

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 09-089**

Approving Donation and Transfer of County Property to OREGON SUSTAINABLE AGRICULTURAL LAND TRUST, a Nonprofit Corporation, for Open Space, Park or Natural Areas for Perpetual Public Use, and Directing the Chair to Execute a Deed and Performance Agreement

**The Multnomah County Board of Commissioners Finds:**

- a. Multnomah County originally acquired the following real property located in the City of Portland, Multnomah County, Oregon:

S ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD  
N ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD

through foreclosure of delinquent tax liens in 1984 and 1989 (the Property).

- b. In 1995, the County received a request to transfer the Property, but the request was later withdrawn because of title issues. On December 9, 1999, the Property was transferred to Portland Community Design for development as low-income housing.
- c. In February 2003, Portland Community Design dissolved as a corporation and the Property was deeded back to the County.
- d. On May 1, 2003, by Resolution 03-059, the Board donated the Property to Our Garden, Inc., a nonprofit corporation, for the creation of open space, parks or natural areas for perpetual public use.
- e. By 2009, however, Our Garden, Inc. was not able to continue the proposed use; and by operation of the reversionary clause in the original transfer deed, the title reverts to the County. In addition, Our Garden Inc. conveyed the Property to the County by a deed recorded on April 8, 2009, at Entry No.2009-046816 in the Multnomah County Deed Records.
- f. Under MCC § 7.356, County real property not needed for any public use by the County may be disposed of by sale, lease, donation or exchange as authorized by state law. The Property is not needed for any public use by the County.
- g. MCC § 27.406 does not apply to this proposed transaction as it is directed to real property when it is first acquired by the County through tax foreclosure and subsequently made available for the initial donation or sale. The Property as noted above has been conveyed and re-conveyed twice after initially being acquired through tax foreclosure over 20 years ago

- h. 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. The County received a request from OREGON SUSTAINABLE AGRICULTURAL LAND TRUST, a nonprofit corporation, for such a transfer of the Property.
- i. The Department of Community Services, Tax Title Division, recommends approval of the transfer in its report dated June 25, 2009, attached and identified as the "Agenda Placement Request" for this Resolution.
- j. Based on the report, it appears that the public interest will be served by donation and transfer of the Property to OREGON SUSTAINABLE AGRICULTURAL LAND TRUST, a nonprofit corporation, under ORS 271.330.

**The Multnomah County Board of Commissioners Resolves:**

1. The transfer of the Property without monetary consideration to OSALT is approved subject to the requirements of ORS 271.330(3) 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 25th day of June 2009.

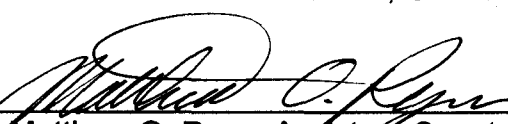


BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
\_\_\_\_\_  
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
\_\_\_\_\_  
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Dept. of Community Services

## **EXHIBIT A**

Until a change is requested, all tax statements

Shall be sent to the following address:

OSALT

PO BOX 1106

CANBY OR 97013

After recording return to:

Multnomah County Tax Title 503/4

### **Deed D092189 For R102924 And R102925**

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, **Grantor**, conveys to OREGON SUSTAINABLE AGRICULTURAL LAND TRUST, **Grantee**, the following real property located in the City of Portland, Multnomah County, Oregon:

S ½ OF LOT 11, BLOCK 3, ALBINA HOMESTEAD

N ½ OF LOT 11, BLOCK 3, ALBINA HOMESTEAD

Provided that said property shall only be used and continue to be used by the Grantee for the creation of open space, parks or natural areas for perpetual public use, and should the property cease to be used in conformance with this restriction by the Grantee, the interests of the Grantee shall 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. 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.

This transfer is without monetary consideration.

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 County Board.

Dated this 25th day of June 2009.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

\_\_\_\_\_  
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

ACCEPTED:

OREGON SUSTAINABLE AGRICULTURAL LAND TRUST

By \_\_\_\_\_  
Matthew O. Ryan, Assistant County Attorney

By \_\_\_\_\_  
Will Newman

STATE OF OREGON                    )  
  ) ss  
COUNTY OF MULTNOMAH        )

This Deed was acknowledged before me this 25th day of June 2009, by Ted Wheeler, 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.

\_\_\_\_\_  
Deborah Lynn Bogstad  
Notary Public for Oregon  
My Commission expires: 06/27/2013

## EXHIBIT B

### OSALT PERFORMANCE AGREEMENT

**DATE:** June 25, 2009

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

**TRANSFeree:** OREGON SUSTAINABLE AGRICULTURAL LAND TRUST  
P.O. BOX 1106  
Canby, Oregon, 97013-1106

#### Recitals

- A. As allowed under ORS 271.330 and Multnomah County Code Sections 27.401-27.406, 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 the City of Portland, Multnomah County and more particularly described as follows:  
  
S ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD  
  
N ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD  
  
(Hereinafter "the Property"). 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. As of June 25th, 2009 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, commonly known as the former 3924 & 3930 NE Garfield Street, Portland, Oregon. (Tax ID Numbers R102924 & R102925).

