

W. 9. a.
03-7-28-6

FILE NOTE July 17, 2003

Agenda Item July 23, 2003

Title In the matter of accepting an offer of \$375,000 from Reinard
A. Pollmann for the purchase of surplus county-owned real
property commonly known as the Florence Annex

From Anette Spickard, Management Analyst I

The Board may wish to discuss the use of the proceeds from this sale. In November 2002 the Board authorized the proceeds of this sale to be deposited into the Capital Improvement Fund (Fund 435). The Order before the Board today directs that the proceeds from the sale of this property be distributed between the Health and Human Services Fund (Fund 286) and Fund 435 as described below.

On May 20, 2003 the Budget Committee agreed to continue funding for Rural Health Clinics for one year. \$100,000 of reserves from the Health and Human Services Fund (Fund 286) was used for this purpose with the understanding that when the Florence Annex was sold, the Health and Human Services Fund would receive \$100,000 of the proceeds to replenish their reserve.

Additionally the Budget Committee discussed an interest in setting the remaining balance of the proceeds aside in the Capital Improvement Fund as "seed" money for the future construction of a new Public Health Building.

cc: David Suchart, Management Services
 Rob Rockstroh, Health and Human Services

W-9-a.

AGENDA COVER MEMORANDUM

Agenda Date: July 23, 2003

DATE: July 8, 2003

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer

SUBJECT: ORDER/IN THE MATTER OF ACCEPTING AN OFFER OF \$375,000 FROM REINARD A. POLLMANN FOR THE PURCHASE OF SURPLUS COUNTY OWNED REAL PROPERTY COMMONLY KNOWN AS THE FLORENCE ANNEX AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE RELATED SALE AND LEASE DOCUMENTS (MAP # 18-12-26-32-05200, 980 QUINCE STREET, FLORENCE)

1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO ACCEPT AN OFFER OF \$375,000 FROM REINARD A. POLLMANN FOR THE PURCHASE OF SURPLUS COUNTY OWNED REAL PROPERTY COMMONLY KNOWN AS THE FLORENCE ANNEX AND AUTHORIZES THE COUNTY ADMINISTRATOR TO EXECUTE RELATED SALE AND LEASE DOCUMENTS (MAP # 18-12-26-32-05200, 980 QUINCE STREET, FLORENCE)
2. **ISSUE/PROBLEM:** Two offers have been received for the purchase of the Florence Annex property. The offers are as follows:

Reinard A. Pollmann: Mr. Pollmann has submitted an offer of \$375,000. In addition, the offer would allow the health clinic to remain rent free for a period of 6 months (the county would pay for utilities, garbage and other services related to its occupancy). The offer is not contingent upon obtaining financing.

Florence Coastal Hardware, Inc. (Steve Lemhouse, principle) has submitted an offer of \$350,000 for the Florence Annex property. The offer would allow the health clinic to remain at its present location rent free for up to one year from closing (the county would pay for utilities, garbage and other services related to its occupancy). The offer also is not contingent upon obtaining financing.

Each of the buyers is prepared to close when sale documents have been prepared and a lease for the clinic has been signed.

3. **DISCUSSION:**

3.1 Background

Florence Coastal Hardware had previously submitted a similar offer (it did not include allowing the clinic to remain rent free) in April. The offer was rejected as a competing offer of \$480,000 was accepted. The \$480,000 subsequently fell through.

Each of the offers provides for the health clinic to remain in its current location rent free (this would include WIC and the sanitarian stationed in Florence). The county will be responsible for utilities, refuse, janitorial services and interior maintenance. The buyer would be responsible for all other maintenance – roof, HVAC, outside walls and grounds. The parameters of this arrangement have been noted in the offers but will need to be memorialized in a formal lease agreement.

The Board has chosen to dispose of the Florence Annex as it is no longer viable for county use. The property was offered at a Sheriff's sale on December 9, 2003 with a minimum bid of \$725,000. No bids were received.

Subsequent to the sale, Management Services through a proposal process, secured the services of Dale Saari, a Florence area realtor, to provide professional services to market the property (Mr. Saari will receive 6% of the sale price as his fee). After reviewing previous appraisals done on the property and discussions with Mr. Saari, the Annex was initially listed with an asking price of \$480,000 which was then reduced to \$425,000 in June. The property was first listed by the realtor in March, 2003.

An appraisal of the property done in September of 2000 by Duncan & Brown valued the parcel at \$400,000. The appraisal did not attribute any value to the building citing poor construction quality, deferred maintenance, functional obsolescence and the cost to cure deficiencies as the reasons.

The Florence Annex property was purchased for \$10 in August, 1959 (the sale was subject to a life estate for the grantor for a portion of the property).

The county built a portion of the current building in 1968 and added the portion now housing the health clinic in the early seventies. The building has approximately 12,000 sq. ft. The land is 1.95 acres.

