

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Approving the Transfer of a Tax Foreclosed Property for Social Services to Corbett Education Foundation, a Nonprofit Corporation

The Multnomah County Board of Commissioners Finds:

a. The County has obtained title to certain real property described as:

Lying and being in said County of Multnomah, State of Oregon, and more particularly described as: Thors Hts & Rplt Lot 27 Block 2

(referred to as the "Property") through foreclosure for failure to pay lawfully imposed taxes and assessments.

b. Under ORS 271.330(2), the County may elect to donate property acquired through tax-foreclosure to qualified, nonprofit corporations, provided such nonprofits use the property for a qualifying purpose. Qualifying purposes include "social services" and "child care services" as defined in ORS 271.330(2)(b)(B).

c. Corbett Education Foundation (CEF) is a qualified nonprofit corporation under ORS 271.330(2), and CEF has agreed to use the Property for social services and/or child care services consistent with this Performance Agreement, a copy of which is attached as Exhibit A to this Resolution (the "Agreement").

The Multnomah County Board of Commissioners Resolves:

1. The transfer of the Property to CEF for the purpose of providing social services or child care services as defined under ORS 271.330(2)(b)(B) is approved, subject to the terms and conditions set forth in the attached Agreement
2. The Chair is authorized to execute all documentation required to complete said transfer, including the attached deed identified as Exhibit B to this Resolution and the Agreement in a form substantially in conformance with the terms and conditions set forth in the Agreement.
3. The County shall cause all appropriate documentation relating to this transfer of the Property to be recorded in the Multnomah County Deed Records.

ADOPTED this 9th day of May 2013.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Jeff Cogen, Chair

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

By _____
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:
Joanne Fuller, Director, Dept. of County Management

**Exhibit A to the Resolution
PERFORMANCE AGREEMENT**

DATE: May _____, 2013

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

TRANSFeree: CORBETT EDUCATION FOUNDATION
35800 E. Historic Columbia River Highway
Corbett, Oregon 97019

Recitals

- A. As allowed under ORS 271.330, Transferor has the authority to transfer ownership in real property to qualified and eligible entities for the purpose of providing “social services” and/or “child care services” as defined in ORS 271.330(2)(b).
- B. The Transferee is a qualifying non-profit corporation, as defined in ORS 271.330(2)(b), and is acquiring from Transferor two certain tax-foreclosed properties described as follows:
Lying and being in said County of Multnomah, State of Oregon, and more particularly described as:
Thors Hts & Rplt Lot 27 Block 2
- (hereinafter referred to as “the Property”). The Multnomah County Tax Account numbers for the two Properties are: R288348 and R288399. The Transferee applied for and was awarded the right to acquire the Property from the Transferor in accordance with ORS 271.330(2).
- C. The purpose of this Performance Agreement (“the Agreement”) is to establish the terms and conditions of the transfer.
- D. As of the same date as the effective date of the Agreement, Transferor has executed and recorded the deed to Transferee for the Property (the “Closing Date”).

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 or before the Closing Date, the Transferee and Transferor shall execute this Agreement and the deed as further explained in Section 4.
4. Title. At or before the Closing Date, Transferor shall execute a statutory bargain and sale deed (Deed) to Transferee for the property. On the Closing Date, the Deed and the Agreement shall be recorded in the Multnomah County Deed Records.

5. “As-Is, Where Is” Transfer; Indemnification. Transferee is acquiring the Property in “AS-IS, WHERE 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 and represents 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 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 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 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 principles 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 and 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 Date. Prior to Closing Date, the following conditions shall be satisfied by Transferee:
- a. Insurance. Transferee shall provide to Transferor 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 \$2,000,000 and property damage and rent loss in amounts satisfactory to Transferor.
 - b. ORS 65.001-(37) Compliance and IRS 501(c)(3) Certification. Transferee shall provide the following to Transferor: (1) written verification that Transferee is registered as a public benefit corporation under ORS 65.001(37) with the Oregon Secretary of State, and (2) 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 Date.

- 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. Transferor and Transferee agree to execute any 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 Obligations. Transferee shall comply with all of the covenants, obligations, terms and conditions set forth in this Agreement.
9. Property Use and Term of Agreement.
- a. Transferee shall use the Property for the purposes of providing “social services” and/or “child care services” as set forth in ORS 271.330(2)(b)(B). (2011 Edition).
 - b. The Term of the Agreement shall be for thirty (30) years from the Closing Date.
10. Reporting. For the duration of this Agreement, Transferee shall annually or as otherwise directed by Transferor, submit to Transferor a report wherein Transferee shall affirmatively represent that Transferee has maintained the status of a “Qualifying Nonprofit Corporation” under ORS 271.330(2)(b)(A) and that Transferee is using the Property for the provision of “Social Services” as described and authorized under ORS 271.330(2)(b)(B). Transferor reserves the ability to revise, expand, modify or delete the submission and reporting requirements under this subsection. Transferor shall advise Transferee of the designated time to submit the report.
11. 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 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 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.
12. Remedies. If an event of default occurs, Transferor may, but shall not be required to, exercise any remedies authorized by law, including but not limited to: specific performance of this Agreement; conveyance and return by Transferee of the Property to the County, or pursue liquidated damages. The parties acknowledge that the default by Transferee to use the Property for the required purposes results in harm to the County that is difficult to quantify and calculate and therefore entitles the County to liquidated damages.
13. Notices. Any notices required or permitted to be given by this Agreement shall be mailed via First Class U.S. 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.
14. Delivery of Possession. Possession of the Property shall be delivered to Transferee at the Closing Date.
15. Risk of Loss. Risk of loss from fire or other hazards shall remain with Transferor until the date and time of the Closing Date.
16. 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 Date of this transaction. All terms, covenants, and conditions to be performed or to exist after Closing Date shall survive the Closing Date and transfer of title to Transferee.
17. Actions Through Agents. Any action or exercise of rights or duties required or permitted to be taken or done by Transferor hereunder 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.

18. Severability. The use of headings and sections in this document is for convenience only and is not intended to create a severable contract.
19. Time is of the Essence. Time is of the essence in the performance of all terms and conditions herein set forth to be performed.
20. 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.
21. Illegality. In the event any provision of this Agreement shall be deemed illegal or unenforceable, the remaining provisions shall remain in effect and the defective provision shall be deemed amended to comply with such rule, law, or statute rendering same illegal or unenforceable.
22. 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.
23. Headings. The headings of the sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.
24. 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 written consent of Transferor, which consent may not be unreasonably denied.
25. Final Agreement. Transferor and Transferee agree that this Agreement states their entire agreement and declare that no promises, representations, or agreements other than those contained herein have been made or relied upon. Any changes or amendments hereto must be made in writing, signed by both parties.
26. Inspection. 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 TRANSFEREE:
CORBETT EDUCATION FOUNDATION

By: _____
Roger Mackaness, Chair CEF

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

On this ____ day of May 2013, before me personally appeared _____ the _____ of the Corbett Education Foundation, an Oregon Nonprofit 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 ____ day of May 2013, 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, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: _____
Matthew O. Ryan, Assistant County Attorney

