

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 98-3-11-5 IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF LOWELL, THE LOWELL RURAL FIRE PROTECTION DISTRICT AND STANLEY K. WHIPPLE GRANTING COUNTY PERMISSION TO BURN A PROPERTY WITH DELINQUENT PROPERTY TAXES (MAP # 19-01-14-21-01600)

WHEREAS the City of Lowell has decreed that buildings located at 263 Third Street in Lowell are "dangerous buildings" thereby requiring their removal or correction of the dangerous situation and

WHEREAS the City of Lowell, the Lowell Rural Fire Protection District and Stanley K. Whipple, the property owner, have entered into a Memorandum of Understanding to allow said Fire District to burn the dangerous structures for training purposes and

WHEREAS the subject property has delinquent property taxes owing of approximately \$7,000 thereby requiring the County, as a lienholder, to grant permission for the training burn and

WHEREAS granting said permission will not undermine any rights the County has against the taxpayer and the subject property

IT IS HEREBY ORDERED that the County Administrator be authorized to execute the Memorandum of Understanding attached as Exhibit "A" thereby granting permission by the County to burn the subject property for training purposes

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

DATED this 11 day of March, 19 98.

[Signature]
Chair, Board of County Commissioners

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF LOWELL, THE LOWELL RURAL FIRE PROTECTION DISTRICT AND STANLEY K. WHIPPLE GRANTING COUNTY PERMISSION TO BURN A PROPERTY WITH DELINQUENT PROPERTY TAXES (MAP # 19-01-14-21- 01600)

FILED

MAR 13 1998

APPROVED AS TO FORM
Date 3/10/98 lane county
[Signature]
OFFICE OF LEGAL COUNSEL

COUNTY CLERK
BY *[Signature]*

March 6, 1998

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Commissioner Cindy Weeldreyer
125 E. 8th Avenue
Eugene, Oregon 97401

Fax 682-3803 (8 Pages)

Re: EMERGENCY CONSIDERATION
19 01 14 21 1600
263 Third Street, Lowell, Oregon
Aka Whipple Apartments

Dear Commissioner Weeldreyer:

The City of Lowell is requesting an Emergency Consideration in order for the Lowell Fire Department to burn the above units under its Burn-to-Learn program. The Emergency Consideration is needed because of the taxes owed on the property.

The structures that are to be burned are two four-plex apartment buildings which are known as the "Whipple Apartment Buildings." These units are in a dangerous condition and constitute a threat to the safety and welfare of Lowell residents.

The Lowell Fire Department has scheduled these units to be burned on March 9, 1998 and March 14, 1998 and will not burn them without the consent of the County Commissioners.

Enclosed is a copy of the Memorandum of Understanding and Agreement which has been signed by the property owner, the fire department and the mayor.

Your immediate reply to this request will be greatly appreciated.

If any additional information is required please call city hall at 937-2157.

Sincerely,



Dee Blacklaw
City Recorder

cc: Commissioners: Steve Cornacchia
Ellie Dumdi
Bobby Green, Sr.
Peter Sorenson

Enc. 7

db

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MEMORANDUM OF UNDERSTANDING

BETWEEN: The City of Lowell, an Oregon municipal corporation ("City")
AND: Lowell Rural Fire Protection District ("District")
AND: Stanley K. Whipple ("Owner")

RECITALS

- A. Owner is the owner of tax lot 19-01-14-21-01600 in Lowell, Oregon ("Owner's Property"). Owner's property includes the following structures: a house located at the corner of Third Street and Hyland Lane; a mobile home located on Fourth Street; and two four-plex apartment buildings located at 263 Third Street. The two four-plex apartment buildings are called the "Whipple Apartment Buildings" in this agreement. Tax lot 19-01-14-21-01600 is depicted in the map attached as Exhibit A, with the general location of the Whipple Apartment Buildings depicted in yellow.
- B. In accordance with its ordinances and state law, after a hearing on August 5, 1997, City declared the Whipple Apartment Buildings to be "dangerous buildings" as that term is defined in Lowell Ordinance 130. City required that Owner remove the buildings or that Owner correct all of the safety related deficiencies. Those deficiencies, which have not been corrected by Owner and which still exist, are set out in the reports attached as Exhibits B, C and D.
- C. Rather than abating by City action, City has agreed to allow Owner sufficient time in which to abate the dangerous buildings through an agreement with District under which District will remove the Whipple Apartment Buildings by burning them for its Burn-to-Learn program.