Up until 1998 occupants of the building included the Florence Justice Court, the sheriff, the sanitarian for the Florence area, the State Police, the DMV and the health clinic. Land Management also sent a staff person to the building once a week. Various non-profit and community groups also made use of the building for meetings. Currently, only the health

clinic, WIC and the sanitarian remain. The clinic will operate one day per week during the current fiscal year. WIC will have office hours one day per month. Legal Aid of Lane County also uses an office in the building once a month.

3.2 Analysis

The appraisal done by Duncan & Brown in September, 2000 attributed value only to the land citing 67,000 sq. ft. of useable area. This equates to \$6.00/ sq. ft. The county's real estate agent has indicated that commercial land values have remained flat since the time of the appraisal. Mr. Pollmann's offer, before factoring in the value of the rent abatement, is approximately \$5.60/ sq. ft.

The value of the rent abatement for the health clinic should be factored in to the value of the offer. The clinic occupies approximately 3,500 sq. ft. Rental rates range from \$.50 - \$1.00/ sq. ft. Using a minimal rental rate of \$.50/sq. ft, the value of the rent abatement for Mr. Pollmann's offer would be \$10,500 (6 months free rent) which would bring the value of the offer to \$385,500 (\$5.75/sq. ft.). The value of the one year rent abatement in Florence Hardware's offer would be \$21,000. This would bring the value of the offer to \$371,000 (\$5.54/sq. ft).

A factor to consider in deciding to accept or reject the offer is a recent ruling by a Federal Court which would allow a gambling casino to be constructed on tribal property near the Florence Annex. Should a casino be built, it is possible that the demand for and value of the county property would increase. The final disposition of when, or whether, a casino will be built is unknown at this time and the county would incur the risk of holding on to the property until a final outcome is known.

There will be costs associated with the clinic's occupancy. During the past year, operating costs for the annex were approximately \$1,100 monthly (\$800 utilities, \$300 for refuse and janitorial services). These costs will be reduced given the clinic's limited operating hours and that the county will no longer be responsible for the entire building.

Prior to offering the parcel at the December 9, 2002 Sheriff's sale, the Board approved conveying the Florence Annex with a Bargain and Sale deed as opposed to the usual conveyance with a Quitclaim deed for county property. Use of a Bargain and Sale to convey the Annex should be continued as it increases the marketability of the property.

As the subject parcel has been through a Sheriff's sale and did not sell, it is eligible for private sale without further notice pursuant to ORS 275.200 provided that the sale price is not less than 15% of the minimum bid for which the parcel was offered at the Sheriff's sale. The proposed sale fulfills the requirements of ORS 275.200.

3.3 Alternatives/Options

- a. Accept Mr. Pollmann's offer of \$375,000 plus 6 months rent abatement for the clinic.
- b. Accept Florence Hardware's \$350,000 offer which allows the clinic to remain rent free for one year.
- c. Reject the offers and propose counter offers as directed by the Board.

3.4 Recommendation

It is recommended that Mr. Pollmann's offer be accepted as presented as it is for greater consideration than Florence Hardware's. Factoring in the value of a rent free lease, the value of the offer is within 10% of the appraisal. The offer is for cash and not contingent on obtaining financing so it can close as soon as documents are in order. The 6 months of free rent will allow the clinic time to plan for a move or negotiate a longer term lease to remain in the Annex property. The county will also be relieved of ongoing maintenance costs of the property and the property will be returned to private ownership and the tax roll.

3.5 Timing

The buyers offer expires July 25th. Closing is to occur by August 10th.

4. **IMPLEMENTATION/FOLLOW-UP:** Upon approval by the Board of County Commissioners, the county administrator will execute documents accepting the buyer's offer on behalf of the county, property management staff will draft a lease for execution allowing the clinic to remain rent free for six months, the County Administrator will execute documents closing the transaction upon satisfaction of the sale terms and the Board will execute a Bargain and Sale deed.
5. **ATTACHMENTS:**
Board Order
Offer from Reinard A. Pollmann.
Plat Map

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF ACCEPTING AN OFFER OF \$375,000 FROM REINARD A. POLLMANN FOR THE PURCHASE OF SURPLUS COUNTY OWNED REAL PROPERTY COMMONLY KNOWN AS THE FLORENCE ANNEX AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE RELATED SALE AND LEASE DOCUMENTS (MAP # 18-12-26-32-05200, 980 QUINCE STREET, FLORENCE)

WHEREAS this matter now coming before the Lane County Board of Commissioners and said Board deeming it in the best interest of Lane County to convey the following real property which was acquired through purchase by the county's general fund, to wit:

All of Block 47 of Gallagher's Part of the City of Florence, as platted and Recorded at Page 12 of Volume 30, Lane County Oregon Deed Records, Lane County Oregon INCLUDING that portion of the vacated streets and alleys that would enure thereto as vacated by Ordinance No. 366, recorded December 21, 1960, Reel No. 164D, Reception No. 18801, Lane County Oregon Deed Records.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, Highway Division, recorded on Reel No. 1362R, Reception No. 85-28276 and Reception No. 2001-022235 recorded on April 18, 2001 Lane County Oregon Deed Records

WHEREAS said real property is owned by Lane County and not in use for County purposes, and sale of said property would benefit Lane County by its return to the tax roll, and

WHEREAS said parcel was offered at a Sheriff's sale on December 9, 2002 with a minimum bid of \$725,000 and

WHEREAS no bids were received for said parcel and it remained unsold at the close of said sale and

WHEREAS an offer to purchase the property for \$375,000 at private sale has been submitted to the county and

WHEREAS said offer would allow the health clinic to remain on the premises rent free for up to six months from closing.

