

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 98-35

Authorizing Acquisition of Real Property for the Construction of  
Improvements for Enlargement of the Belmont Library

The Multnomah County Board of Commissioners Finds:

- a. The Multnomah County Department of Library Services provides library services to customers in the Belmont Library area at 1038 SE 39th Avenue, Portland, and immediately surrounding areas
- b. The existing Belmont Library facility is no longer adequate in size to provide such services
- c. Adjacent real property suited to the construction of improvements to the Belmont Library such that it will be adequate to provide such services has been identified
- d. The parcels described in the Purchase and Sale Agreement before the Board this date constitute said real property and have been determined to be available at a price of \$400,000.00 from the owners, Stanley C. Kennedy and Beth I. Kennedy
- e. The total value of the parcels was appraised at \$450,000.00 as of January 16, 1998 by a professional real estate appraiser certified by the State of Oregon, and the Facilities and Property Management Division considers the appraisals to be accurate
- f. The purchase of the parcels described in the Purchase and Sale Agreement before the Board this date will benefit Multnomah County

The Multnomah County Board of Commissioners Orders:

The Multnomah County Board of Commissioners hereby approves the acquisition of real property for the construction of improvements for enlargement of Belmont Library and authorizes the County Chair to execute the Purchase and Sale Agreement on behalf of Multnomah County, and any other documents required for completion of this purchase.

APPROVED this 23rd day of April, 1998.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
For Multnomah County, Oregon

By

  
Matthew O. Ryan, Assistant County Counsel

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made this 23rd day of April, 1998 between Stanley C. Kennedy and Beth I. Kennedy (Sellers), as tenants by the entirety and Multnomah County, a political subdivision of the State of Oregon (Purchaser).

### RECITALS

A. Seller owns certain real property (Property) situated in Multnomah County, Oregon and more particularly described as follows:

#### PARCEL I:

Lots 3 and 4, Block 6, EDENDALE, in the City of Portland, County of Multnomah and State of Oregon.

#### PARCEL II:

Lots 1 and 2, Block 6, EDENDALE, in the City of Portland, County of Multnomah and State of Oregon.

#### PARCEL III:

Part of Lots 1 and 2, Block 4, EASTLAND, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northeast corner of said Lot 2, Block 4, EASTLAND; thence South along the East line of said Lot 2, to a point 100 feet North of the point of intersection of the East line of said Lot 2, with the North line of S.E. Taylor Street as measured along the East line of said Lot 2; thence West parallel to the North line of said Lot 2, 7 ½ feet; thence South parallel to the East line of said Lot 2 to a line drawn parallel to and distant 50 feet from the North line of said Lot 2; thence Westerly parallel to the North line of said Lots 2 and 1 to the Easterly line of S.E. 39<sup>th</sup> Street; thence Northerly along the Easterly line of S.E. 39<sup>th</sup> Street to the North line of said Lot 1; thence Easterly along the North line of said Lots 1 and 2 to the point of beginning.

B. Seller desires to sell and Purchaser desires to purchase the Property for the price and upon the terms and conditions recited below.

### TERMS AND CONDITIONS

1. Purchase and Sale: Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Property for the price and in accordance with the terms and conditions set forth in this Agreement.

2. Purchase Price and Payment: The purchase price for the Property shall be Four Hundred Thousand Dollars (\$400,000.00), payable in full in cash upon closing.

3. Title: Purchaser shall obtain, within ten days from the date hereof, a preliminary title report covering the Property, to be prepared by First American Title Insurance Company of Oregon (First American); Purchaser shall have ten days from the receipt of said title report to examine the condition of title to the Property and notify Seller of any objections to exceptions to title shown therein. Not later than five days following Seller's receipt of Purchaser's objections, Seller shall notify Purchaser in writing either that Seller will remove the objectionable exceptions,

or that Seller is terminating this Contract. If Seller terminates this Contract, the Contract shall be null and void, and neither party shall have or make any claim against the other, any provision of this Contract to the contrary notwithstanding. Failure to notify Seller of such objections within said time shall be deemed approval by Buyer of any exceptions to which Buyer fails to object.

4. Warranty Deed, Title Insurance and Closing Expenses: Upon closing, the Property shall be conveyed by Seller by statutory warranty deed, free of encumbrances except for the approved exceptions as provided in paragraph 3 above and Seller shall deliver exclusive possession of the Property to Purchaser. Purchaser, at its expense will obtain a standard form of owner's title insurance policy in the amount of the purchase price insuring title to be vested in Purchaser subject only to the usual printed exceptions and the exceptions authorized to be included in the statutory warranty deed. The sale will be closed in escrow by First American and the escrow fees will be paid fully by Purchaser.

5. Closing Date: Closing will take place at such date as agreed by the parties but not later than July 1, 1998. If Seller is unable to close and deliver exclusive possession of the Property to Purchaser by July 1, 1998, Purchaser shall have the right to terminate this Purchase and Sale Agreement upon five (5) days written notice, excluding Saturdays, Sundays and Legal Holiday, to Seller. Prior to the Closing Date, each party will deposit with First American the funds, documents and instruction necessary for closing.

6. Prorations:

(a) General: For purposes of calculating prorations, Purchaser shall be deemed to be entitled to the Property, therefore entitled to any income and responsible for the expenses, commencing on the day after the Closing Date and the reference to the Closing Date in this paragraph 6 shall be construed as July 1, 1998 or such other date as closing shall occur as provided in paragraph 5.

(b) Taxes and Assessments: Purchaser shall be responsible for payment of all property taxes and assessments for the tax year 1998/99 and subsequent years.

