

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 18-11-27-07

IN THE MATTER OF AUTHORIZING THE
SALE OF COUNTY OWNED REAL
PROPERTY FOR \$500,000 TO WRIGHT
LUMBER, INC. PURSUANT TO A
LEASE/PURCHASE OPTION AGREEMENT,
MAP NO. 19-01-08-00-03800, 38534
DEXTER RD.

WHEREAS this matter now coming before the Lane County Board of Commissioners and the Board deeming it in the best interest of Lane County to sell the following real property which was acquired through tax foreclosure, to wit:

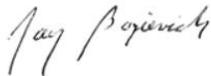
See Attached Exhibit "A"

WHEREAS the property is zoned Rural Industrial

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. Pursuant to ORS 275.318 the above described real property be sold to Tom Wright Lumber, Inc. for \$500,000 under the terms of a lease/purchase option agreement not to exceed five years substantially similar to attached Exhibit "B".
2. The County Administrator is authorized to execute the agreement.
3. The Board Chair is authorized to execute a Quitclaim deed if the purchase option is exercised.
4. The proceeds be deposited in the Industrial Development Revolving Fund pursuant to ORS 275.318.

ADOPTED this 27th day of Nov., 2018



Jay Bozievich, Chair, Lane County Board of Commissioners

APPROVED AS TO FORM
Date 11/19/18

LANE COUNTY OFFICE OF LEGAL COUNSEL

EXHIBIT "A"

A PARCEL OF LAND LYING IN THE SOUTH ONE HALF OF SECTION 8 AND THE NORTH ONE HALF OF SECTION 17, TOWNSHIP 19 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INITIAL POINT OF LAND PARTITION PLAT NO. 2004-P1769, SAID POINT BEING NORTH 70° 01' 06" WEST, 2221.79 FEET FROM THE SOUTHEAST CORNER OF THE JOHN STOOPS DONATION LAND CLAIM NO. 41, LOCATED IN SECTION 17, TOWNSHIP 19 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON; RUN THENCE SOUTH, 156.14 FEET; THENCE WEST, 550.38 FEET TO THE POINT OF BEGINNING, SAID POINT BEING THE MOST EASTERLY SOUTHEAST CORNER OF PARCEL 1 OF LAND PARTITION PLAT NO. PA 1523-85 AND A POINT IN THE CENTERLINE OF LOST CREEK; RUN THENCE ALONG SAID CENTERLINE OF LOST CREEK SOUTH 13° 02' 00" EAST, 51.97 FEET; THENCE LEAVING SAID CENTERLINE OF LOST CREEK RUN SOUTH 69° 00' 00" WEST, 234.17 FEET; THENCE NORTH 48° 02' 00" WEST, 20.97 FEET; THENCE NORTH 38° 13' 00" WEST, 140.79 FEET; THENCE SOUTH 53° 24' 00" WEST, 318.37 FEET TO A POINT ON THE EASTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY; THENCE ALONG THE EASTERLY LINE OF SAID RIGHT-OF-WAY THE FOLLOWING SEVEN (7) COURSES: 1) ALONG THE ARC OF A 150 FOOT PARALLEL OFFSET SPIRAL CURVE TO THE RIGHT, THE CHORD OF WHICH BEARS NORTH 23° 01' 03" WEST, 180.81 FEET, AND THE CENTERLINE OF WHICH HAS AN A=0.8 FEET AND AN S=5° 37' 36"; THENCE 2) NORTH 22° 34' 04" WEST, 291.59 FEET; THENCE 3) NORTH 67° 25' 56" EAST, 100.00 FEET; THENCE 4) NORTH 22° 34' 04" WEST, 550.00 FEET; THENCE 5) NORTH 67° 34' 04" WEST, 141.42 FEET; THENCE 6) NORTH 22° 34' 04" WEST, 350.00 FEET; THENCE 7) NORTH 16° 37' 10" WEST, 482.48 FEET; THENCE LEAVING THE EASTERLY LINE OF SAID RIGHT-OF-WAY RUN NORTH 89° 12' 00" EAST, 44.92 FEET; THENCE NORTH 89° 12' 00" EAST, 30.00 FEET; THENCE NORTH 83° 40' 00" EAST, 43.70 FEET; THENCE SOUTH 60° 25' 00" EAST, 362.87 FEET TO A POINT IN THE CENTERLINE OF LOST CREEK; THENCE ALONG SAID CENTERLINE OF LOST CREEK THE FOLLOWING FIVE (5) COURSES: 1) SOUTH 35° 54' 00" EAST, 208.00 FEET; THENCE 2) SOUTH 29° 50' 00" EAST, 285.34 FEET; THENCE 3) SOUTH 38° 38' 00" EAST, 626.74 FEET; THENCE 4) SOUTH 20° 56' 00" EAST, 388.19 FEET; THENCE 5) SOUTH 13° 02' 00" EAST, 185.02 FEET TO THE POINT OF BEGINNING, IN LANE COUNTY, OREGON.



