

RESOLUTION NO. 1205

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A DONATION AND VACATION AGREEMENT WITH PLANTORE LLC.

WHEREAS, a recent survey revealed that a portion of the City's property is encroaching onto the eastern portion of Plantore LLC's real property and that a portion of Plantore LLC's property is encroaching onto the western portion of the Berg Parkway right-of-way; and

WHEREAS, both parties have agreed to donate and vacate their respective property through legally sufficient processes; and

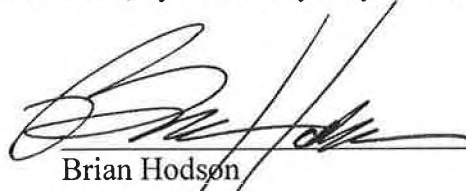
WHEREAS, the exchanged property rights will result in increased, superior useful value for public use; and

WHEREAS an agreement has been drafted that outlines each parties responsibility for this process;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City of Canby Council that the City Administrator shall execute a Donation and Vacation Agreement as set forth in the attached Exhibit "A".

This Resolution shall take effect on December 3, 2014.

ADOPTED this 3rd day of December 2014, by the Canby City Council.



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

DONATION AND VACATION AGREEMENT

THIS DONATION AGREEMENT (this "Agreement") is made as of the 3rd day of December, 2014, (the "Effective Date"), by and between Plantore LLC, a Delaware limited liability company ("Donor"), and CITY OF CANBY, OREGON, a political subdivision of the State of Oregon ("City").

ARTICLE 1 DONATION AND VACATION

1.1 Current Encroachments. The parties acknowledge that recent survey work has revealed that a portion of the City's property is encroaching onto the eastern portion of Donor's real property, and that a portion of the Donor's property is encroaching onto the western portion of the Berg Parkway right-of-way. The parties desire to swap the encroachment areas, and Donor desires to donate additional property beyond the City encroachment to provide a more regular shape to the parties respective properties following the swap.

1.2 Agreement to Donate. Subject to the terms and conditions herein, Donor, for and in consideration of the mutual covenants and agreements herein contained and other valuable consideration, Donor agrees to donate, and City agrees to accept, the real property described on Exhibit A attached hereto and by this reference incorporated herein (the "Property").

1.3 Agreement to Vacate. Subject to the terms and conditions herein, City, for and in consideration of the mutual covenants and agreements herein contained and other valuable consideration, City agrees to vacate, pursuant to ORS 271.130, and Donor agrees to accept, the real property described on Exhibit B attached hereto and by this reference incorporated herein (the "Vacation Area").

1.4 Consideration. City acknowledges that Donor has agreed to convey the Property to City as a gift pursuant to this Agreement, and that the real market value of the Property exceeds the real market value of the Vacation Area.

ARTICLE 2 TITLE AND SURVEY

2.1 Title Examination. Donor agrees to provide preliminary title reports for the Property and the Vacation Area at its own expense. City shall have sixty (60) days from and after the Effective Date to examine title to the Property, and any examination of the Property title shall be at City's sole option, cost and expense. Donor shall have thirty (30) days from and after the Effective Date to examine title to the Vacation Area, and any examination of the Vacation Area title shall be at Donor's sole option, cost and expense.

2.2 Survey. Donor agrees to provide surveys of the Property and the Vacation Area at its own expense. Any examination of the surveys by City shall be at City's sole option, cost and expense.

2.3 Title Objections. Donor shall not be obligated to cure, or attempt to cure, anything contained in the title records or shown on a survey to which City objects. City's sole remedy in the event of any unacceptable title or survey objection shall be to either accept title subject to such objection, or to terminate this Agreement in accordance with Section 3.2 hereof and decline to accept the gift of the Property as contemplated hereunder.

