

REAL ESTATE DONATION AGREEMENT

BY THIS REAL ESTATE DONATION AGREEMENT, ("**Agreement**") effective on the date last signed by the parties ("**Effective Date**"), by and between SFA2, LLC, an Oregon limited liability company, ("**Donor**") and the City of Salem, an Oregon municipal corporation ("**Recipient**"). Donor and Recipient shall be referred to herein jointly as the "**Parties**" and severally as a "**Party**."

RECITALS:

- A. Donor wishes to donate, and Recipient wishes to obtain from Donor, that certain real property known as "Marion County Taxlot 083W1100202", which is more specifically described below.
- B. Recipient is willing to receive the donated property, access and property rights, and all improvements from Donor, subject to the terms and conditions set forth herein, and Donor is willing to donate the donated property, access and property rights, and all improvements to Recipient as described herein.
- C. Donor intends for this donation to be a charitable donation pursuant to Section 170(a) of the Internal Revenue Code, as amended, to the maximum extent allowed.

AGREEMENT:

NOW, THEREFORE, the Parties do hereby mutually covenant and agree as follows:

1. **Donation of Property**. Donor hereby agrees to assign, donate, and convey to Recipient the Donation Property, in reliance upon both the representations of Recipient and on the terms and conditions set forth herein, including the real property, access and property rights, and all improvements thereto which are located in the City of Salem, Marion County, Oregon, and are more particularly described in **Exhibit A**, attached hereto and incorporated herein, (the "***Donation Property***").

2. **Donation Value**. The valuation of the Donation Property is \$1,525,000, which the parties agree will be the Donation Value of the Donation Property; provided, that Closing occurs within 90 days from the date of this Agreement and there is no material change in the condition of the Donation Property prior to Closing.

3. **Earnest Money**. Not applicable to this Agreement.

4. Environmental Review and Assessment. Donor to provide to Recipient any and all environmental data and information related to the Donation Property in Donor's possession.

5. Recipient's Conditions to Close.

5.1. **Environmental Contingency.** Recipient may initiate a Phase I and a Phase II Environmental Assessment of the Donation Property ("Inspection"). If the investigation results indicate environmental liability issues that are unacceptable to Recipient, then Recipient may, on written notice to Donor, terminate this Agreement and it shall be null and void for all purposes. If such written notice to terminate is not given to Donor on or before Closing, this condition shall be deemed waived by Recipient for all purposes.

5.2. **Inspection Contingencies.**

5.2.1 **Inspection Expenses.** All costs and expenses of the Investigation will be paid by Recipient when due, regardless of whether this transaction closes. Recipient shall not allow any construction liens or other encumbrances on the Donation Property.

5.2.2 **Inspection Indemnity.** Except for any liability or costs to Donor related to any environmental condition existing on, or caused by contaminants on the Donation Property prior to the investigation of the Donation Property, Recipient will indemnify, defend, and hold harmless Donor from and against any and all costs, losses, damages, expenses, liabilities, actions, liens, or claims to the extent they arise from any activities on or about the Donation Property by Recipient or any agent, employee, contractor, or invitee of Recipient at or after the time of the investigation, even if in part due to the prior acts or omissions of Donor. Notwithstanding the above, Recipient shall not be liable to Donor, nor shall be required to indemnify, defend or hold harmless Donor for any costs, losses, damages, expenses, liabilities, actions, liens, or claims arising from any environmental contamination existing prior to Recipient's inspection of the Donation Property and due diligence undertaken pursuant to this Agreement.

5.2.3 **Confidentiality Requirements.** Recipient will use and disclose information it obtains about the Donation Property solely in connection with its acceptance evaluation. Unless and until it acquires the Donation Property, Recipient will not disclose any such information to any third party except (a) DEQ, and the Recipient's property and environmental consultants, and lawyers; (b) to any court of competent jurisdiction in connection with any mediation, arbitration, or litigation in connection with this Agreement; (c) as to any information that is otherwise a matter of public record, or as Recipient may be required by law, including Oregon public records law.

5.3 **Property Transfer.** Donor agrees that Recipient may sell all, or a portion of, the Donation Property at its sole discretion.

5.4 **Prohibition on Agreements Restricting use of Donor Property.** Donor affirms that it has not entered into any shared use, operations, maintenance, or access agreements, contracts, easements, restrictive covenants or any other agreement that restricts use or access to the Donation Property or any related easements within the previous three hundred and sixty-five (365) days of the execution of this Agreement or Closing Date, whichever occurs later.