IT IS HEREBY ORDERED that, pursuant to ORS 275.200 and ORS 275.275, the attached offer, or one substantially similar, of \$375,000 submitted by Reinard A. Pollmann for property identified as map No. 18-12-26-32-05200 be accepted contingent upon the buyer and county agreeing to terms to allow the health clinic to occupy the Florence Annex rent free for up to six months, that the County Administrator is authorized to execute a lease agreement for said occupancy and that the County Administrator is authorized to execute a sale agreement with the buyer and other sale related documents including closing documents

IT IS FURTHER ORDERED that the Board shall execute a Bargain and Sale deed conveying the property to the buyer if a sale is consummated, that \$100,000 of the sale proceeds be deposited in fund 286 (Health and Human Services) and that the remainder of the sale proceeds, less the commission paid

to the county's contracted real estate agent and other costs associated with closing the transaction, be disbursed to fund 435 (Capital Improvement Fund) with said proceeds reserved for the acquisition and/or construction of a Public Health building.

IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this ____ day of _____, 20 ____.

Peter Sorensen, Chair,
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 7-17-03 lane county



OFFICE OF LEGAL COUNSEL



FINAL AGENCY ACKNOWLEDGMENT

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction:

(1) Dale A. Saari (Name of Selling Licensee) of Windermere Jean Tate R.E. (Name of Real Estate Firm) is the agent of (check one): [] The Buyer exclusively. [] The Seller exclusively ("Seller Agency"). [X] Both the Buyer and the Seller ("Disclosed Limited Agency").

(2) Dale A. Saari (Name of Listing Licensee) of Windermere Jean Tate R.E. (Name of Real Estate Firm) is the agent of (check one): [] The Seller exclusively. [X] Both the Buyer and the Seller ("Disclosed Limited Agency").

(3) If both parties are each represented by one or more licensees in the same Real Estate Firm, and the licensees are supervised by the same principal broker in that Real Estate Firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both Buyer and Seller as more fully explained in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and Licensee(s).

Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of the Agreement or any terms therein.

Buyer: [Signature] Print Reinard A. Pollmann Date 7/10/03
Buyer: [Signature] Print Date
Seller: Lane County Date
Seller: Print Date

REAL ESTATE SALE AGREEMENT

Upon signature by Seller and Buyer, this Agreement is a legal and binding contract. If not understood, seek competent legal advice before signing.

1. DEFINITIONS: All references in this Agreement to "licensee" and "firm" shall refer to Seller's and Buyer's real estate agents licensed in the State of Oregon and the respective real estate companies with which they are affiliated.

2. PRICE/PROPERTY DESCRIPTION: Buyer (print name(s)) Reinard A. Pollmann offers to purchase from Seller (print name(s)) Lane County the following described real property (hereinafter "the Property") situated in the State of Oregon, County of Lane and commonly known or identified as (insert street address, city, zip code, tax identification number, and/or lot-block description, etc.) 980 Quince St., Florence, OR 97439, Lane County Tax Map #18-12-26-32, Tax Lot 5200

(Seller and Buyer agree that if it is not provided herein, a complete legal description as provided by the title insurance company in accordance with Section 4, below, shall, where necessary, be used for purposes of legal identification and conveyance of title)

for the purchase price (in U.S. currency) of A \$ 375,000.00

on the following terms: Earnest money herein receipted for B \$ 5,000.00

on as additional earnest money, the sum of C \$ 0.00

at or before closing, the balance of down payment D \$ 0.00

at closing and upon delivery of [] DEED [] CONTRACT the sum of (Lines B, C, D and E must equal Line A) E \$ 370,000.00

Payable as follows: Cash at the close of this escrow. Closing to be as soon as all documents are prepared or a date that is suitable to Seller.

For additional details, see Addendum

3. BUYER REPRESENTATION: As of the date of signing this Agreement, Buyer has sufficient funds available to close this transaction in accordance with the terms proposed herein, and is not relying on any contingent source of funds (e.g. from loans, gifts, sale or closing of property, 401K disbursements, etc.). unless otherwise disclosed in this Agreement.

IF A NEW LOAN IS REQUIRED, THIS TRANSACTION IS SUBJECT TO BUYER AND PROPERTY QUALIFYING FOR THE LOAN. Buyer agrees to make written loan application not later than business days from date this Agreement is signed by Seller and Buyer, complete necessary papers, and exert best efforts, including payment of application, appraisal and processing fees, in order to procure the loan. If Property is located in a designated flood zone, Buyer acknowledges that flood insurance may be required as a condition of the new loan.