2.4 Parcel. City has preliminarily determined that the Property is not a lawful parcel and Donor shall be responsible at its sole cost and expense for submitting a complete lot line adjustment application and any other application necessary for the lawful conveyance of the Property and the completion of the transaction contemplated herein to the City of Canby Development Services Department. City agrees to execute the application form as owner of the Community Park property and to reasonably cooperate with the application. Within the limits of the Oregon Tort Claims Act, City shall indemnify and hold harmless Donor from any and all liability, claims, suits or costs incurred due to City's failure to adjust the lot lines of the Property. Notwithstanding anything to the contrary in this Agreement, City's obligation to indemnify and hold harmless Donor shall survive Closing or termination by City, other than for Donor's breach.

ARTICLE 3 INSPECTION PERIOD

3.1 Right of Inspection. Beginning upon the Effective Date and ending at 5:00 p.m. on the date that is Sixty (60) days following the Effective Date (such period herein referred to as the "Inspection Period" and such date herein called the "Inspection Date"), City shall have the right to make a physical inspection of the Property. City understands and agrees that any on-site inspections of the Property shall be conducted upon at least forty-eight (48) hours prior written notice to Donor and, at Donor's option, in the presence of Donor or its representative. If City desires to do any invasive testing, sampling or drilling at the Property, City shall do so only after notifying Donor and obtaining Donor's prior written consent thereto, which consent may be granted or withheld in Donor's sole and absolute discretion and may be subject to any terms and conditions imposed by Donor in its reasonable discretion. City shall promptly restore any affected part of the Property which is subjected to any such invasive testing, sampling, or drilling, or otherwise affected by City's inspection, to substantially the same condition which existed prior to any such inspections, tests, sampling or drilling, at City's sole cost and expense. At Donor's request, City will furnish to Donor copies of any reports received by City relating to any inspections of the Property. Within the limits of the Oregon Tort Claims Act, City agrees to indemnify Donor against and hold Donor harmless from any claim for liabilities, costs, expenses (including reasonable attorneys' fees actually incurred), damages or injuries resulting from its exercise of its rights under this Section 3.1. Notwithstanding anything to the contrary in this Agreement, City's obligation to indemnify and hold harmless Donor under this Section 3.1 shall survive Closing or termination of this Agreement by City other than by breach of Donor.

City will cause all persons and entities entering the Property at City's request to maintain adequate and appropriate insurance, as reasonably determined by Donor, to cover risks of the type described in this Section 3.1 above, and upon Donor's written request, City will deliver to

Donor written evidence establishing to Donor's reasonable satisfaction that such adequate and appropriate insurance is being maintained.

3.2 City's Right of Termination. Donor agrees that in the event City determines that the Property is not suitable for its purposes, or that City does not desire to own the Property for any other reason or for no reason at all, City shall have the right to terminate this Agreement and decline the gift contemplated hereunder by giving written notice thereof to Donor prior to the expiration of the Inspection Period. If City gives such notice of termination within the Inspection Period, this Agreement shall terminate, and City and Donor shall have no further rights and obligations hereunder except those which expressly survive termination of this Agreement. If City fails to give Donor a notice of termination prior to the expiration of the Inspection Period, City shall no longer have any right to terminate this Agreement under this Section 3.2 and, subject to the provisions of this Agreement, shall be bound to proceed to Closing and consummate the transaction contemplated hereby pursuant to the terms of this Agreement. Time is of the essence with respect to the provisions of this Section 3.2.

3.3 Donor's Right of Termination. City agrees that in the event Donor determines that the Vacation Area is not suitable for its purposes, or that City is unable to vacate the Vacation Area, or that City or Clackamas County is unable to approve the lot line adjustment, Donor shall have the right to terminate this Agreement by giving written notice thereof to City prior to the expiration of the Inspection Period. If Donor gives such notice of termination within the Inspection Period, this Agreement shall terminate, and City and Donor shall have no further rights and obligations hereunder except those which expressly survive termination of this Agreement. If City fails to give Donor a notice of termination prior to the expiration of the Inspection Period, City shall no longer have any right to terminate this Agreement under this Section 3.3 and, subject to the provisions of this Agreement, shall be bound to proceed to Closing and consummate the transaction contemplated hereby pursuant to the terms of this Agreement. Time is of the essence with respect to the provisions of this Section 3.3.