6. Donor's Conditions to Close.

6.1. Recipient agrees to assume and pay and, upon Closing, to discharge Donor, and Donor's members from, all of Donor's obligations and liabilities under that Construction Deferral Agreement dated April 16, 2015, and recorded April 16, 2015 in Marion County, Oregon, and that Improvement Agreement dated April 13, 2015, and recorded April 16, 2015, in Marion County, Oregon as to Parcel 2. This provision shall survive the Closing of this Agreement. Recipient agrees to cooperate with Donor in signing a Form 8283, Noncash Contributions, which Donor will file with the Internal Revenue Service.

7. Title Insurance.

7.1. **Title Report.** Within ten (10) days after the Effective Date, Recipient will order a preliminary title report from Melanie Serazin at Fidelity Title (the "**Escrow Agent**") with respect to the Donation Property (the "**Title Report**"). The Title Report will be accompanied by the most legible copies available of all special exceptions listed therein. Recipient will have ten (10) days after its receipt of the Title Report and copies in which to notify Donor in writing of Recipient's disapproval of any exceptions shown in the Title Report. Any special assessments shown on the Title Report that are objected to by Recipient will be included in Recipient's notice. In the event of any disapproval, Donor will notify Recipient in writing within five (5) business days after Recipient's notification as to whether Donor agrees to remove any of the exceptions so disapproved, and upon delivering the notice, Donor will have until the Closing Date described in Section 15 to cause the exceptions that Donor has agreed to remove to be removed of record and from the Title Report. Recipient will be deemed to have accepted all title exceptions to which it has not timely objected.

7.2. **Rescission of Agreement—Title Defects.** If Donor elects not to eliminate any title exception disapproved by Recipient, Recipient may elect to cancel this Agreement by written notice to Donor given on or before ten (10) business days

after Donor's notification of the election. If Recipient does not elect to cancel this Agreement, Recipient's objections to the disapproved exceptions that Donor elected not to eliminate are deemed waived and the Donation Property will be conveyed to the Recipient with such defects. The foregoing notwithstanding, Donor agrees that it will cause all trust deed liens encumbrances against the Donation Property that are not accepted by Recipient to be released of record by the Closing Date. If Recipient fails to give timely notice to Donor of termination under this paragraph, then Recipient's right of termination will be deemed waived. Said title insurance policy shall be in the amount of the Donation Value. Recipient shall bear the cost of standard title insurance. Any extended title coverage shall be paid by Recipient.

8. Access. Donor hereby grants to Recipient full access to the Donation Property to complete its due diligence, including, but not limited to environmental assessment as described in Section 5.1 and other necessary assessment activities.

9. Risk of Loss. All risk of loss, injury, damage or condemnation of the Donation Property shall be transferred from Donor to Recipient at the time of Closing. If the Donation Property is partially destroyed or partially condemned at any time prior to Closing and that portion of the Donation Property destroyed or condemned constitutes a material part of this transaction, or if the Donation Property is totally destroyed or condemned prior to Closing, either party may terminate this Agreement without liability or obligation to the other party. All insurance proceeds and condemnation awards, received by or accruing to Donor by reason of such loss, injury, damage, or taking, shall be for the account of Donor.

10. Taxes and Assessments: Closing Costs. Real estate and personal property taxes, if any, and all utilities shall be prorated between the Parties as of the date of Closing. Recipient shall pay any closing fees, including escrow fees, recording fees, transfer taxes and assessments, deed stamps, etc. Each Party shall pay its own attorney fees and other expenses incurred.

11. Title Documents.

Deed. Donor agrees to execute and deliver to Recipient a statutory warranty deed conveying title to the Donation Property, subject to the accepted title exceptions of record.

12. Possession. Recipient shall be entitled to possession of the Donation Property at Closing.

13. As Is Donation.

13.1. **Limitation of Representations and Warranties.** The representations and warranties in this Agreement, if any, shall be limited to the actual knowledge of the undersigned below with no duty of inquiry. The Parties further agree the Donor's liability for any misrepresentation or the breach of any warranty under this Agreement will survive the closing of this transaction; provided, however, that any claim for any misrepresentation or breach of any covenant will be deemed to have been waived unless Recipient files and serves a complaint for damages or other remedies based on such alleged misrepresentation or breach within six months after the Closing date or, if this transaction fails to close, within six months after the date this Agreement is canceled or terminates.