AGREEMENT

Now, therefore, in consideration of the foregoing Recitals, which by this reference are incorporated herein as if set forth in full, and of the mutual covenants, conditions and obligations on the part of each party to be kept and performed, it is hereby agreed as follows:

I. City Agrees:

- 1.1 **Abatement of Owner's Property.** City shall allow District to use Owner's Property for District's Burn-to-Learn program, in accordance with City's dangerous building abatement

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ordinance. More specifically, City agrees to District's intent to burn the Whipple Apartment Building structures located on Owner's Property.

1.2 **Notice.** City shall provide notice of the burning schedule to City residents when it receives said schedule from District as provided in section 2.3.

2. **District Agrees:**

2.1 **Burn-to-Learn Assessment.** District shall evaluate Owner's Property to determine whether it is reasonably safe to conduct District's Burn-to-Learn activities at the site.

2.2 **Lane Regional Air Pollution Authority Rules.** District shall comply with all applicable rules of the Lane Regional Air Pollution Authority.

2.3 **Burn-to-Learn Schedule.** District shall set a schedule of Burn-to-Learn activities immediately upon full execution of this Memorandum.

2.4 **District Safety Responsibilities.** District shall be responsible for safeguarding the life and property of participating personnel as well as surrounding structures and properties during the actual Burn-to-Learn exercises and activities.

2.5 **Indemnification.** District shall indemnify, hold harmless and defend City, its officials, agents and employees, from and against any and all claims, injuries to persons, damages, losses and expenses, including attorney fees, arising out of any negligence on the part of District or any of its officers, agents or employees, volunteer or otherwise, arising out of Burn-to-Learn Activities at Owner's Property.

2.6 **Compliance with Laws.** At all times relevant to this Memorandum, District shall comply with all applicable federal, state and local laws.

3. **Owner Agrees:**

3.1 **Authorization and Property Access.** Owner agrees that District may burn the Whipple Apartment Building structures located on Owner's Property as part of District's "Burn-to-Learn" program and, in that regard, District may have access to Owner's property for purposes of conducting the number and duration of Burn-to-Learn training exercises as the District deems appropriate. Access to Owner's Property shall begin on the ____ day of _____, 199__, and will continue until the ____ day of _____, 199__.

3.2 **Representations.** Owner represents that it has the full right and authority to authorize the burning of the structures and that there are no underlying security agreements, interests of any other party, or other competing owners who have any right in or to the building or the land other than, and solely limited to, the following: Lane County and Ray Klein, Inc. (collectively "Lienholders"). Owner will obtain the consent of all Lienholders to the use of Owner's Property by District for District's Burn-to-Learn program. The Lienholders signatures on this Memorandum

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shall evidence their consent to the burning of the Whipple Apartment Building structures located on Owner's Property.

3.3 Waiver. Owner acknowledges that the District may be using water and other fire agents to control and put out training fires, and that this exercise will necessitate the bringing of equipment and people onto Owner's Property. Owner specifically waives any claims it may otherwise have against District or City for damages to Owner's Property as a result of its use for District's Burn-to-Learn program.

3.4 Hold Harmless. Owner agrees to hold the District and City harmless from any and all claims of any person having an interest to or claiming an interest in Owner's Property, including any reasonable attorney's fees which are incurred.

3.5 Insurance. Owner agrees to notify Owner's insurance company, and the agent will be advised that the Whipple Apartment Building structures on Owner's Property will be used by District under its Burn-to-Learn program. Fire insurance on such property is to no longer be effective. Owner shall provide City and District with proof of such notification.

3.6 Hazardous Materials. Owner shall verify, through a written report of a qualified building inspector, that there are no hazardous materials on the property, including asbestos. If there are such materials on the property, Owner will advise the District, by written report of said building inspector, of their existence and location. If the District is not advised of their existence, Owner shall hold the District and City harmless from any resulting claims. Owner will also advise the District of any other hazards on the property which may cause injury to persons or property (i.e., abandoned wells or sink holes).

3.7 Utilities. Owner has had all utilities disconnected. Owner shall provide District with a letter from its power and telephone service providers to verify disconnection.

3.8 Post-Burn Safety. Owner assumes full-responsibility for Owner's Property subsequent to District's completion of its Burn-to-Learn activities.

3.9 Permits. In the event District determines that Owner's Property and the Whipple Apartment Buildings can safely be used by District for its Burn-to-Learn program, Owner shall obtain all necessary permits, including, but not necessarily limited to, a demolition permit and an asbestos permit.

3.10 Clean-up of Debris. Owner shall clean-up and remove any and all debris from Owner's Property within two weeks of District's completion of its Burn-to-Learn activities.