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 27.406(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's Obligation and Action Plan. Transferee will do the following:
- a. Comply with all of the covenants, terms and conditions set forth in this Agreement.
  - b. Implement and fully comply the provisions set forth in the "Action Plan" attached herein, identified as Exhibit 1.
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.

**TRANSFEE:**  
OREGON SUSTAINABLE AGRICULTURAL LAND TRUST

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2009, 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:

**TRANSFEROR:**

**BOARD OF COMMISSIONERS  
MULTNOMAH COUNTY, OREGON**

By: \_\_\_\_\_

Print Name: Ted Wheeler

Title: Multnomah County Chair

STATE OF OREGON                    )  
  ) ss  
COUNTY OF MULTNOMAH        )

This Performance Agreement was acknowledged before me this 25th day of June 2009, by Ted Wheeler, 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.

\_\_\_\_\_  
Deborah Lynn Bogstad  
Notary Public for Oregon  
My Commission expires: 6/27/2013

**REVIEWED BY:**

**AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON**

By: \_\_\_\_\_  
Matthew O. Ryan, Assistant County Attorney

# **EXHIBIT 1**

## **“Our Garden” Action Plan**

**Purpose Statement:** The Oregon Sustainable Agriculture Land Trust (OSALT) intends that the certain real property located in the City of Portland, Multnomah County, Oregon; more particularly described as follows:

S ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD  
N ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD

Commonly referred to and known as “Our Garden” after the work of Reverend Jeanne Walker, continue to be developed as a community garden for the benefit of the surrounding neighborhood. The above described property will be referred to as “Our Garden Site” Or “OGS” in this Exhibit.

### **1. Goal for the Site.**

To establish a working and productive community garden that will involve and serve the immediate King neighborhood surrounding the Our Garden Site.

### **2. Initial Phase: First 3 months after possession.**

- a. OSALT shall conduct or cause to conduct sufficient soil tests and analysis of OGS to ascertain whether the toxins typically found on older home sites are present.
- b. If results of these tests indicate contamination problems exist on OGS to the extent that organic or sustainable growing practices cannot be implemented, these contamination problems will be remediated before food crops are grown.

### **3. Neighborhood Participation and Site Management.**

- a. At such time that OSALT’s activities are completed under Section 2; the OGS will be a public garden available for use by the residents of the King neighborhood, and will be managed by those participating in the growing on the site.
- b. OSALT will pursue the commitment of at least two local businesses to contribute to and support an active composting program for local yard debris for use on the site.
- c. The goal is to have OGS maintained and managed by volunteers from the neighborhood, currently led by Jessica Larson, who lives next door to the property, but OSALT shall retain responsibility for the maintenance and management of the site if the volunteers do not adequately perform these tasks.
- d. OSALT shall be responsible for and shall guide and oversee all volunteers, workers, contractors or any other parties at the OGS and the activities conducted thereon.
- e. OSALT will ensure the OGS is not designated or found to be a nuisance or otherwise in violation of any applicable laws, land use or regulatory codes of the City of Portland or other regulatory authority with jurisdiction over the site.
- f. OSALT will ensure the existing heritage cherry tree present at the OGS will be protected.

### **4. Alternative Long Term Plan.**

- a. In the event that the garden can no longer be managed as a community growing space by neighbors, OSALT will continue a productive agricultural use of benefit to the community.
- b. Regardless of the ultimate use of OGS, OSALT shall comply with the provisions and requirements of Section 3, Sub-sections 3.c -3.f at all times.

## OSALT PERFORMANCE AGREEMENT

**DATE:** June 25, 2009

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

**TRANSFeree:** OREGON SUSTAINABLE AGRICULTURAL LAND TRUST  
P.O. BOX 1106  
Canby, Oregon, 97013-1106

### Recitals

- A. As allowed under ORS 271.330 and Multnomah County Code Sections 27.401-27.406, 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 the City of Portland, Multnomah County and more particularly described as follows:

S ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD

N ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD

(Hereinafter "the Property"). 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. As of June 25th, 2009 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, commonly known as the

former 3924 & 3930 NE Garfield Street, Portland, Oregon. (Tax ID Numbers R102924 & R102925).

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 27.406(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 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 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's Obligation and Action Plan. Transferee will do the following:
- a. Comply with all of the covenants, terms and conditions set forth in this Agreement.

- b. Implement and fully comply the provisions set forth in the “Action Plan” attached herein, identified as Exhibit 1.

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.

