

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 06-042**

Authorizing Execution of Contract Between Multnomah County, Seller and EDGAR A. & PATRICE M. WESTPHAL, Purchasers for Tax-Foreclosed Property Sold at Public Sale and Deed to Purchasers at Contract Completion

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

- a. On February 28, 2006 Multnomah County conducted a public auction and sale of tax-foreclosed real properties, including the property described below (property).
- b. The public sale was conducted consistent with the requirements of ORS 275.110 to 275.250 and MCC Chapter 7.
- c. PATRICE M. WESTPHAL was the highest bidder at the sale for the property with a bid of \$26,000. The County acknowledges receipt of the sum of \$1,504, as deposit paid by Buyer. An additional amount of \$3,696 to be paid at the contract signing and the balance remaining \$20,800 is to be paid pursuant to the proposed Contract.
- d. The Sheriff delivered to the Buyer a Certificate of Sale as required under ORS 275.150 containing the legal description of the property, the whole purchase price, the amount paid in cash, and the date upon which the future payment will become due.

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

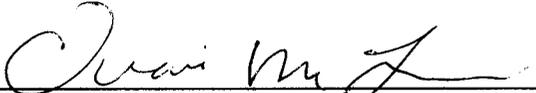
1. The Chair on behalf of Multnomah County is authorized to execute the attached Contract.
2. Upon Purchaser's performance of all the obligations of the Contract and upon Tax Title's receipt of the full balance due, the Chair on behalf of Multnomah County, is authorized to execute a deed conveying to EDGAR A. & PATRICE M. WESTPHAL, the following described real property:

As described in the attached Exhibit A.

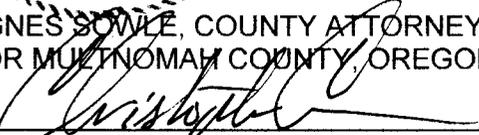
ADOPTED this 6th day of April, 2006.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Diane M. Linn, Chair

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY OREGON

By   
Christopher D. Crean, Assistant County Attorney

## EXHIBIT A (RESOLUTION)

### Tax Account R315019 Legal Description

A parcel of land situated in Section 10, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon described as follows:

Beginning at the intersection of the east line of the Pacific Northwest Public Service Right of Way on the North line of N.E. Gertz Rd.;

thence N 21°05'00"W 166.90';

thence S 84°24'00"W to a point 20' west of the east line of said right of way when measured at right angles, said point also being on the east line of the Portland Electric Power Co. right of way, now vacated, conveyed to Kenneth P. and Julia Gustin, book 1528, page 428;

thence S 21°05'00"E 152.69' along said east line of Gustin property to the north line of N.E. Gertz Rd.;

thence Southeasterly along the North line of said road to the point of beginning.

**Until a change is requested, all tax statements shall be sent to the following address:**  
**EDGAR A. & PATRICE M. WESTPHAL**  
**1811 NW 93rd PLACE**  
**PORTLAND OR 97229**

**After recording please return to:**  
**Multnomah County Tax Title**  
**503/4/TT**

## **CONTRACT 15821 OF SALE**

THIS CONTRACT is made and entered into on **April 6, 2006** by Multnomah County, Oregon, ("the County"), a municipal corporation, and EDGAR A. & PATRICE M. WESTPHAL ("purchaser").

The County agrees to sell, in accordance with the statutes of the State of Oregon and in consideration of the covenants and agreements made on the part of the purchaser, and purchaser agrees to buy the real property described as follows:

### **LEGAL DESCRIPTION TAX ACCOUNT R315019**

**A parcel of land situated in Section 10, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon described as follows:**

**Beginning at the intersection of the east line of the Pacific Northwest Public Service Right of Way on the North line of N.E. Gertz Rd.;**

**thence N 21°05'00"W 166.90';**

**thence S 84°24'00"W to a point 20' west of the east line of said right of way when measured at right angles, said point also being on the east line of the Portland Electric Power Co. right of way, now vacated, conveyed to Kenneth P. and Julia Gustin, book 1528, page 428;**