4. TITLE INSURANCE: Unless otherwise provided herein, this transaction is subject to Buyer's review and approval of a preliminary title report and the recorded covenants, conditions and restrictions ("the report and CC&Rs") showing the condition of title to the Property. Upon execution of this Agreement by all parties, Seller will, at Seller's sole expense, promptly order the report and CC&Rs from an Oregon title insurance company and furnish them to Buyer. Upon receipt of the report and CC&Rs, Buyer shall have business days (five (5) if not filled in) within which to notify Seller, in writing, of any matters disclosed in the report and CC&Rs which is/are unacceptable to Buyer ("the objections"). Buyer's failure to timely object, in writing, to any matters disclosed in the report and/or CC&Rs shall constitute acceptance of the report and/or CC&Rs. If, within business days (five (5) if not filled in) following receipt of the objections, Seller fails to remove or correct the matters identified in the objections, or does not give written assurances reasonably satisfactory to Buyer that they will be removed or corrected prior to the closing date, all earnest money shall be promptly refunded to Buyer and this transaction shall be of no further binding effect between Seller and Buyer. Within

Table with 2 columns: Field (Sale Agreement #, Buyer Initials, Seller Initials) and Value (1012633, BP, /)



PROMISSORY NOTE FOR EARNEST MONEY

Buyer(s)	<u>Reinard A. Pollmann</u>
Seller(s)	<u>Lane County</u>
Property Address	<u>980 Quince Street, Florence, OR 97439</u>

TERMS

- Buyer(s) Reinard A. Pollmann jointly and severally promise to pay to (select only (1) one payee):
 - Broker:
 - Seller(s): Lane County
 the sum of \$ 5,000.00 (Five Thousand Dollars)
- Upon redemption of this Promissory Note, funds shall be made payable to Western Title & Escrow
- This Note is due and payable (select only one due date):
 - 5 days after mutual acceptance of the Real Estate Sale Agreement and Receipt for Earnest Money;
 - on or before _____
- If this Note is not paid when due, Buyer(s) shall pay interest at the rate of ten percent (10%) per annum on the unpaid balance from the due date until it is paid in full.
- If Broker is named as the payee of this Note and it is not paid when due, Buyer(s) hereby consent to Broker assigning and transferring it to Seller(s) for all purposes including collection.
- This Note is hereby incorporated into and made a part of the Real Estate Sale Agreement and Receipt for Earnest Money between Seller(s) and Buyer(s). In the event of any dispute between said parties, the mediation, arbitration and attorney fee provisions shall expressly apply.
- If payment is not made on or before the due date, Buyer(s) understand that Broker is instructed by Seller(s) to promptly assign and transfer this Note to Seller(s), without recourse, and for all purposes, including collection. It is expressly understood and agreed that neither Broker nor Broker's agents, subagents, employees or representatives shall have any duty, responsibility or liability to Seller(s) to enforce collection, nor for any fees or costs associated therewith.

Buyer *[Signature]* Date 7/10/03 ← Seller _____ Date _____ ←

Buyer _____ Date _____ ← Seller _____ Date _____ ←

LINES WITH THIS SYMBOL ← REQUIRE A SIGNATURE AND DATE
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Sale Agreement #
Broker's Initials & Date



ADDENDUM TO REAL ESTATE SALE AGREEMENT

The Oregon Real Estate Agency has reviewed this form for compliance with the applicable provisions in ORS.696 and finds that it complies with those provisions.

This is an Addendum to: Real Estate Sale Agreement Seller's Counter Offer Buyer's Counter Offer

Re: Real Estate Sale Agreement No. 1012633 Dated 7/10/03 Addendum No. "A"

Buyer: Reinard A. Pollmann

Seller: Lane County

The real property described as: 980 Quince Street, Florence, OR 97439 Lane County Tax Map 18-12-26-32, Tax Lot 5200

SELLER AND BUYER HEREBY AGREE THE FOLLOWING SHALL BE A PART OF THE REAL ESTATE SALE AGREEMENT REFERENCED ABOVE.

Buyer acknowledges the following:

1. That the property is exempt from property disclosure laws as outlined in Section 37 of Sale Agreement.

2. That the property is exempt from Lead Based Paint Inspection as outlined in Section 14 of the Sale Agreement.

3. That the property is being sold "AS-IS" with any defects known or unknown to Seller.

4. That the Seller will be transferring property via a Bargain and Sale Deed.

NOTE: The Seller & Buyer will enter into a mutually acceptable Lease Agreement, prior to or at the close of this escrow.

Buyer Signature [Signature] Date 7/10/03 10:30 AM P.M.

Buyer Signature _____ Date _____ A.M. P.M.

Seller Signature _____ Date _____ A.M. P.M.

Seller Signature _____ Date _____ A.M. P.M.