13.2. **Acceptance of Donation Property.** The Donation Property is being conveyed "**AS IS – WITH ALL FAULTS AND DEFECTS,**" if any, including any and all environmental conditions identified in the Investigation as described in Section 5.1 of this Agreement. The Donation Property is being conveyed without recourse, and no representations, warranties, guarantees, promises, statements, estimates, of any nature whatsoever, whether oral or written, expressed or implied, have been made by Donor, or any agent of Donor, including but not limited to, the physical condition of the Donation Property, latent defects, patent defects, personal property, use, drainage, pests, zoning and land use restrictions, title, habitability, suitability, fitness, merchantability, size, compliance with building codes, government laws, rules and regulations, availability of utility rights or the existence of hazardous substances, wetlands, easements or encroachments, whether or not disclosed by inspection. Recipient shall look solely to the Title Company issuing said policy for any claim or damage in any way relating to the title to the Donation Property, including, but not limited to, any liens, encumbrances, encroachments, or assessments.

DONOR ALSO EXPRESSLY DISCLAIMS, AND RECIPIENT WAIVES, ANY AND ALL IMPLIED AND EXPRESS WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF HABITABILITY FOR ANY AND ALL DEFECTS IN DESIGN OR CONSTRUCTION OF THE DONATION PROPERTY. RECIPIENT HAS READ, UNDERSTANDS AND AGREES TO THE DISCLAIMER OF ALL WARRANTIES.

RECIPIENT FURTHER WAIVES ANY AND ALL DISCLOSURES, REPRESENTATIONS AND WARRANTIES ALLOWED OR REQUIRED UNDER APPLICABLE LAW, TO THE EXTENT ALLOWED BY APPLICABLE LAW.

13.3. **Waiver of Claims.** The Parties acknowledge that the Closing of the Donation Property is conditioned upon Recipient's inspection of the Donation Property and completion of the Investigation, to Recipient's satisfaction, unless Recipient chooses to expressly waive some part of the Investigation in writing. Recipient shall have the opportunity, prior to closing, to fully inspect, investigate and complete all due diligence relating to the Donation Property. Recipient is

hereby instructed to complete all inspections, investigations and due diligence regarding any aspect of or relating to the Donation Property that Recipient deems necessary or desirable, to Recipient's satisfaction, in order to be fully informed prior to the Closing of the sale of the Donation Property or to otherwise protect Recipient's interest. In the event that Recipient has completed all such due diligence to its satisfaction, Recipient shall execute an addendum prior to the Closing of the donation of the Donation Property waiving all contingencies, including any such inspection contingency, and accepting the condition and all other aspects relating to the Donation Property, without right to rescind or set aside the sale of the Donation Property. If Donor fails or neglects to execute such an addendum prior to Closing, Donor shall be deemed to have waived all such contingencies and to have accepted the Donation Property upon Closing. Recipient acknowledges that Recipient is not relying and will not rely upon any statements or representations of any person with respect to the Donation Property, or of any other matter affecting or relating to the Donation Property. Recipient will instead rely solely on such investigations, examinations, and inspection as Recipient may choose to make prior to the expiration of the inspection contingency set forth in this Agreement. Recipient further acknowledges that any agent of Donor is not authorized to make representations upon which Recipient may rely.

13.4. **Acknowledgment.** Recipient understands, acknowledges and agrees that the representation, disclosures and warranty exclusions set forth above were a specifically negotiated basis for the donation.

13.5. **Limited Disclosure.** Donor has disclosed to Recipient certain documents and statements, if any, that are more particularly enumerated in Section 4 above, which are incorporated herein by this reference.

14. Indemnification.

14.1. **Donor's Indemnification.** Donor shall indemnify and hold Recipient harmless from and against:

14.1.1 Except as otherwise provided in this Agreement, any and all obligations relating to Donor's ownership of the Donation Property which exist as of the Closing Date;

14.1.2 Any and all actions, suits, proceedings, demands, assessments, judgments, reasonable costs and other reasonable expenses, including, but not limited to, reasonable attorney's fees, incident to the foregoing.

For purposes of Section 14, an obligation shall be deemed to “exist” as of the Closing Date if it relates to events which occurred prior to the Closing Date even if it is not asserted until after the Closing Date.