**thence S 21°05'00"E 152.69' along said east line of Gustin property to the north line of N.E. Gertz Rd.;**

**thence Southeasterly along the North line of said road to the point of beginning.**

### **Purchase Price**

Purchaser agrees to pay for described real property the sum of \$26,000 which is the true and actual consideration paid for this transfer. A down payment in the amount of \$1,504 has been paid, with receipt acknowledged by the County. An additional down payment amount of \$3,696, representing 20% of the full sale price is due at the time this contract is executed. At closing, the down payment shall be credited to the purchase price and the Buyer shall pay the remainder to the County with interest charged at a rate of 6% per annum on the dates and in the amounts as follows:

Not less than \$176 on the 15th of May 2006, and a payment on the 15th day of each month for a period of 15 years, until the full amount of both the principal and interest has been paid in full, provided always that the purchaser may pay the full amount of both principal and interest due at any time without penalty for early payment.

If any monthly payment of interest and principal, or part of such payments has not been received by the Tax Title Division on the 26th day of each month, a late-charge of \$25.00 will be assessed to the purchaser.

### **Application of Payments**

All payments on the contract shall be applied first to the interest due on the contract, and then to late charges, if any, then the remaining amount shall be applied to the principal. Payments will be credited as of the due date without adjustment of interest when paid either before or after the due date. Purchaser may prepay at any time all or part of the principal amount due on this contract without payment of penalties or premiums, provided that purchaser is not under default under this contract and the payment is identified as prepayment of the principal.

If an agreement is reached between the County and the purchaser to accept payments in a smaller amount than the originally agreed upon payments, the County shall not be held to have breached this contract, nor to have waived its right to insist upon strict compliance by the purchaser with the terms of this contract. The County may proceed with its legal remedies at any time, without notice to the purchaser except as stated within the terms of this contract. Such notice, if extended to the purchaser, shall be accepted by the purchaser as a courtesy only.

### **Default**

Time is of the essence in this contract and the County has the discretion to declare a contract in default due to unpaid payments. The purchaser's default can be cured by following the procedures set forth in Oregon Revised Statutes 93.920 and by paying all costs and expenses actually incurred by the County in enforcing the contract, including but not limited to late charges, attorney fees of \$500.00 and costs of the title search.

In addition, the County may declare the contract in default if:

1. Purchaser fails to make any payment within 15 days after it is due;
2. Purchaser fails to perform or comply with any condition and does not commence corrective action within ten days after written notice from the County specifying the nature of the default, or, if the default cannot be cured within that time, fails to commence and pursue curative action with reasonable diligence;
3. Purchaser becomes insolvent; a receiver, trustee or custodian is appointed to take possession of all or a substantial part of purchaser's property or properties; purchaser makes an assignment for the benefit of creditors or files a voluntary petition in bankruptcy; or purchaser is subject to an involuntary bankruptcy which is not dismissed within ninety days; or
4. Purchaser makes or allows to be made a fraudulent transfer under applicable federal or state law, conceals any of his/her property from creditors; makes or allows to be made a preference within the meaning of the federal bankruptcy laws; or allows a lien or distraint upon any of his/her property.

## **Tax Payments.**

In addition to payment of installments as agreed in this contract, purchaser agrees to pay all taxes lawfully assessed and levied against said property during the term of this contract before they become delinquent.