Listing Licensee Dale A. Saari Selling Licensee Dale A. Saari

Listing Firm Broker Initials/Date _____ Selling Firm Broker Initials/Date _____

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Buyer may withdraw this offer any time prior to Seller's acceptance before the deadline. If Seller accepts this offer after the deadline, it shall not be binding upon Buyer unless accepted by Buyer in writing within ___ business days (two (2) if not filled in) by so indicating at Section 42 below. This offer may be accepted by Seller only in writing.

Buyer [Signature] Date 7/10/03 10:30 a.m. p.m.
Buyer _____ Date _____ a.m. p.m.
Address 1525 12th St, #11, Florence OR Zip 97439
Phone Home 541-991-6343 Work 541-997-8098 Work Fax _____

ANY MODIFICATION BY SELLER OR SELLER'S AGENT ABOVE BUYER'S SIGNATURE SHOULD BE ON A SEPARATE DOCUMENT
This offer was submitted to Seller for signature on the ___ day of ___ at ___ a.m. p.m.
By _____ (licensee presenting offer).

40. AGREEMENT TO SELL/PAY COMMISSION: Seller accepts this offer. At the time of closing, Seller agrees to pay in U.S. dollars to the Selling Firm or, if this is a co-op transaction, to the Listing Firm, the sum of \$ 22,500 for professional real estate services rendered in this transaction. Seller authorizes Listing Firm to order a preliminary title report and title insurance at Seller's expense and further authorizes Escrow to pay out of the cash proceeds of sale the expenses of furnishing title insurance, Seller's recording fees, Seller's closing costs and any encumbrances on the Property payable by Seller on or before closing. Seller is a U.S. citizen unless otherwise stated herein. Seller acknowledges receipt of a completely filled in copy of this Agreement, which Seller has fully read and understands. Seller acknowledges that Seller has not received or relied upon any oral or written statements of Buyer or any real estate licensee(s) which are not expressly contained in this Agreement. In the event Buyer fails to complete this transaction as provided herein, all earnest money shall be distributed as follows after deduction of any title insurance and escrow cancellation charges: (check one) First to the Listing Firm to the extent of the agreed commission just as if the transaction had been closed, with residue to Seller, or 100% to Seller

Seller print full name(s): _____
Seller _____ Date _____ a.m. p.m.
Seller _____ Date _____ a.m. p.m.
Address _____ Zip _____
Phone Home _____ Work _____ Work _____ Fax _____

41. REJECTION/COUNTER OFFER:

SELECT ONE: Seller does not accept the above offer, but makes the attached counter offer; Seller rejects Buyer's offer without a counter offer.

Seller print full name(s): _____
Seller _____ Date _____ a.m. p.m.
Seller _____ Date _____ a.m. p.m.
Address _____ Zip _____
Phone Home _____ Work _____ Work _____ Fax _____

42. BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's written response to this Agreement. If Seller's response is an acceptance of Buyer's offer that occurred after the deadline identified at Section 39 above, Buyer (select only one) agrees does not agree, to be bound thereby. (The failure to check either box shall constitute rejection of Seller's acceptance after the deadline.)

Buyer _____ Date _____ a.m. p.m.
Buyer _____ Date _____ a.m. p.m.

43. CO-OP TRANSACTION:

Selling Firm _____ Selling Licensee _____
Listing Firm _____ Listing Licensee _____
Selling Firm to receive: (select one) _____ % of purchase price or \$ _____
Listing Firm Main Office Address _____ Phone _____ Fax _____
Listing Firm Branch Office Address _____ Phone _____ Fax _____
Listing Firm Broker Initials/Date _____ / _____ Selling Firm Broker Initials/Date _____ / _____

LINES WITH THIS SYMBOL ← REQUIRE A SIGNATURE OF BUYER AND/OR SELLER AND DATE

NOTE: Fill in preprinted number from Page 1

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Table with 2 columns: Field, Value. Fields include Sale Agreement # (1012633), Buyer Initials, Seller Initials, Date.

32. MEDIATION: If Seller or Buyer were represented in this transaction by a licensee whose principal broker is a member of the National Association of REALTORS®, all Claims shall be submitted to mediation in accordance with the procedures of the Home Seller/Home Buyer Dispute Resolution System of the National Association of REALTORS®, or other organization-adopted mediation program (collectively "The System"). Provided, however, if the licensee's principal broker is not a member of the National Association of REALTORS®, or the System is not available through the principal broker's Association of REALTORS®, then all Claims shall be submitted to mediation pursuant to: (1) the special mediation program administered by Arbitration Service of Portland for the mediation of Claims in those geographic areas where the System is not available through the principal broker's Association of REALTORS®, or (2) any other impartial private mediator(s) or program(s) providing such service in the county where the Property is located, as selected by the party first filing for mediation.

