On this ____ day of January, 2012, before me personally appeared _____ the _____ of the OREGON SUSTAINABLE AGRICULTURAL LAND TRUST, an Oregon non-profit corporation; and acknowledged the foregoing instrument to be the voluntary act and deed of the corporation, executed by authority of its board of directors.

Notary Public for Oregon
My Commission expires: _____

FOR TRANSFEROR:
BOARD OF COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By: _____
Jeff Cogen, County Chair

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

This Performance Agreement was acknowledged before me this 12th day of January 2012, by Jeff Cogen, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.

Marina A. Baker
Notary Public for Oregon
My Commission expires: 7/14/2014

REVIEWED BY:
JENNY M. MORF, ACTING COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: _____
Matthew O. Ryan, Assistant County Attorney