## **Terms and Conditions.**

1. Purchaser agrees to pay and discharge all municipal liens and assessments of any kind and nature assessed against the property before they become delinquent.
2. Purchaser will keep all improvements on the property in at least as good condition and repair as they were on the date of possession by purchaser and shall not permit any waste or removal of all or part of the improvement without first obtaining express written permission from the County.
3. Purchaser will promptly comply with and cause all other persons to comply with all laws, ordinances, regulations, directions, rules and other requirements of all governmental authorities applicable to the use or occupancy of the property.
4. Purchaser shall promptly make all required repairs, alterations and additions, including, without limitation, any required alteration of the property due to purchaser's specific use of the property. Purchaser also agrees to complete any alterations or repairs necessary to comply with any applicable federal, state and local laws including those pertaining to air and water quality, hazardous materials and other environmental zoning, land use statutes, ordinances and regulations.
5. Purchaser will not use or permit others to use any of the property for any "prohibited conduct" as that term is defined in ORS 475.005 or any "nuisance" as described in ORS 105.555, as those statutes may now or hereafter be amended, supplemented or superseded, or otherwise do or allow any act or omission on or about the property that could subject the property of the County's or Purchaser's interest therein to forfeiture or the risk of forfeiture.
6. In any proceeding to enforce any provision of this contract, the Purchaser shall be liable to the County for any costs, including attorney fees, incurred by the County in the proceeding, provided only that the County is determined to be a prevailing party in the proceeding.

## **Insurance**

Purchaser will keep all improvements now existing or which shall hereafter be placed on the property insured against fire and other casualties covered by a standard policy of fire insurance with extended coverage endorsements. The policy shall be written to the full replacement value and loss payable to County and purchaser as their respective interests may appear, and certificates evidencing the policy shall be delivered to County and shall contain a stipulation providing that coverage will not be canceled or diminished without a minimum of ten days' written notice to the County. In the event of a loss, purchaser shall give immediate notice to County. County may make proof of loss if purchaser fails to do so within fifteen days of casualty.

## **Binding Effect/Assignment Restricted**

This contract is binding on and will inure to the benefit of the County, purchaser and their respective heirs, legal representatives, successors and assigns. No assignment of this contract or any interest therein or any interest in any of the property herein described shall be valid unless it is approved by County. Terms of this contract may be amended by County upon assignment. Subject to the foregoing restriction, the terms of this contract shall be binding upon the heirs, successors-in-interest and assigned of Purchaser.

### **Indemnity and Hold Harmless Agreement**

Purchaser will indemnify, defend, and hold harmless the County, its elected officials, officers, and employees from and against any claims, loss or liability of any kind arising out of or related to any activity on the property occurring while purchaser is entitled to occupy the property under this or any predecessor agreement, whether or not the property is leased to others. This indemnification of the County by purchaser includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of hazardous material present in the soil or groundwater or under the property. Without limiting the foregoing, if the presence of any hazardous material on property caused or permitted by Purchaser or purchaser's agents or contractors results in any contamination of the property, Purchaser shall promptly take all actions at Purchaser's sole expense as are necessary to return the property to the condition existing prior to the release of any such hazardous material onto the property, provided that the County's approval of such action shall first be obtained, and approval shall not be unreasonably withheld, as long as such actions would not potentially have any material adverse long-term or short-term effect on the property. This indemnification by Purchaser includes, without limitation, reimbursement for any diminution in the value of the property and reimbursement for sums paid in settlement of claims, attorney fees, consultant fees, and expert fees. The obligations agreed to with regard to the indemnity and hold harmless provisions of this contract shall survive any termination or cancellation of the contract for any reason.

### **Waste**

It is understood and agreed between the parties that the purchaser shall not commit any strip or waste on the premises or sever any growing timber from the premises nor shall the purchaser suffer or permit any strip or waste to be committed on the property. All improvements placed on the property shall remain and shall not be removed before final payment is made. Purchaser shall not remove any improvements currently upon the property without first having obtained the express written consent of the County. Multnomah County is not responsible for relocation costs.

### **Hazardous Materials**

As used in this contract, the term Hazardous Material means any hazardous or toxic substance, material, or waste, including, but not limited to those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR § 172.101), or by the United States Environmental Protection Agency as hazardous substances (40 CFR pt 302) and amendments thereto, petroleum products, or other such substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law.

Purchaser will not cause or permit any hazardous material to be brought upon, kept, or used in or about the property by purchaser or purchaser's agents, employees, contractors, or invitees without the prior written consent of the County, which shall not be unreasonably withheld as

long as purchaser demonstrates to County's reasonable satisfaction that such hazardous material is necessary to purchaser's business and will be used, kept, and stored in a manner that complies with all laws regulating any such hazardous materials brought upon or used or kept in or about the property.