ARTICLE 4 CLOSING

4.1 Time and Place. The consummation of the transaction contemplated hereby ("Closing") shall be held at Canby City Hall on or before five (5) business days following the recording of the City vacation ordinance pursuant to ORS 271.150. The date on which the Closing is scheduled to occur hereunder (or, if earlier, the date on which Closing occurs) is sometimes referred to herein as the "Closing Date". Time is of the essence with respect to the Closing Date, and in the event that the transactions fail to close on or before the Closing Date, then this Agreement shall be terminated and shall be of no further force and effect.

4.2 Donor's Obligations at Closing. At Closing, Donor shall:

- (a) Deliver to City a duly executed statutory form bargain and sale deed (the "Deed") in recordable form, conveying the Property,
- (b) Deliver to City such evidence as City's counsel may reasonably require as

to the authority of the person or persons executing documents on behalf of Donor;

(c) Deliver to City possession of the Property; and

(d) Deliver such additional documents as shall be reasonably requested by City or required to consummate the transaction contemplated by this Agreement; provided, however, that in no event shall Donor be required to indemnify the City or any other party pursuant to any such documents, or undertake any other liability not expressly contemplated in this Agreement, unless Donor elects to do so in its sole discretion.

4.3 City's Obligations at Closing. At Closing, City shall:

(a) Deliver to Donor such evidence as Donor's counsel may reasonably require as to the authority of the person or persons executing any documents on behalf of City;

(b) Execute and deliver to Donor, City's portion of Internal Revenue Service Form 8283, Noncash Charitable Contributions, or such similar or successor form as reasonably required by Donor; and

(c) Deliver a copy of the recorded vacation ordinance; and

(d) Deliver such additional documents as shall be reasonably requested by Donor or required to consummate the transactions contemplated by this Agreement.

4.4 Credits and Prorations.

(a) All expenses in connection with the operation of the Property shall be apportioned, as of 11:59 P.M., on date prior to the Closing Date, as if City were vested with title to the Property and Donor were vested with title to the Vacation area during the entire Closing Date. Any operating expenses or other items pertaining to the Property which are customarily prorated between a purchaser and a seller in the area in which the Property is located will be prorated at Closing utilizing the information known at that time and a post-closing "true-up" shall take place within thirty (30) days of the Closing Date to adjust said prorations, if necessary.

(b) Notwithstanding anything contained in the foregoing provisions, Donor shall pay any past due property taxes, interest and penalties as of the Closing Date on the Property. Any property taxes imposed but not yet due shall be prorated as of the Closing date.. Donor shall receive the entire advantage of any discounts for the prepayment by it of any taxes.

(c) The provisions of this Section 4.4 shall survive Closing.

4.5 Closing Costs.

(a) Donor shall pay (1) the fees of any counsel representing it in connection with this transaction, (2) the application fee for the lot line adjustment, (3) all fees for recording the Deed and any other recorded instruments effecting the conveyance of the Property to City, (4) any transfer tax which becomes payable by reason of transfer of the Property, and (5) the cost of any survey and title work performed for Donor in connection with this transaction.

(b) City shall pay (1) City's fees of any counsel representing City in connection with this transaction, (2) City's fees or costs to acquire title insurance for the Property and (3) City's administrative costs for processing the lot line adjustment and the vacation.

(c) All other costs and expenses incident to this transaction and the closing thereof shall be paid by the party incurring same.

ARTICLE 5 RISK OF LOSS

5.1 Allocation Pre- and Post-Closing. Prior to Closing, Donor bears the risk of loss with respect to the Property, and City bears the risk of loss with respect to the Vacation Area, in the event of any fire or other casualty. Upon Closing, full risk of loss shall pass to City for the Property, and pass to Donor for the Vacation Area.

5.2 Option to Terminate. In the event of a loss or damage to the Property as a result of any casualty, either Donor or City may terminate this Agreement by written notice to the other party. If neither Donor nor City elects to terminate this Agreement within ten (10) days after either party sends to the other party written notice of the occurrence of loss or damage, then Donor and City shall be deemed to have elected to proceed with the closing on the Property in its present condition. In no event shall Donor be obligated to repair any damage or restore the Property to its pre-casualty condition.