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33. ARBITRATION: All Claims that have not been resolved by mediation, or otherwise, shall be submitted to final and binding private arbitration in accordance with Oregon Laws. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statutes of limitation or for purposes of filing a lis pendens. Seller, Buyer and/or their licensees or the firms with which the licensees are associated, may file Claims with Arbitration Service of Portland or, alternatively, may use any other professional arbitrator(s) or companies which similarly provide such service in the county where the Property is located, as selected by the party first filing for arbitration. BY CONSENTING TO THIS PROVISION YOU ARE AGREEING THAT DISPUTES ARISING UNDER THIS AGREEMENT SHALL BE HEARD AND DECIDED BY ONE OR MORE NEUTRAL ARBITRATORS AND YOU ARE GIVING UP THE RIGHT TO HAVE THE MATTER TRIED BY A JUDGE OR JURY. THE RIGHT TO APPEAL AN ARBITRATION DECISION IS LIMITED UNDER OREGON LAW.

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34. ATTORNEY FEES: The prevailing party in any suit, action or arbitration (excluding those Claims filed in Small Claims Court) shall be entitled to recovery of all reasonable attorney fees and costs (including all filing and mediator fees paid in mediation) pursuant to ORCP 68. Provided, however, if a mediation service was available to the parties when the Claim arose, the prevailing party shall not be entitled to any award of attorney fees unless it is established to the satisfaction of the arbitrator(s) or judge that the prevailing party offered or agreed in writing to participate in mediation prior to, or promptly upon, the filing in arbitration or court.

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35. RECEIPT FOR EARNEST MONEY: The undersigned Selling Firm acknowledges receipt of earnest money (which Selling Firm agrees to handle as provided below) from Buyer in the sum of \$ 5,000.00 evidenced by (check one) CASH CHECK PROMISSORY NOTE payable on or before _____ Other within 5 days of seller's written acceptance of this offer

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36. EARNEST MONEY INSTRUCTIONS: Buyer instructs the undersigned Selling Firm to handle the earnest money as follows (check all that apply):
 Hold any earnest money that is in the form of a check undeposited pending mutual acceptance of this Agreement and all agreed-upon counter offers, after which time deposit it as provided herein within three (3) banking days. Deposit it in the Selling Firm's client trust account, and thereafter/or Deposit with Escrow. Deposit any earnest money funds redeemed under a promissory note with Western Title & Escrow

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SELLING LICENSEE AND SELLING FIRM SHALL HAVE NO FURTHER LIABILITY WITH RESPECT TO EARNEST MONEY WHICH THE PARTIES HAVE AUTHORIZED TO BE TRANSFERRED TO A THIRD PARTY.

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Selling Firm Windermere Jean Tate R.E. Selling Licensee Signature _____
Main Office Address 1600 Oak Street, Eugene, OR 97401 Phone 541.997.5926 FAX 541.997.5992
Branch Office Address 1870 Hwy 126, "C", Florence, OR 97439 Phone 541.997.5926 FAX 541.997.5992

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37. PROPERTY DISCLOSURE/DISCLAIMER LAW: Buyer acknowledges that unless otherwise exempted, Buyer has a right to revoke Buyer's offer within five (5) business days after delivery of Seller's property disclosure form, or within seven (7) business days after delivery of Seller's written disclaimer, or at any time before closing, as defined in the Oregon Administrative Rules, if Buyer does not receive either a disclosure form or disclaimer from Seller. Buyer may waive the right of revocation if done so in writing. If this transaction is exempted from the property disclosure/disclaimer law, Seller and Buyer are encouraged to sign a written acknowledgment identifying the specific exemption.

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Seller authorizes the Listing Firm to receive Buyer's notice of revocation, if any, on Seller's behalf.

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38. COUNTERPARTS/DELIVERY: This Agreement may be signed in multiple counterparts with the same effect as if all parties signed the same document. Delivery of a photocopy, telefax, carbon or carbonless copy of a signed original of this Agreement shall be treated the same as delivery of the original.

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39. AGREEMENT TO PURCHASE: BUYER acknowledges receipt of a completely filled in copy of this Agreement which Buyer has fully read and understands. Buyer acknowledges that Buyer has not received or relied upon any oral or written statements, made by Seller or any real estate licensee, which are not expressly contained in this Agreement. Neither Seller nor any licensees warrant the square footage of any structure or the size of any land being purchased. If square footage or land size is a material consideration, all structures and land should be measured by Buyer prior to signing, or should be made an express contingency in this Agreement.

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Deed or contract shall be prepared in the name of Reinard A. Pollmann

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This offer shall automatically expire on (insert date) July 25 at 5:00 a.m./p.m., "the deadline", if not accepted within that time.

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NOTE: Fill in preprinted number from Page 1

Sale Agreement #	1012633
Buyer Initials	<u>RP</u> Date <u>7/10/03</u>
Seller Initials	_____ Date _____

(whether or not there is then a dispute between Seller and Buyer), you are to hold all earnest money deposits until you receive written instructions from Seller. Buyer, Selling Firm and the Listing Firm (if any) as to disposition of such deposits.