### **Title Insurance**

The County does not provide title insurance.

### **Property Sold "AS IS"**

Purchaser agrees that it has accepted and executed this contract on the basis of its own examination and personal knowledge of the Property; County makes no representations or warranties with respect to the physical condition or any other aspect of the Property, including, without limitation, whether the Property conforms to past, current, or future zoning or building code requirements, the existence of soil stability, past soil repair, soil additions, conditions of soil fill or susceptibility to land slides, the sufficiency of any under-shoring, the sufficiency of any drainage, whether the Property is located either wholly or partially in a flood plain or a flood hazard boundary or similar area, or any other matter affecting the stability or integrity of the Property. Purchaser expressly acknowledges that the Property is being sold and accepted "**AS IS**", and purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights purchaser may have regarding any form of warranty, except as set forth in this contract, express or implied, of any kind or type, relating to the Property. Such waiver is absolute, complete, total, and unlimited in any way.

### **Remedies**

TIME IS OF THE ESSENCE REGARDING THIS AGREEMENT.

1. If the transaction does not thereafter close, through no fault of County, before the close of business on the Closing Date, purchaser may forfeit the [earnest money deposit] to County as liquidated damages.
2. The parties agree the remedies for the failure to close this transaction shall be limited to the remedies set forth in this contract and the parties waive any further remedies, which may be available to either. If this transaction does not close, the County may pursue cancellation of this contract under ORS 275.220.
3. Nothing herein shall be interpreted to limit the purchaser's obligations under any provision of this contract as applicable, to defend, hold harmless and indemnify the County.

### **Severability**

If any term or provision of this Contract of the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this contract and the application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this contract shall be valid and enforceable to the fullest extent permitted by law.

**Entire Agreement**

This contract sets forth the entire understanding of the parties with respect to the purchase and sale of the property. This contract supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This contract may not be modified or amended except by a written agreement executed by both parties.

**Conveyance of Title**

Upon complete performance by Purchaser of all the terms and conditions of this contract, County agrees to convey to Purchaser the title to the aforesaid property by Bargain & Sale Deed.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)). 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 APPROVED USES, 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 CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).

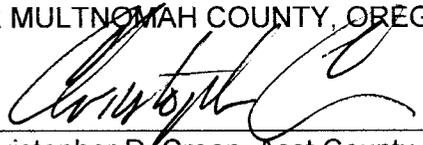
IN WITNESS WHEREOF, purchaser has set his/her hand the year and day first above written, and County has caused these presents to be executed by the Chair of the Multnomah Board of County Commissioners heretofore entered of record.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

\_\_\_\_\_  
Diane M Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By  \_\_\_\_\_  
Christopher D. Crean, Asst County Attorney

BUYERS:

EDGAR A. & PATRICE M. WESTPHAL

\_\_\_\_\_  
Edgar A. Westphal

\_\_\_\_\_  
Patrice M. Westphal

STATE OF OREGON            )  
  ) ss  
COUNTY OF MULTNOMAH )

This instrument, "Contract 15821 of Sale", was acknowledged before me the 6th day of April, 2006 by Diane M. Linn, 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: 06/27/09

STATE OF OREGON            )  
  ) ss  
COUNTY OF MULTNOMAH )

Signed or attested before me on \_\_\_\_\_, 2006 by EDGAR A. WESTPHAL.

\_\_\_\_\_  
Becky J. Grace  
Notary Public for Oregon  
My Commission Expires 12/12/2008

STATE OF OREGON            )  
  ) ss  
COUNTY OF MULTNOMAH )

Signed or attested before me on \_\_\_\_\_, 2006 by PATRICE M. WESTPHAL.

\_\_\_\_\_  
Becky J. Grace  
Notary Public for Oregon  
My Commission Expires 12/12/2008