

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 04-052

Authorizing Private Sale by Contract of Certain Tax Foreclosed Property to C&M MOTORS, BMW AND MERCEDES-BENZ, LLC

The Multnomah County Board of Commissioners Finds:

- a) Multnomah County acquired the real property described in the attached Exhibit A through the foreclosure of liens for delinquent property taxes.
- b) The property has an assessed value of \$272,680 on the County's current tax roll.
- c) After the sheriff has unsuccessfully attempted to sell real property of the county as provided in ORS 275.120 to 275.160, the county court may sell such lands, or any part thereof, or any interest therein less than the whole fee, at private sale without further notice but for not less than the largest amount bid therefore at any such sale, or, if no bid therefore was made, at such price as the county court deems reasonable, but at a price no less than 15 percent of the minimum bid set under ORS 275.110 for the sheriff's sale.
- d) The property was offered for sale at public auction on February 25 of 2003. No offers to purchase the property were received at the auction. The minimum price that the subject property was offered for sale at the 2/25/03 auction was \$150,000. The Tax Title Division Conducted a sealed bid auction in February 2004 to sell the property. A minimum bid of \$160,000 was set for the property. The winning bid and the amount offered to purchase the property is \$200,000. This amount is higher than the minimum allowed pursuant to ORS 275.110 and reimburses the county for the back taxes, interest and expenses charged against the property.
- e) C & M MOTORS, BMW AND MERCEDES-BENZ, LLC has agreed to pay \$200,000. with \$150,000 down, to carry a 15 year contract with Tax Title for the remaining \$50,000 at 6% interest, an amount the Board finds to be a reasonable price for the property in conformity with ORS 275.200(2).

The Multnomah County Board of Commissioners Resolves:

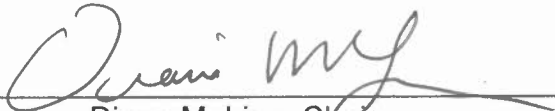
- 1. The Chair on behalf of Multnomah County is authorized to execute the attached Contract 15812 of Sale.

2. Upon complete performance of all the terms and conditions of the Contract, the Chair on behalf of Multnomah County, is authorized to execute a deed conveying to C & M MOTORS, BMW AND MERCEDES-BENZ, LLC, the real property described in the attached Exhibit A.

ADOPTED this 29th day of April, 2004.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

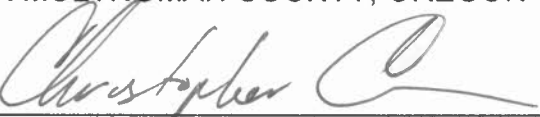
By 
Christopher Crean, Assistant County Attorney

EXHIBIT A (RESOLUTION)

A tract of land located in Section 15 Township 1 North, Range 1 East and also being a portion of Piedmont Park, a duly recorded plat in the County of Multnomah and State of Oregon further described as:

Lot 1, Block 1, except therefrom that portion in Bryant Street; AND ALSO
Lot 2, 3 and 4, Block 1.

Multnomah County Contract No.: 15812

Tax Account No.: R243872

CONTRACT 15812 OF SALE

THIS CONTRACT is made and entered into on <<DATE>> by Multnomah County, Oregon, ("the County"), a municipal corporation, and C & M MOTORS, BMW AND MERCEDES-BENZ, LLC, ("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 certain real property situated in the County of Multnomah, State of Oregon, described as follows:

A tract of land located in Section 15 Township 1 North, Range 1 East and also being a portion of Piedmont Park, a duly recorded plat in the County of Multnomah and State of Oregon further described as: Lot 1, Block 1, except therefrom that portion in Bryant Street; AND ALSO Lot 2,3 and 4, Block 1.

Purchase Price

Purchaser agrees to pay for described real property the sum of \$200,000 which is the true and actual consideration paid for this transfer. A down payment in the amount of 150,000 has been paid, with receipt acknowledged by the County. 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 \$422.00 on the 15th of May, 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.

Lead Based Paint Inspection

1. Purchaser shall have an opportunity to conduct a risk-assessment or inspection to determine the presence of lead-based paint or lead-based Paint hazards on the property. Purchaser may terminate this sale by delivering to County written notice of purchaser's disapproval or risk-assessment or inspection within ten (10) days of the date of this contract unless purchaser has waived the opportunity. The disclosure statement on lead-based paint and lead-based paint hazards, which is attached as Exhibit A, is incorporated in this contract. If purchaser delivers to County a timely notice of disapproval, this contract terminates and will be cancelled and County will refund purchaser's down payment.
2. Purchaser shall indemnify, hold harmless and defend County from all liens, costs, claims, demands, suits and expenses including reasonable attorney fees and expert fees, arising from or relating to purchaser's entry on or inspection of the property as provided under this section. This covenant to indemnify, hold harmless and defend seller shall survive closing or any termination of this contract.
3. Purchaser or its agents may, prior to closing, enter the Property to inspect the Property as needed. Coordination of the date and time the inspection(s) is requested needs to be made with the Tax Title Section at 503-988-3590.

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.

Tax Notice

Until a change of address is requested, all tax statements shall be sent to the following address:

C&M MOTORS, BMW AND MERCEDES-BENZ, LLC
20455 NE LAKESIDE DR
FAIRVIEW OR 97024

Remedies.

TIME IS OF THE ESSENCE REGARDING THIS AGREEMENT.

1. If the conditions described in the LEAD-BASED PAINT section above are satisfied or waived by purchaser and 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.

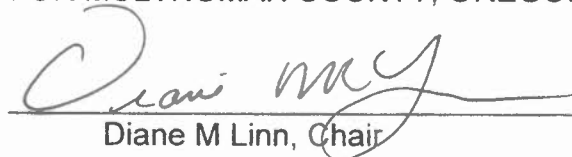
Conveyance of Title

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.

THIS INSTRUMENT WILL 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 AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

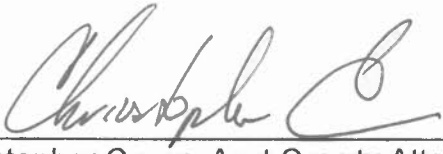
IN WITNESS WHEREOF, purchaser has set his/her hand the year and day first above written, and County has caused these presents to be executed by the Chair of the Multnomah Board of County Commissioners heretofore entered of record.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Christopher Crean, Asst County Attorney

BUYER:

ALBERTO DIAZ
C&M MOTORS, BMW AND
MERCEDES-BENZ, LLC

By _____

Exhibit A

Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards

Lead Warning Statement

Every buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

County's Disclosure (initial)

- ☐ (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):
- ☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain): _____
- ☒ County has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- ☐ (b) Records and reports available to the County (check one below):
- ☐ County has provided the Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).
- ☒ County has no reports or records pertaining to lead-based paint in the housing.

Buyer's Acknowledgment (initial)

- ☐ (c) Buyer has received copies of all information listed above.
- ☐ (d) Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.
- ☐ (e) Buyer has (check one below):
- ☐ Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
- ☐ Waived the opportunity to conduct a risk management or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Certification of Accuracy

The following party has reviewed the information above and certifies, to the best of the County's institutional knowledge, that the information provided by the signatory is true and accurate.

For the County:

Title: _____

Date: _____