Exhibit "B"

LEASE AGREEMENT WITH PURCHASE OPTION

This Lease Agreement ("Lease") is made and entered into effective October 1, 2018, by and between Lane County, a political subdivision of the State of Oregon ("Landlord"), and Wright Lumber Incorporated ("Tenant"), referred to collectively in this Lease as the "Parties".

RECITALS

- A. Landlord owns the real property described as Lane County Assessor's Map #19-0108-00-03800 located at 38534 Dexter Road (the "Property"). The real property is further described in Exhibit A which is attached and by this reference incorporated herein. .
- B. Tenant is interested in leasing the Property and the structures contained within the Property confines, an area comprised of approximately 20 acres (the "Premises"). The Premises are further shown in Exhibit B which is attached and by this reference incorporated herein.
- C. Tenant intends to potentially move Wright Lumber Incorporated from its current location to the Premises and operate Wright Lumber on the Premises.
- D. Tenant intends to make a number of improvements to the Premises including but not limited to: improving and increasing the capacity of the bridge on the Premises, increasing the power capacity at the Premises, improving drainage, paving and leveling and construction of a break room.
- E. Tenant desires to use the term of the Lease to make improvements to the Premises and eventually purchase the Premises.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows.

1. CONDITIONS

- 1.1. **Tenant Expenses.** Tenant shall pay all expenses related to the Premises and Tenant's occupancy of the Premises, including but not limited to: utilities and insurance.
- 1.2. **Landlord Expenses.** Landlord shall not be required by this Lease to provide any services nor pay any costs or expenses related to the Premises or to Tenant's use thereof except to work with Tenant to improve the language of the easement the Premises to better align with Tenant's business needs.
- 1.3. **Condition of Premises.** Tenant acknowledges that this Lease is accepted and executed on the basis of Tenant's own examination and personal knowledge of the value and condition of the Leased Premises; that no representation as to the value, condition or repair of the Leased Premises has been made by Landlord or any agent of Landlord; and that Tenant agrees to take the Leased Premises in the condition the Leased Premises are in at the time of the execution of this Lease, including all structures, personal property of Landlord, and other items on the Premises. Personal property items on the premises may be used by Tenant at the time Tenant takes possession although ownership of said personal property items will be retained by Landlord unless a mutual agreement is made

between the parties for ownership. This condition would include the potential that there are potentially hazardous materials on the property.

1.4. **Maintenance.** The Parties understand and acknowledge that the Premises have not been fully occupied or maintained since its final closure and that as a result of deferral of maintenance during this time the structures and building systems have deteriorated. The Parties further agree that Tenant's obligation to maintain the Property does not require that Tenant restore the Premises to a certain condition. However, Tenant is required, at Tenant's sole expense, to take reasonable steps to maintain the Premises in a manner to prevent further deterioration.

1.4.1. To the extent Tenant alters, constructs, or improves any portion of the Premises, Tenant shall, at Tenant's sole expense, maintain and repair the improved, constructed, or altered portions of the Premises in the improved state.

1.4.2. The Tenant shall take no actions which would cause additional potential environmental contamination to the Premises. If the Tenant causes such contamination Tenant shall be fully responsible for the cost of any clean-up or remediation as a result of Tenant's conduct.