23. EARNEST MONEY PAYMENT/REFUND: If (1) Seller does not approve this Agreement, or (2) Seller approves this Agreement but fails to furnish marketable title; or (3) Seller fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided; or (4) any condition which Buyer has made an express contingency in this Agreement (and has not been otherwise waived) fails through no fault of Buyer, then all earnest money shall be promptly refunded to Buyer. However, acceptance by Buyer of the refund shall not constitute a waiver of other legal remedies available to Buyer. If Seller approves this Agreement and title is marketable; and (1) Buyer has misrepresented Buyer's financial status; or (2) Buyer's bank does not pay, when presented, any check given as earnest money; or (3) Buyer fails to redeem, when due, any note given as earnest money; or (4) Buyer fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided, then all earnest money paid or agreed to be paid shall be paid to Seller either as liquidated damages or as otherwise allowed under Oregon law, and this transaction shall be of no further binding effect. **It is the intention of the parties that under no circumstances shall Buyer be liable to Seller under this Agreement beyond the amount of earnest money provided for herein.**

24. BINDING EFFECT/CONSENT: This Agreement is binding upon the heirs, personal representatives, successors and assigns of Buyer and Seller. However, Buyer's rights under this Agreement or in the Property are not assignable without prior written consent of Seller.

25. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT: The Foreign Investment in Real Property Tax Act ("FIRPTA") requires every person who purchases real property located within the United States from a "foreign person" to deduct and withhold from the Seller's proceeds ten percent (10%) of the gross sales price, with certain exceptions, and to pay the amount withheld to the Internal Revenue Service. A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust and foreign estate. Seller and Buyer agree to execute and deliver, as appropriate, any instrument, affidavit or statement, and to perform any acts reasonable or necessary to carry out the provisions of FIRPTA.

26. APPROVED USES: 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. IF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505, ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY.

27. IRC 1031 EXCHANGE: Buyer Seller hereby acknowledges that it is the intention of Buyer/Seller to complete an IRC 1031 exchange which will not delay the close of escrow or cause additional expense to the other party. Buyer/Seller agrees to cooperate with the other party and the accommodator, if any, in a manner necessary to complete the exchange.

28. LEVY OF ADDITIONAL PROPERTY TAXES: The Property: (check one) is is not specially assessed for property taxes (e.g. farm, forest or other) in a way which may result in levy of additional taxes in the future. If, as a result of Buyer's actions or the closing of this transaction, the Property either is disqualified from special use assessment or loses its deferred property tax status, unless otherwise specifically provided in this Agreement, Buyer shall be responsible for and shall pay when due, any deferred and/or additional taxes and interest which may be levied against the Property and shall hold Seller completely harmless therefrom. However, if as a result of the Seller's actions prior to closing, the Property either is disqualified from its entitlement to special use assessment or loses its deferred property tax status, Seller shall be responsible for and shall pay at or before closing all deferred and/or additional taxes and interest which may be levied against the Property and shall hold Buyer completely harmless therefrom.

29. ADDITIONAL LAND SALE CONTRACT/TRUST DEED/MORTGAGE PROVISIONS: If this transaction is to include a land sale contract, trust deed or mortgage to be carried back by Seller, Buyer and Seller shall agree upon the terms and conditions of such document not later than _____ business days (ten (10) if not filled in) from the date this Agreement is signed by Seller and Buyer. Upon failure to reach such agreement, this transaction shall be of no further binding effect, and all earnest money shall be promptly refunded to Buyer.

30. DISPUTE RESOLUTION: Seller and Buyer, including the licensees and firms representing each, if any, agree that all claims, controversies and disputes, including those for rescission (hereinafter collectively referred to as "Claims"), relating directly or indirectly to this transaction, shall be resolved in accordance with the procedures set forth herein, which shall expressly survive closing or earlier termination of this Agreement. Provided, however, the following matters shall not constitute Claims: (1) any proceeding to collect, interpret or enforce any mortgage, trust deed, land sale contract or recorded construction lien; (2) a forcible entry and detainer action; or (3) any dispute between REALTORS® which is subject to the Professional Standards Arbitration provisions of the National Association of REALTORS®. The filing of a notice of pending action ("lis pendens") or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified herein.

31. SMALL CLAIMS: Notwithstanding the following provisions, Seller, Buyer, licensees and firms if any, mutually agree that all Claims within the jurisdiction of the Small Claims Court shall be brought and decided there, in lieu of mediation, arbitration or litigation in any other court of law.