(c) Operating Expenses: All utility service charges for electricity, heat and air conditioning service, other utilities, and other expenses incurred in operating the Property that Seller customarily pays in the ordinary course of operation of the Property shall be prorated on an accrual basis. Seller shall pay all such expenses that accrue prior to the Closing Date. To the extent possible, Seller and Purchaser shall obtain billings and meter readings as of the Closing Date to aid in such prorations.

(d) Service Contracts: Amounts payable under service contracts shall be prorated as of the Closing Date on an accrual basis. Seller shall pay all amounts due thereunder which accrue prior to the Closing Date and Purchaser shall pay all amounts accruing from and after the Closing Date; provided, however that Purchaser shall not be deemed to have assumed or required to assume any liability or responsibility for such service contracts.

(e) Adjustments: Prorations, if and to the extent known and agreed upon as of the Closing Date, shall be paid by Purchaser to Seller (if the prorations result in a net credit to Seller) or by Seller to Purchaser (if the prorations result in a net credit to Purchaser), by adjusting the cash to be paid by Purchaser at closing. Any such adjustments not determined or not agreed upon as of the Closing Date shall be paid by Purchaser to Seller, or by Seller to Purchaser, as the case may be, in cash as soon as practicable following the closing of escrow.

7. Condition of Property:

(a) No representations as to the condition or repair of the Property have been made by Seller or any agent of Seller except as expressly set forth in this Agreement. No agreement to alter, repair or remove the Property has been made by Seller or by any agent of Seller and except as otherwise herein provided, Purchaser shall take the Property "as is" and in

the same condition existing at the Closing Date, subject to the condition that the Property shall be in substantially the same condition at the Closing Date as at the time of execution of this Agreement, ordinary wear and tear excepted.

(b) Purchaser shall have a period of twenty (20) days from the date hereof in which to inspect the Property and to object, in writing to Seller, to any condition of the Property unsatisfactory to Purchaser. Seller shall eliminate any such conditions to the satisfaction of Purchaser prior to the Closing Date or, at its election, Seller may terminate this Purchase and Sale Agreement by written notice to Purchaser with fifteen (15) days after receipt of said written objections from Purchaser. Purchaser shall be deemed to have waived any objections to conditions of the Property if it does not notify Seller thereof as herein provided.

8. Casualty: In the event that prior to the Closing Date the Property or any part thereof is destroyed or damaged and not restored or agreed to be restored by Seller, then, at Purchaser's option, (i) this Agreement shall terminate and neither party shall have any further rights or obligations hereunder, or (ii) the closing shall proceed as provided pursuant to this Agreement and Purchaser shall receive any and all insurance proceeds attributable to casualty, which proceeds shall not be credited against Purchaser's obligation to pay the purchase price.

9. Brokers: Purchaser represents to Seller that it has not employed or dealt with any real estate brokers, sales persons or finders in connection with this sale and purchase. Seller will be responsible for the commission due to any real estate brokers, agents or finders employed by Seller.

10. Remedies: There is no earnest money in connection with this Purchase and Sale. In the event of a breach or default by either party, the other party shall be entitled to such remedies for breach of contract as may be available under applicable law.

11. Entire Agreement: This instrument is the entire, final and complete agreement of the parties pertaining to the Sale and Purchase of the Property, and supersedes and replaces all written or oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Property is concerned. Neither party shall be bound by any promises, representations or agreements except as are herein expressly set forth.

12. Notices: Any notice required or permitted under this Agreement shall be in writing and shall be deemed given when actually delivered in person or forty eight (48) hours after having been deposited in the United States mail as certified or registered mail addressed as follows:

Seller: Stanley C. Kennedy  
Beth I. Kennedy  
12653 S.W. Tooge Road  
Sherwood, Oregon 97140

Purchase: Multnomah County Property Management  
2505 S.E. 11<sup>th</sup> Avenue  
Portland, Oregon 97202

13. Attorney Fees: In the event any controversy or claim arises under this Agreement, the prevailing party shall be entitled to its reasonable costs, disbursements and attorney fees together with all expenses which it may reasonably incur in taking such action, including, but not limited, to costs incurred in searching records, expert witnesses and consulting fees, discovery depositions whether or not introduced into evidence in the trial, hearing or other proceeding and travel expenses in any arbitration, trial or other proceeding, including any proceeding brought to enforce an award of judgement and any and all appeals taken therefrom.

14. Nonwaiver: Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

15. Governing Law: This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon.


16. Captions: All captions and paragraph heading used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

17. Binding Effect: The covenants, conditions and terms of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

18. Fire Protection: The Property described in this instrument may not be within a fire protection district protecting structures. The Property is subject to land use laws and regulations, which, in farm or forest zones, may not authorize construction or siting of a residence and which limit lawsuits against farming or forest practices as defined in ORS 30.930 in all zones. 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 existence of fire protection for structures.

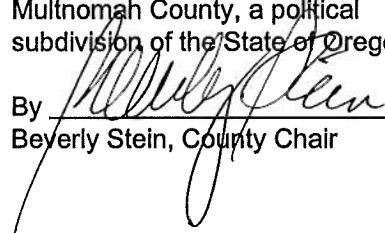
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

  
By Brian J. Kennedy

PURCHASER:

Multnomah County, a political  
subdivision of the State of Oregon

By   
Beverly Stein, County Chair

REVIEWED:

Thomas Sponsler, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By 

STATE OF OREGON

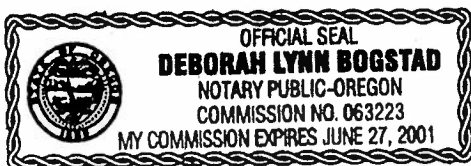
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) ss

COUNTY OF MULTNOMAH

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The foregoing Purchase and Sale Agreement was acknowledged before me this 23rd day of April, 1998, by Beverly Stein, 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: June 27, 2001