1.5. **Alterations and Improvements.** The Parties acknowledge and agree that Tenant's intended use of the Premises may require alterations, improvements, and construction upon the Premises and the existing improvements thereon as described in the Recitals. However, Tenant must obtain Landlord's approval prior to making alterations and improvements upon the Premises, which approval will not be unreasonably withheld.

1.5.1. Any improvements upon or permanently attached to the Premises by Tenant become the property of Landlord.

1.6. **No Waste.** Tenant must make reasonable efforts not to cause or permit any waste, damage, disfigurement, or injury to the Premises, except as provided in Article 2 of this Lease.

1.7. **Liens.** Tenant shall not suffer or permit any construction liens to attach to the interest of Tenant in all or any part of the Property by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or any person occupying or holding an interest in all or any part of the improvements on the Premises. If any such lien is filed against the Property, Tenant shall cause the same to be discharged of record within 60 days after the date of its filing by payment, deposit, or bond. Landlord expressly reserves the right to post notice of nonresponsibility under the lien laws of the State of Oregon.

1.8. **Compliance with Legal Requirements.** Throughout the Lease Term, Tenant shall promptly comply with all local, state and federal legal requirements that may apply to the Property or to the use or manner of uses of the Property, whether or not they interfere with the use and enjoyment of the Premises, whether or not compliance with the legal requirements is required by reason of any condition, event, or circumstance existing before or after the Lease Term commences, with the exception of removal of hazardous waste described in Sec. 3.3. Tenant will pay all costs of compliance with legal requirements.

1.9. **Quiet Enjoyment.** On adhering to all covenants, agreements, and conditions of this Lease, Tenant will have quiet enjoyment of the Premises at all times during the Lease Term without hindrance or disturbance by any person claiming by, through or under Landlord, subject, however, to the exceptions, reservations, and conditions of this Lease.

1.10. **Landlord's Right to Inspect.** Tenant will permit Landlord or its authorized representatives to enter the Premises at all reasonable times during usual business hours for the purposes of inspecting them and making any repairs or performing any work that Lessee has neglected or refused to make in accordance with the terms, covenants, and conditions of this Lease. Tenant shall not unreasonably withhold permission under this section.

1.11. **Landlord's Right to Cure.** If Tenant fails to perform any Lease obligation, Landlord shall have the right but no obligation to perform the same after 30 days' written notice to Tenant. Tenant covenants to reimburse Landlord for all of Landlord's reasonable expenditures to correct the default, which shall be immediately paid upon Landlord's demand.

2. USE

2.1. **Tenant's Use of the Premises.** Permissible use of the Premises by Tenant includes but is not limited to: a facility for storage, set up and planning for a potential transfer of Tenants existing business only. There would not be any manufacturing during the term of this Lease. Tenant would be permitted to mow the heavy grass and do general light improvements including but not limited to the replacement of light bulbs, repairing and weatherizing pipes. Tenant will cooperate and coordinate with Landlord to assure Tenant's use of the Premises does not impede or interfere with the clear-up and environmental assessment of the Premises.

2.2. **Access to Property Outside the Premises.** Tenant will retain use of the entire property associated with Premises.

2.3. **Hazardous Substances.** Tenant must prevent Hazardous Substances from being stored in amounts exceeding typical residential use. Hazardous Substances spilled or leaked shall be cleaned up and disposed of using best practices. The term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection under Environmental Standards.

2.4. **Signage.** Tenant may place signage at the property entrance and within the Premises that, in Tenant's judgment, will support management of and control of access to the Premises and the Property.

3. TERM, TERMINATION, RENEWAL AND OPTION TO PURCHASE

3.1. **Term.** The term of this Lease ("Lease Term") is from [insert date here] through [insert date here] and may be extended by the Parties using the procedure in Section 8.1.2 of this Lease.

3.2. **Purchase Option:** At any time during the term of this Lease, Tenant may purchase the Premises for Five Hundred Thousand Dollars and no cents (\$500,000.00).

4. RENT

4.1. **Rent Commencement Date:** Rent will commence upon the Commencement Date.

