

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of the Sale of Surplus)
County Land in Block 97, East Portland)
at SE Grand Avenue and Yamhill Street,)
Portland, Oregon.)

O R D E R
92-36

It appearing that the real property described in the SALE AGREEMENT AND EARNEST MONEY RECEIPT before the Board this date is surplus to the needs of Multnomah County and is not residential property; and

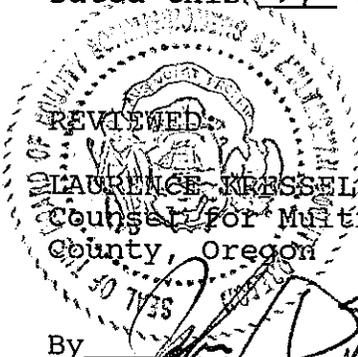
It appearing that Bolliger & Sons, Inc., an Oregon Corporation, has offered to purchase the said real property for the sum of \$110,000.00; and

It appearing that said offer price is within the fair market value as determined by appraisal by Multnomah County; and

It appearing that the sale will benefit Multnomah County, and the Board being fully advised in the matter:

It is ORDERED that Multnomah County execute this SALE AGREEMENT AND EARNEST MONEY RECEIPT before the Board this date and any deed or other documents required for completion of this sale and that the County Chair be, and she is hereby, authorized and directed to execute the same on behalf of Multnomah County.

Dated this 19th day of March, 1992.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

By Gladys McClary
County Chair

By [Signature]

**SALE AGREEMENT AND
EARNEST MONEY RECEIPT**

THIS AGREEMENT entered into between MULTNOMAH COUNTY, a political subdivision of the State of Oregon, (hereinafter referred to as "Seller") and BOLLIGER & SONS, INC., an Oregon corporation, (hereinafter referred to as "Buyer").

RECITALS

WHEREAS, Seller is the owner of certain real property located in Multnomah County, Oregon, more particularly described in Exhibit "A", attached hereto (hereinafter the "Property"); and

WHEREAS, Seller desires to sell the Property; and

WHEREAS, Buyer wishes to buy the Property.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises stated herein, it is agreed as follows:

ARTICLE 1

General Provisions

1.1 **Purchase Price.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$110,000.00.

1.2 **Earnest Money.** Seller hereby acknowledges receipt of \$5,000.00 paid by Buyer as earnest money in partial payment of the purchase price for the aforesaid real estate.

1.3 **Time for Acceptance.** Buyer's offer is made subject to the acceptance of Seller within 60 days on the execution of this Earnest Money on the part of Buyer. If Seller does not accept this Agreement within the time specified, the earnest money shall be refunded to Buyer on demand.

1.4 Closing. The sale shall be closed in the office of the closing agent, Transamerica Title Company, within 120 days after preliminary commitment for title insurance policy is delivered showing title insurable, as provided in paragraph 3.6, or after removal of the conditions hereinafter contained, whichever is later, but in any event, not later than the 31st day of December, 1992, upon which date the Agreement shall terminate. The Buyer and Seller shall deposit with the closing agent all instruments, documents and monies necessary to complete the sale in accordance with this Agreement. Escrow fees, if any, shall be divided equally between the Seller and Buyer.

1.5 Date of Closing. For purposes of this Agreement, "Date of Closing" shall be construed as the date upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to Seller. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Seller.

1.6 Risk of Loss. Should the Property be destroyed or taken through condemnation, Buyer will have the option to cancel this transaction and rescind this Agreement, or proceed to closing with a credit for insurance or condemnation proceeds payable to the seller or the holder of an underlying lien or contract.

1.7 Conveyancing.

Fee Title. Title shall be conveyed by statutory Bargain and Sale Deed free of encumbrance or defects except those contained in the preliminary title report approved by Buyer as provided in Paragraph 1.8(a) and 3.2 , or those noted in Paragraph 3.7.

1.8 Conditions. The closing of this Agreement is conditioned upon the following:

(a) **Preliminary Title Report.** Buyer shall give to Seller written notice of its approval or disapproval of title within 30 days after a preliminary title report has been furnished to Buyer. If Buyer does not disapprove within that time, then the title report is deemed accepted.

(b) **Conditional Use.** The parties understand that it is Buyer's intent to use the property as customer and employee parking in connection with Buyer's business. The property has currently been used as parking. The parties believe that such use is legal under the current zonings or as a non-conforming use under the zoning rules and regulations of the City of Portland. This transaction is conditioned upon Buyer being allowed such use by the City of Portland under either the non-conforming use or a conditional use permit within the time specified in Paragraph 1.4. The determination of the use being allowed is a condition

of this transaction. The cost of determining such shall be born by the Buyer.

(c) The decision made at the highest review level in the administrative process of the City of Portland will be determined of the lawfulness of the use of this property for the purposes of this Earnest Money, unless the parties mutually agree to have the matter appealed for review by an appellate authority.

(d) **Condition of Waiver.** The foregoing conditions are for the benefit of Buyer and may be waived, in whole or in part, by Buyer only. Any waiver must be in writing. Unless waived, if any condition is not satisfied by the date specified, this Agreement may be terminated at the option of either Buyer or Seller, by written notice, in which event the earnest money shall be refunded to Buyer.

ARTICLE 2
Buyer's Obligations

2.1 Payment of Purchase Price. The purchase price shall be payable as follows:

(a) **Earnest Money.** At closing, the earnest money shall be credited to the purchase price.