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Date	

- 13. **INSPECTIONS:** Buyer understands that a complete professional inspection of the Property is advisable. (check one) 100
 - PROFESSIONAL INSPECTIONS:** At Buyer's expense, Buyer may have the Property and all elements and systems thereof inspected by one or more professionals of Buyer's choice. Provided, however, Buyer must specifically identify in this Agreement any desired inspections which may include testing or removal of any portion of the Property. Buyer understands that Buyer is responsible for the restoration of the Property to its original condition for any inspection(s)/test(s) performed by the Buyer or on Buyer's behalf. Buyer shall have _____ business days (ten (10) if not filled in), after the date Seller and Buyer have signed this Agreement, (hereinafter "the Inspection Period") in which to negotiate with Seller regarding any matters disclosed in any inspection report. However, during the Inspection Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer. Unless a written and signed modification is reached, at any time during the Inspection Period, Buyer may notify Seller or Listing Licensee, in writing, of Buyer's unconditional disapproval of the property based on any inspection report(s), in which case, all earnest money deposits shall be promptly refunded and this transaction shall be of no further binding effect. Buyer shall promptly provide a copy of all reports to Seller if requested by Seller. If Buyer fails to provide Seller or Listing Licensee with written unconditional disapproval of any inspection report(s) by Midnight of the final day of the Inspection Period, Buyer shall be deemed to have accepted the condition of the Property. 101-111
 - SEE ATTACHED ADDENDUM REGARDING PROFESSIONAL INSPECTIONS.** 112
 - BUYER'S INSPECTION:** Buyer has personally inspected the Property and all elements and systems thereof. Buyer is fully satisfied and has elected NOT to have any professional inspections performed. 113-114

- 14. **LEAD-BASED PAINT INSPECTION:** If the Property was constructed before 1978, a Lead-Based Paint Disclosure Addendum (hereinafter "the Disclosure Addendum") shall be signed by Seller, Buyer and Listing and Selling Licensees, and made a part of this Sale Agreement. After reading the section below, Buyer should check the accompanying box if Buyer intends to conduct a risk assessment or inspection. 115-117
 - Buyer shall have _____ calendar days (ten (10) if not filled in), hereinafter referred to as "the Lead-Based Paint Inspection Period," within which to conduct said assessment or inspection. The Lead-Based Paint Inspection Period shall commence when Buyer signs the Disclosure Addendum. During the Lead-Based Paint Inspection Period, Buyer shall not become obligated under this Sale Agreement. Buyer may, in writing, unconditionally cancel this transaction during the Lead-Based Paint Inspection Period and receive a prompt return of all earnest money deposits. Buyer understands that the failure to give timely written notice of cancellation shall constitute acceptance of the condition of the Property as it relates to the presence of lead-based paint or lead-based paint hazards. 118-123

- 15. **ESCROW:** This transaction shall be closed at Western Title & Escrow ("Escrow"), a neutral escrow located in the State of Oregon. Costs of Escrow shall be shared equally between Seller and Buyer, unless Buyer is financing through Federal VA, in which case Seller shall pay all escrow costs. 124-125
- 16. **CLOSING: TIME IS OF THE ESSENCE.** Closing shall occur on or before 8/10/03 or sooner if Seller wishes, or as soon thereafter as financing documents can be prepared and marketable title delivered, but not to exceed _____ business days (zero (0) if not filled in). This extension is not available if financing documents are prepared and marketable title can be delivered on or before the specified closing date. The terms "closed", "closing" or "closing date" shall mean when the deed or contract is recorded and funds are available to Seller. Seller and Buyer acknowledge that for closing to occur by the date specified, it may be necessary to execute documents and deposit funds in Escrow prior to that date. 126-130
- 17. **POSSESSION:** Seller shall remove all personal property not sold to Buyer and deliver possession of the Property to Buyer (check one): by 5:00 p.m. on the closing date; by _____ a.m./p.m. _____ days after the closing date; by _____ a.m./p.m. on the _____ day of _____. If a tenant is currently in possession of the Property (check one): Buyer will accept tenant at the time of closing; Seller shall have full responsibility for removal of tenant prior to closing date. 131-134
- 18. **PRORATIONS:** Prorates for rents, current year's taxes, interest on assumed obligations, and other prepaid expenses attributable to the Property shall be as of: (check one only) the closing date; date Buyer is entitled to possession; or _____. 135-136
- 19. **SELLER POSSESSION AFTER CLOSING:** In the event that Seller and Buyer have agreed that Seller will deliver possession after the closing date, Seller shall pay as consideration \$ _____ per day for each day after closing that Seller remains in possession of the Property. Such payment shall be made by Seller through Escrow at the time of closing and no landlord-tenant relationship shall be created thereby, so long as Seller's possession does not exceed 90 days after the date of closing. See attached Addendum _____, if applicable. 137-140
- 20. **UTILITIES:** Seller shall pay all utility bills accrued to date Buyer is entitled to possession. Buyer shall pay Seller for heating fuel then on premises, at Seller's supplier's rate on the possession date. Payment shall be handled between Buyer and Seller outside of escrow. 141-142
- 21. **INSURANCE:** Seller shall keep the Property insured until closing. 143
- 22. **ESCROW DEPOSIT:** Escrow is hereby instructed by Seller, Buyer, Selling Firm and the Listing Firm (if any) as follows: (1) Upon your receipt of a copy of this Agreement marked "rejected" by Seller or of Selling Firm's written advice that the offer is "rejected" by Seller, you are to refund all earnest money to Buyer. (2) Upon your receipt of a copy of this Agreement signed by Seller, Buyer, Selling Firm and the Listing Firm (if any), set up an escrow account and proceed with closing in accordance with the terms of this Agreement. If you determine that the transaction cannot be closed for any reason 144-147

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