4.2. **Rent Amount.** Tenant shall pay Two Thousand Dollars and no cents (\$2000.00) per month to Landlord, which includes exclusive use of the Premises. The month's Rent is due on before the 10th of the month. Rent amount shall be mailed or delivered to:

Lane County
Department of Public Works

3040 N. Delta Hwy.
Eugene, Oregon 97408
Attn: Jeff Turk

5. INSURANCE, INDEMNITY AND SECURITY

- 5.1. **Liability Insurance.** At all times during the Lease Term, Tenant, at its expense, will maintain commercial general liability insurance on the conduct or operation of its use of the Premises, with Landlord named as additional insured by endorsement, with coverage in an amount not less than \$2,000,000 per occurrence. Before the Commencement Date, Tenant will deliver to Landlord certificates of insurance and such other documents as Landlord may require demonstrating compliance with the coverage requirements of this Lease. Tenant will procure and pay for renewals of such insurance from time to time before its expiration, and Tenant will deliver to Landlord and any additional named insured any renewal policy or certificate at least thirty (30) days before the expiration of any existing policy.
- 5.2. **Property Insurance.** Tenant shall at all times during the Lease Term keep the Premises insured against fire and other risks under a standard property insurance policy with extended coverage, with endorsement for loss payable to Landlord. Any additional insurance Tenant may desire covering Tenant's Leased Premises and personal property shall be obtained by Tenant at Tenant's expense.
- 5.3. **Indemnity.** To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act, the Parties agree to indemnify, defend, and hold each other, their agents, officers and employees, harmless from all damages, losses and expenses, including but not limited to attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the other party's negligence in the performance of or failure to perform under this Lease. Neither party to this Lease will be required to indemnify or defend the other party for any liability arising solely out of wrongful acts of its own officers, employees or agents.
- 5.4. **Site Security.** Tenant agrees to hire and maintain a night watchman for the Premises from 8PM to 6AM.
- 5.5. **Bridge.** Tenant is aware that the bridge on the Premises has a limited load capacity. Tenant assumes all liability for any damages caused to Tenant or third parties a result of the use of the bridge and agrees to indemnify Landlord as required by section 5.3.

6. TAXES

- 6.1. Tenant is responsible for and shall pay any and all taxes assessed against Tenant's inventory, equipment, appliances, personal property and real property if applicable. All taxes must be paid when due.

7. DEFAULT AND REMEDIES

- 7.1. Each of the following shall be a default by Tenant and a breach of this Lease:

- 7.1.1. Failure to pay any payment coming due hereunder from Tenant to Landlord within thirty (30) days from the due date thereof;

- 7.1.2. Failure to comply with any other term or fulfill any other obligation of this Lease within 30 days after written notice by Landlord; provided, however, that Landlord shall not be required to give more than one written notice per compliance violation per calendar year;
- 7.1.3. An assignment by Tenant for the benefit of Tenant's creditors of all or any portion of the assets of Tenant; or a proposal or consent by Tenant to a composition with unsecured creditors of Tenant; or if any interest of Tenant hereunder is levied upon by legal process for the enforcement of any debt of Tenant, individually or jointly; or if Tenant becomes insolvent;
- 7.1.4. Attachment of or in the levying of execution on the Leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within thirty (30) days; and
- 7.1.5. Abandonment of the Leased Premises, for which purpose abandonment means a failure of Tenant to occupy the Leased Premises for one or more of the purposes permitted under this Lease for twenty (20) consecutive business days or more, unless such failure is excused by Landlord.

7.2. **Remedies on Default.** Landlord will be entitled to the following remedies upon Tenant's default under this Lease:

- 7.2.1. **Termination.** In the event of a default the Lease may be terminated at the option of Landlord by notice in writing to Tenant. If the Lease is terminated, Tenant's liability to Landlord for damages shall survive such termination, and Landlord may reenter, take possession of the Leased Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. Whether or not Landlord elects to terminate this lease, Landlord shall be entitled to recover from Tenant any amounts due hereunder, or any damages arising out of the violation or failure of Tenant to perform any covenant, condition or provision of this Lease.
- 7.2.2. **Re-letting.** Following reentry or abandonment, Landlord may re-let the Leased Premises and in that connection may make any suitable alterations or refurbish the Leased Premises, or both, or change the character or use of the Leased Premises, but Landlord shall not be required to re-let for any use or purpose other than that specified in the Lease or which Landlord may reasonably consider objectionable. Landlord may re-let all or part of the Leased Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.
- 7.2.3. **Damages.** In the event of termination on default Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:
- 7.2.4. **All remedies are available to Landlord under applicable law.** All remedies, to the extent they are not inconsistent with each other, shall be deemed cumulative. The election by Landlord of one remedy shall not prevent the subsequent election by Landlord of an inconsistent remedy unless Tenant has substantially changed Tenant's position in reliance upon such prior election by Landlord.

8. OTHER PROVISIONS

8.1. Miscellaneous Provisions

- 8.1.1. **Exhibits.** All of the exhibits attached to this Lease are incorporated into the Lease by this reference.
- 8.1.2. **Sole Agreement.** This Lease constitutes the sole and complete agreement between the Parties and cannot, once executed, be changed except by written amendment. Landlord and Tenant mutually acknowledge and agree that there are no oral agreements or other representations, warranties, or understandings affecting this Lease.
- 8.1.3. **Binding Effect.** This Lease will apply to and bind each of the Parties and their heirs, executors, administrators, successors, and assigns.
- 8.1.4. **Time is of Essence.** Time is of the essence of this Lease.
- 8.1.5. **Due Date.** If the due date for performing any action or obligation of providing any notice under this Lease falls on a Saturday, Sunday, or federal or Oregon legal holiday, the due date shall be deemed to be the immediately following date that is not a Saturday, Sunday, or federal or Oregon legal holiday.

8.2. **Non-Assignment.** Without prior written approval of Landlord, Tenant may not transfer nor assign this Lease or a controlling interest in Tenant (including, without limitation: mergers, consolidations, reorganizations, or combinations with other entities).

8.3. **Force Majeure.** Neither Landlord nor Tenant will be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party.

8.4. **Governing Law, Forum, and Venue.** All matters in dispute between the Parties arising from or relating to this Lease, including without limitation alleged tort or violation, shall be governed by, construed, and enforced in accordance with the laws of the State of Oregon without regard to principles of conflict of laws. In no event shall this section be construed as a waiver by Landlord of any form of defense or immunity, whether governmental immunity or otherwise, from any claim or from the jurisdiction of any court. All disputes and litigation arising out of this Contract will be decided by the state or federal courts of Oregon. Venue for all disputes and litigation will be in Lane County, Oregon.

8.5. **Severability.** If any provision of this Lease is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties are to be construed and enforced as if the Lease did not contain the particular provision held to be invalid.

8.6. **Relationship of Parties.** Nothing contained in this Lease is to be deemed or construed, either by the Parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Landlord and Tenant.

8.7. **Notices.** Any notice, demand, request, consent or approval that either party desires or is required to give to the other party under this Lease shall be in writing and shall be sent to the following relevant address:

TENANT

LANDLORD

Wright Lumber, Inc.
29805 Lusk Road
Eugene, Oregon 97405
Attn: Tom Wright

Lane County
Department of Public Works
3040 N. Delta Hwy.
Eugene, Oregon 97408
Attn: Jeff Turk

Notices may be sent by any of the following means: (i) by delivery in person, or (ii) by U.S. mail, return receipt requested, postage prepaid. Notices delivered in person shall be deemed effective immediately upon receipt. Notices sent by certified mail shall be deemed given on the date deposited with the U.S. Postal Service, which shall exclude Saturdays, Sundays and federal or state designated legal holidays. Notices sent by e-mail transmission shall be effective on the date of successful transmission, excluded days as above. Either party may, from time to time, by written notice to the other, designate a different address, which shall be substituted for the one above specified.

*** *signature page to follow* ***

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the dates listed below with their respective signatures.

TENANT:

Wright Lumber, Incorporated

By: _____
Tom Wright
Title: President

Date: _____

LANDLORD:

Lane County

By: _____
Steve Mokrohisky
Title: County Administrator

Date: _____