ARTICLE 6 DISCLAIMERS AND WAIVERS

6.1 Reliance on Documents. Donor covenants that to the best of Donor's knowledge, all materials, data and information provided to City in connection with this transaction are true and accurate, and that donor has made no intentional misstatements in representing facts relating to this transaction. Donor has provided or will provide documentation to the City, including a land survey, appraisal, title report, and an environmental report. Donor affirms that it has disclosed all information known to it relating to any known environmental condition or environmental hazards that currently exist or may exist on the Property.

6.2 Disclaimers; Indemnity.

IT IS UNDERSTOOD AND AGREED EXCEPT AS NOTED IN SECTION 6.1 THAT DONOR IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH

RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF DONOR TO CITY, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. CITY ACKNOWLEDGES AND AGREES THAT UPON CLOSING DONOR SHALL TRANSFER AND CONVEY TO CITY AND CITY SHALL ACCEPT THE PROPERTY "AS IS WHERE IS WITH ALL FAULTS". CITY HAS NOT RELIED AND WILL NOT RELY ON, AND DONOR IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY DONOR, ANY MANAGER OF THE PROPERTY, OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT DONOR. TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING.

CITY REPRESENTS TO DONOR THAT CITY HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS CITY DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS SUBSTANCES OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF DONOR OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO.

UPON CLOSING, CITY EXPRESSLY ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY CITY'S INVESTIGATIONS.

(1) SUBJECT TO THE OREGON TORT CLAIMS ACT, CITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DONOR, ITS OFFICERS, DIRECTORS, AGENTS, AFFILIATES AND EMPLOYEES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, JUDGMENTS, INJURIES, FINES, PENALTIES, CITATIONS OR EXPENSES (INCLUDING EXPERT AND ATTORNEYS' FEES) ARISING OUT OF, RESULTING FROM OR RELATED TO CITY'S USE OR OPERATION OF, OR CITY'S ACTIVITIES ON, THE PROPERTY, OR CITY'S SUBSEQUENT DISPOSITION OF ANY IMPROVEMENTS OR PERSONALTY LOCATED THEREON.

(2) EXCEPT TO ENFORCE THIS AGREEMENT, AND AS RESERVED IN (3) BELOW, UPON CLOSING CITY EXPRESSLY ASSUMES RESPONSIBILITY AND LIABILITY FOR, ALL CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN

TORT OR UNDER ANY ENVIRONMENTAL LAW), LOSSES, DAMAGES, LIABILITIES (WHETHER BASED ON STRICT LIABILITY OR OTHERWISE), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER KNOWN OR UNKNOWN, WHICH CITY MIGHT HAVE ASSERTED OR ALLEGED AGAINST DONOR (AND DONOR'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY.

(3) NOTWITHSTANDING (2) ABOVE, DONOR RESERVES AND MAINTAINS FOR ITSELF, ITS OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS ANY AND ALL CLAIMS AGAINST CITY, ITS RELATED PARTIES, SUCCESSORS AND ASSIGNS, THAT ARISE OUT OF OR RELATE IN ANY WAY TO THE CONDITION, OWNERSHIP, USE, MAINTENANCE OR OPERATION OF THE VACATION AREA AT ANY TIME BEFORE OR ON THE DATE OF CLOSING, NO MATTER HOW CAUSED, WHETHER KNOWN OR UNKNOWN, THAT ARE ASSERTED OR MADE BY ANY PERSON OR ENTITY, WHETHER PUBLIC OR PRIVATE, UNDER ANY LAW TO THE EXTENT SUCH CLAIMS ARISE IN DEFENSE, MITIGATION OR APPORTIONMENT AND ALLOCATION OF LIABILITY FOR SUCH CLAIMS ASSERTED AGAINST DONOR.