14.2. **Recipient’s Indemnification.** Recipient shall indemnify and hold Donor harmless from and against:

14.2.1 Except as otherwise provided in this Agreement, any and all obligations relating to Donor’s ownership of the Donation Property from and after the Closing Date;

14.2.2 Any and all damage, loss or liability resulting from any misrepresentation of the material fact, breach of warranty or nonfulfillment of any agreement on the part of Recipient under this Agreement or from any misrepresentations in any certificate furnished or to be furnished to Donor hereunder;

14.2.3 Any and all actions, suits, proceedings, demands, assessments, judgments, reasonable costs and other reasonable expenses, including, but not limited to, reasonable attorney’s fees, incident to the foregoing.

15. **Closing.** The term “***Closing***” as used in this Agreement means the donation of the Donation Property from Donor to Recipient by Donor delivering to Recipient the warranty deed and title insurance policy. Unless otherwise agreed by the Parties, or the Agreement is terminated pursuant Sections 5 and 6, so long as all conditions precedent to closing set forth herein have then been satisfied or waived in accordance herewith, Closing shall take place at the earliest date possible, but no later than 90 days from date of execution of this Agreement. This transaction shall be closed through an escrow that is to be held by Melanie Sarazin of Fidelity National Title Company (“Title Company”). Each Party shall execute and deliver on a timely basis all escrow instructions, deeds, declaration of restrictive covenants, and other documents reasonably necessary to close this transaction. Recipient shall pay all closing costs, escrow fees and recording fees as well as the cost of title insurance as provided, above.

16. **Statutory Warning (ORS 93.040(2)).** 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

17. Brokers. Donor and Recipient warrant to each other that no person or entity of any sort is entitled to any commission, broker fees, finder fees, or other payment.

18. Default. In the event that either Party fails to close this transaction when and as required hereby, the other Party's sole remedy is to terminate this Agreement, in which case this Agreement shall be null and void.

19. Assignment.

19.1. Neither this Agreement nor any rights arising under it may be assigned or mortgaged by Recipient without the prior written consent of Donor, and any attempt to transfer this Agreement or any rights or interests arising hereunder, by operation of law or otherwise, without such consent shall be void and of no force and effect.

20. Modification. No part of this Agreement may be modified without the express written consent of both Parties.

21. Notices. Any notice or demand required or permitted to be given under the terms of this Agreement shall be deemed duly given or made if given by any of the following methods:

- a. Deposited in the US mail in a sealed envelope, postage prepaid, by registered or certified mail, return receipt requested, respectfully addressed as follows:

To Donor: SFA2, LLC
Attention: Sally N. Miller, Manager
3095 Crestview Drive S.
Salem, OR 97302

To Recipient: City of Salem
Attn: Real Property Services Manager
350 Commercial St. NE
Salem, OR 97301

With a Copy to: City of Salem, City Attorney's Office
555 Liberty St, SE, Rm. 205
Salem, OR 97301

- b. Sent to the above addresses via an established national overnight delivery service (such as Federal Express), charges prepaid, or
- c. Sent via any electronic communications method, provided the sender obtains written confirmation of receipt of the communication by the electronic communication equipment at the office of the addressee listed above.

22. Enforcement and Attorney's Fees. In the event a suit or other action is instituted to enforce any of the terms or obligations under this Agreement, each party shall bear the costs of its respective attorney's fees.

23. Integration. This Agreement contains the entire agreement between the parties concerning the subject hereof, including all oral understandings and agreements, and there are no collateral understandings or agreements or representations or warranties not expressly included herein.

24. Counterparts, Electronic Transmission and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile, email transmission or other means of electronic transmission of any signed original document, and retransmission shall be the same as delivery of an original. The Parties agree that this transaction may be conducted and closed by electronic means in accordance with the provisions of the Uniform Electronic Transactions Act ("UETA") as codified in ORS Chapter 84. At the request of either Party, the Parties shall confirm electronically transmitted original signatures or electronic signatures by signing an original document and providing the signed original to the requesting Party.

25. Recording. Neither this Agreement nor any copy hereof shall be recorded without the express written consent of Donor.

<signature page to follow>

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year last indicated below.

DONOR:
SFA2, LLC

By: _____
Sally N. Miller, Manager

DATE: _____

RECIPIENT:
CITY OF SALEM

By: _____

DATE: _____

NAME: _____

TITLE: _____

EXHIBIT A
LEGAL DESCRIPTION

TBD