4. All Parties agree:

4.1 Term. This Memorandum shall be in effect upon its signing by the parties and shall remain in effect until the activities under this Memorandum are completed which shall be not later than _____, unless terminated sooner as provided in paragraph 4.3.

02/04/98 WED 12:23 FAX 541 836 6564

HARRANG LONG

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4.2 Attorney Fees. If any arbitration, administrative proceeding, action, or appeal thereon, is instituted in connection with any controversy arising out of this Memorandum, performance of this Memorandum or failure to perform this Memorandum the prevailing party shall be entitled to recover, in addition to costs and disbursements, such sum as the court may adjudge reasonable as attorney fees.

4.3 Termination. Notwithstanding any other provision of this Memorandum to the contrary, City or District may terminate this Memorandum at any time by giving the other parties written notice at least ten (10) days in advance of such termination. In the event of termination, all obligations of the parties under this Memorandum shall cease as of the date of termination.

4.4 Notices. Any notice required to be given under this Memorandum, or required by law, shall be in writing and delivered to the parties at the following addresses:

City of Lowell
P.O. Box 490
Lowell, Oregon 97452

Lowell Rural Fire Protection District

Lowell, Oregon _____

Stanley K. Whipple
37265 Wheeler Rd.
Pleasant Hill, Oregon 97455

4.5 Applicable Laws. The laws of the State of Oregon shall be used in construing this Memorandum and enforcing the rights and remedies of the parties.

4.6 Merger. Other than the agreement between City and District, dated 26 September 1988, there are no other undertakings, promises or agreements, either oral or in writing, other than that which is contained in this Memorandum. Any amendments to this Memorandum shall be in writing and executed by both parties.

4.7 Discretion of District. Depending on conditions, District, at its sole discretion, will determine the level and extent of any Burn-to-Learn activity at Owner's Property. All parties waive any claim they may have against District because of District's exercise of this discretion in determining the level of the burn or the determination by District to discontinue a Burn-to-Learn before a total burn or destruction has occurred.

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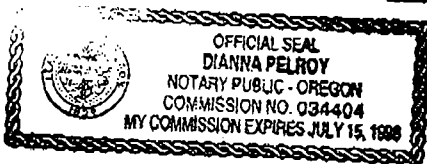
CITY OF LOWELL

By Warren W. Wathes Mayor Date 2/12/98
(name) (title)

STATE OF OREGON)
) ss.
County of Lane)

Personally appeared the above-named Warren Wathes and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me this 12th day of February, 1998.



Dianna Pelroy
Notary Public for Oregon
My Commission Expires: July 15, 98

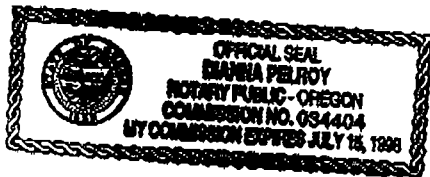
LOWELL RURAL FIRE PROTECTION DISTRICT

By Janet Mann Chief Date 2-12-98
(name) (title)

STATE OF OREGON)
) ss.
County of Lane)

Personally appeared the above-named Janet Mann and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me this 12th day of February, 1998.



Dianna Pelroy
Notary Public for Oregon
My Commission Expires: July 15, 98

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OWNER

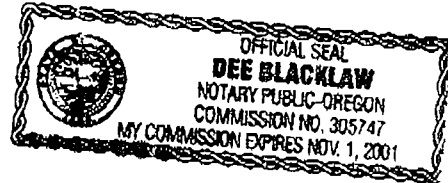
By Stanley Whipple (name) Date 2-17-98

STATE OF OREGON)
) ss.
County of Lane)

Personally appeared the above-named Stanley Whipple and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me this 17th day of Feb, 1998.

Dee Blacklaw
Notary Public for Oregon
My Commission Expires: 11-1-2001



BY SIGNING THIS MEMORANDUM, LANE COUNTY CONSENTS TO USE OF OWNER'S PROPERTY FOR DISTRICT'S BURN-TO-LEAN PROGRAM, AS DESCRIBED IN THIS MEMORANDUM, WITHOUT WAIVING ANY RIGHTS AGAINST THE TAXPAYER OR HIS PROPERTY.

By _____ Date _____

Title: _____

STATE OF OREGON)
) ss.
County of Lane)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be _____ voluntary act and deed.

Before me this _____ day of _____, 199_____.

Notary Public for Oregon
My Commission Expires: _____