AS USED IN THIS SUBPARAGRAPH (3), "LAW" SHALL MEAN ANY STATUTE, LAW, RULE, REGULATION OR ORDINANCE, WHETHER FEDERAL, STATE OR LOCAL, AT LAW OR IN EQUITY, WHETHER BY STATUORY, COMMON LAW, ADMINISTRATIVE, OR REGULATORY PROCEEDING OR OTHERWISE, WHETHER BASED ON NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, WILLFUL MISCONDUCT OR OTHER CONDUCT OF ANY PARTY HERETO OR OTHERWISE, RELATING TO (I) THE ENVIRONMENT, HAZARDOUS SUBSTANCES, MATERIALS, OR WASTE, TOXIC SUBSTANCES, POLLUTANTS (OR WORDS OF SIMILAR IMPORT), OR (II) ENVIRONMENTAL CONDITIONS AT, ON UNDER OR ORIGINATING OR MIGRATING FROM THE PROPERTY, (III) OR SOIL, WATER AND GROUNDWATER CONDITION, TO INCLUDE WITHOUT LIMITATION AND BY WAY OF EXAMPLE ONLY, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, THE CLEAN AIR ACT, THE TOXIC SUBSTANCES CONTROL ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL HAZARDOUS MATERIALS TRANSPORTATION ACT, THE SAFE DRINKING WATER ACT, AND THE CLEAN WATER ACT, OR SIMILAR OR COUNTERPART STATE STATUTES.

AS USED IN THIS SUBPARAGRAPH (3), "CLAIMS" SHALL MEAN ANY AND ALL LOSSES, DAMAGES, CLAIMS, CAUSES OF ACTION, CROSS-CLAIMS, COUNTERCLAIMS, RIGHTS OF CONTRIBUTION OR INDEMNITY, RIGHTS OF REIMBURSEMENT, LIENS, SUITS, LIABILITIES, DEMANDS, PAYMENTS, EXPENSES, COSTS AND FEES TO INCLUDE, WITHOUT LIMITATION AND BY WAY OF EXAMPLE ONLY, ATTORNEY'S FEES AND EXPERT WITNESS FEES, COURT COSTS, CIVIL OR

CRIMINAL PENALTIES OR FINES, TAXES ANDY ANY OTHER CHARGES OF ANY KIND OR NATURE WHATSOEVER.

AS USED IN THIS SUBPARAGRAPH (3) "RELATED PARTIES" SHALL INCLUDE CITY, EMPLOYEES, OFFICERS, AND AGENTS AND ALL OF THEIR RESPECTIVE REPRESENTATIVE, SUCCESSORS AND ASSIGNS.

6.3 Statutory Land Use Disclaimer. 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. 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

6.4 Effect and Survival of Provisions of Article 6. Donor and City acknowledge that the provisions of this Article 6 are an integral part of this transaction and a material inducement to Donor to enter into this Agreement. Donor and City agree that the provisions of this Article 6 shall survive Closing.

ARTICLE 7 REMEDIES

7.1 Default and Remedy. In the event of a default by either party hereunder, the non-defaulting party's sole and exclusive remedy shall be to terminate this Agreement, in which event neither party shall have any further obligations hereunder (except as to those provisions which expressly survive the termination hereof) and this Agreement shall be null and void. The parties acknowledge and agree that the non-defaulting party shall have no right to sue for damages,

pursue specific performance or pursue any other remedy at law or in equity and, by executing below, knowingly and intentionally waive such rights.

ARTICLE 8 MISCELLANEOUS

8.1 Public Disclosure. Prior to Closing, any release to the public of information with respect to the donation contemplated herein or any matters set forth in this Agreement other than public filings required for the vacation of Berg Pkwy, for City's intended use of the Property or as required by the Oregon Public Records law will be made in the form and manner consistent with the legal requirements for Oregon Cities, as determined by City.

8.2 Assignment. City may not assign its rights under this Agreement without first obtaining Donor's written approval, which approval may be given or withheld in Donor's sole discretion. No transfer or assignment by City shall release or relieve City of its obligations hereunder.