**TRANSFEE:**  
OREGON SUSTAINABLE AGRICULTURAL LAND TRUST

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2008, 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:

**TRANSFEROR:**

**BOARD OF COMMISSIONERS  
MULTNOMAH COUNTY, OREGON**

By: \_\_\_\_\_

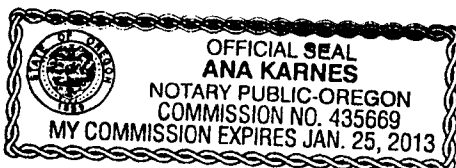
Print Name: Ted Wheeler

Title: Multnomah County Chair

REVIEWED:  
AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY  
BY: \_\_\_\_\_  
ASSISTANT COUNTY ATTORNEY  
DATE: June 25, 2009

STATE OF OREGON            )  
  ) ss  
COUNTY OF MULTNOMAH    )

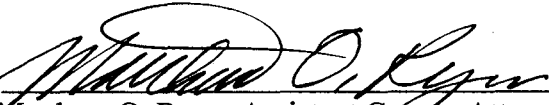
This Performance Agreement was acknowledged before me this 25th day of June 2009, by Ted Wheeler, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Ana Karnes  
Ana Karnes  
Notary Public for Oregon  
My Commission expires: 1/25/2013

**REVIEWED BY:**

**AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON**

By:   
Matthew O. Ryan, Assistant County Attorney

# **EXHIBIT 1**

## **“Our Garden” Action Plan**

**Purpose Statement:** The Oregon Sustainable Agriculture Land Trust (OSALT) intends that the certain real property located in the City of Portland, Multnomah County, Oregon; more particularly described as follows:

S ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD  
N ½ OF LOT 11 BLOCK 3, ALBINA HOMESTEAD

Commonly referred to and known as “Our Garden” after the work of Reverend Jeanne Walker, continue to be developed as a community garden for the benefit of the surrounding neighborhood. The above described property will be referred to as “Our Garden Site” Or “OGS” in this Exhibit.

### **1. Goal for the Site.**

To establish a working and productive community garden that will involve and serve the immediate King neighborhood surrounding the Our Garden Site.

### **2. Initial Phase: First 3 months after possession.**

- a. OSALT shall conduct or cause to conduct sufficient soil tests and analysis of OGS to ascertain whether the toxins typically found on older home sites are present.
- b. If results of these tests indicate contamination problems exist on OGS to the extent that organic or sustainable growing practices cannot be implemented, these contamination problems will be remediated before food crops are grown.

### **3. Neighborhood Participation and Site Management.**

- a. At such time that OSALT’s activities are completed under Section 2; the OGS will be a public garden available for use by the residents of the King neighborhood, and will be managed by those participating in the growing on the site.
- b. OSALT will pursue the commitment of at least two local businesses to contribute to and support an active composting program for local yard debris for use on the site.
- c. The goal is to have OGS maintained and managed by volunteers from the neighborhood, currently led by Jessica Larson, who lives next door to the property, but OSALT shall retain responsibility for the maintenance and management of the site if the volunteers do not adequately perform these tasks.
- d. OSALT shall be responsible for and shall guide and oversee all volunteers, workers, contractors or any other parties at the OGS and the activities conducted thereon.
- e. OSALT will ensure the OGS is not designated or found to be a nuisance or otherwise in violation of any applicable laws, land use or regulatory codes of the City of Portland or other regulatory authority with jurisdiction over the site.
- f. OSALT will ensure the existing heritage cherry tree present at the OGS will be protected.

### **4. Alternative Long Term Plan.**

- a. In the event that the garden can no longer be managed as a community growing space by neighbors, OSALT will continue a productive agricultural use of benefit to the community.
- b. Regardless of the ultimate use of OGS, OSALT shall comply with the provisions and requirements of Section 3, Sub-sections 3.c -3.f at all times.

Until a change is requested, all tax statements

Shall be sent to the following address:

OSALT  
PO BOX 1106  
CANBY OR 97013

After recording return to:

Multnomah County Tax Title 503/4

**Deed D092189 For R102924 And R102925**

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, **Grantor**, conveys to OREGON SUSTAINABLE AGRICULTURAL LAND TRUST, **Grantee**, the following real property located in the City of Portland, Multnomah County, Oregon:

S ½ OF LOT 11, BLOCK 3, ALBINA HOMESTEAD  
N ½ OF LOT 11, BLOCK 3, ALBINA HOMESTEAD

Provided that said property shall only be used and continue to be used by the Grantee for the creation of open space, parks or natural areas for perpetual public use, and should the property cease to be used in conformance with this restriction by the Grantee, the interests of the Grantee shall 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. 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.

This transfer is without monetary consideration.

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 County Board.

Dated this 25th day of June 2009.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Ted Wheeler, Chair

REVIEWED:  
AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

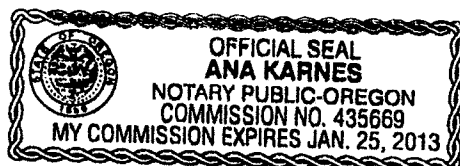
By   
Matthew O. Ryan, Assistant County Attorney

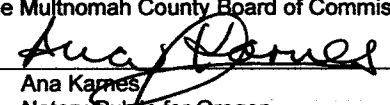
ACCEPTED:  
OREGON SUSTAINABLE AGRICULTURAL LAND TRUST

By \_\_\_\_\_  
Will Newman

STATE OF OREGON                     )  
  ) ss  
COUNTY OF MULTNOMAH        )

This Deed was acknowledged before me this 25th day of June 2009, by Ted Wheeler, 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.



  
Ana Karnes  
Notary Public for Oregon  
My Commission expires: 01/25/2013