8.3 Notices. Any notice, request or other communication (a "notice") required or permitted to be given hereunder shall be in writing and shall be delivered by hand or overnight courier (such as United Parcel Service or Federal Express) or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth below. Any such notice shall be considered given on the date of such hand or courier delivery, deposit with such overnight courier for next business day delivery, or deposit in the United States mail, but the time period (if any is provided herein) in which to respond to such notice shall commence on the date of hand or overnight courier delivery or on the date received following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. By giving at least five (5) days' prior written notice thereof, any party may from time to time and at any time change its mailing address hereunder. Any notice of any party may be given by such party's counsel.

The parties' respective addresses for notice purposes are as follows. Telecopy numbers are given for convenience of reference only. Notice by telecopy shall not be effective.

If to Donor: Plantore, LLC
1017 SW Berg Pkwy
Canby, OR 97013
Attention: Don Jeskey

With a copy to:
Jordan Ramis, PC
2 Centerpointe Dr, Sixth Floor
Lake Oswego, OR 97035
Attention: Robert Koury

If to City: City of Canby

182 N. Holly St.
P.O. Box 930
Canby, OR 97013
Attention: Rick Robinson

8.4 Modifications. This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

8.5 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State of Oregon, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., P.S.T.

8.6 Successors and Assigns. Subject to Section 8.2 hereof, the terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.

8.7 Entire Agreement. This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

8.8 Further Assurances. Each party agrees that it will, and without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. The provisions of this Section 8.8 shall survive Closing.

8.9 Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement.

8.10 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

8.11 Applicable Law. This Agreement is governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of state of Oregon. Venue for any dispute is Clackamas County Circuit Court. This provision shall survive the Closing of the transaction contemplated by this Agreement.

8.12 No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Donor and

City only and are not for the benefit of any third party (except for a lender with a recorded security interest in Donor's real property), and accordingly, no third party (lender excepted) shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

8.13 No Joint Venture. This Agreement is not intended, nor shall it be deemed or construed to create a partnership or joint venture between Donor and City, nor to make Donor in any way responsible for the debts or obligations of City.

8.14 Captions. The section headings appearing in this Agreement are only for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any section or any subsection hereof.

8.15 Termination of Agreement. It is understood and agreed that if either City or Donor terminates this Agreement pursuant to a right of termination granted hereunder, such termination shall operate to relieve Donor and City from all obligations under this Agreement, except such obligations as are specifically stated herein to survive the termination of this Agreement.

8.16 Charitable Donation Representation. Subject to Section 1.4, City hereby acknowledges, agrees and represents that Donor is transferring the Property to City without the receipt of consideration of any kind, or any other direct or indirect benefit resulting thereby now and in the future from the transfer of the Property.

8.17 Right to Counsel; No Presumption Against Drafter. CITY EXPRESSLY ACKNOWLEDGES AND AGREES THAT CITY IS REPRESENTED BY COUNSEL IN CONNECTION WITH THE NEGOTIATION OF ITS AGREEMENT AND THE DONATION AND VACATION AND CLOSING CONTEMPLATED THEREIN. FURTHERMORE, CITY ACKNOWLEDGES THAT DONOR'S COUNSEL REPRESENTS DONOR'S INTERESTS ONLY, THAT NO ATTORNEY-CLIENT RELATIONSHIP HAS BEEN CREATED BETWEEN CITY AND SUCH COUNSEL, AND SUCH COUNSEL HAS NO FIDUCIARY DUTY TO CITY.

This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party drafting the document. It shall be construed neither for nor against Donor or City, but shall be given reasonable interpretation in accordance with the plain meaning of its terms and the intent of the parties.

DONOR


PLANTORE, LLC, a Delaware limited liability company



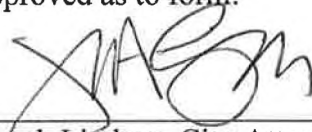
By: Thomas Masterson, President

CITY

CITY OF CANBY, an Oregon municipal corporation


By: Rick Robinson, City Administrator

Approved as to form:


Joseph Lindsay, City Attorney