(b) **Additional Payment.** At closing, Buyer shall pay to Seller in cash, the entire balance of the

purchase price of which the earnest money received herein is a part.

ARTICLE 3
Seller's Obligations

3.1 **Deed.** At closing, Seller shall execute and deliver to Buyer a statutory Bargain and Sale Deed, conveying the Property to Buyer, subject to easements, conditions and restrictions of record.

3.2 **Title Insurance.** Seller shall furnish to Buyer a Policy of Title Insurance in the amount of purchase price. Seller authorizes closing agent to apply as soon as practical for such title insurance, and, as soon as reasonably possible, Buyer shall be furnished a preliminary commitment therefore issued by Transamerica Title Company. The Seller shall assume any cancellation fee for such commitment or policy. The title policy to be issued shall contain no exceptions other than those provided in said standard form or approved by Buyer. If title is not so insurable as above provided and cannot be made so insurable by termination date set forth in Paragraph 1.5 hereof, earnest money shall be refunded and this Agreement shall terminate; provided, however, that Buyer may waive defects in writing and elect to purchase.

3.3 **Proration.** Taxes for the current year, rents, insurance, interest, water and other utilities that may

constitute liens against the property shall be prorated as of the date of closing.

3.4 Possession. The Buyer is presently in possession of the property pursuant to the terms of a lease previously executed between the parties. The lease was executed in contemplation of the Sale Agreement and Earnest Money Receipt, and it is contemplated that it shall continue during the pendency of this Earnest Money, and upon closing, the lease shall terminate and the parties' obligations under the terms of the Lease shall cease. During the pendency of the lease or this Earnest Money, while Buyer is in possession of the property, Buyer will maintain the insurance as provided for in the lease agreement.

3.5 Seller's Representations. Seller makes the following representations:

(a) Notice of Liens. Except for any real property taxes which may accrue or are accruing after Buyer's possession of the property either under the terms of the lease referred to above or under the terms of this Earnest Money, Seller has no notice of any liens to be assessed against the Property; and

(b) Governmental Notice. That Seller has no notice from any governmental agency of any violation of law relating to the Property.

(c) Foreign Person. Seller is a political subdivision of the State of Oregon.

3.6 Condition of Title. Title is to be free of all encumbrances or defects except those contained in the preliminary title report approved by Buyer provided for in Paragraph 1.8(a), building or use restrictions general to the area, existing easements not inconsistent with Buyer's intended use, and building or zoning regulations or provisions shall not be deemed encumbrances or defects. Encumbrances to be discharged by Seller may be paid out of purchase money at date of closing. It is understood that Buyer's intended use of the Property is for the purposes of customer and employee parking. The purchase of the property is conditioned upon the lawfulness of the said use contemplated by Buyer.

3.7 Condition of Property. Buyer offers to purchase the Property in its present condition on the terms noted. Seller hereby warrants that to the best of its knowledge the premises described herein and the improvements thereon do not violate the applicable building or zoning regulations and that it is unaware of any material defect in the premises or improvements thereon.

3.8 Environmental Matters. Seller represents, warrants, covenants, and agrees that it has never used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under or about the Property or transported to or from the Property any Hazardous Substance (as defined herein) or knowingly allowed any other person or entity to do so and, further, Seller has no knowledge of any use, generation, manufacture, production, storage, release or disposition of, on,

under or about the Property or transportation to or from the Property any Hazardous Substance (as defined herein) by any other person or entity. Seller also represents that Seller has no knowledge of any violations of any applicable environmental laws. The Buyer may, at Buyer's expense, conduct such environmental studies as Buyer deems appropriate. Buyer may terminate this Earnest Money and all obligations under this Agreement if such studies disclose any condition which is estimated to cost more than \$5,000.00 for cleanup or rehabilitation of the property. If Buyer wishes to exercise the provision to have this Agreement terminated, the Buyer must notify Seller of such condition or conditions and advise Seller of the termination within 60 days after this Agreement shall be signed by all parties. Failure on the part of the Buyer to notify the Seller within the time herein provided automatically removes this condition.

For purposes of this Section, the following terms shall have the meanings as set forth below:

(a) **Environmental Laws.** "Environmental Laws" shall mean any federal, state or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA")

as amended, 42 U.S.C. Sections 6901 et seq. and further including any and all subsequent amendments to any of the Environmental Laws applicable to or binding upon Property.

(b) **Hazardous Substance.** The term "Hazardous Substance" shall include without limitation:

(i) Those substances included within the definitions of any or more of the terms "hazardous substances," "hazardous materials," "toxic substances," and "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act as amended, 49 U.S.C. Sections 1801 et seq., and in the regulations promulgated pursuant to said laws or under applicable (state) law;

(ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(iii) Such other substances, materials and wastes which are or become regulated under applicable local, state or federal laws, or which are classified as hazardous or toxic under federal, state, or local laws or regulations; and

(iv) Any material, waste or substance which is petroleum, asbestos, polychlorinated biphenyls, designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); flammable explosives; or radioactive materials.

ARTICLE 4
Remedies/Default

4.1 Default. If either party defaults (that is, fails to perform the acts required of him) in his contractual performance herein, the non-defaulting party may seek specific performance pursuant to the terms of this Agreement, damages, or rescission. If the non-defaulting party seeking damages or rescission is the Buyer, the earnest money, upon demand, shall be refunded less all charges provided under this Agreement. If the non-defaulting party seeking damages or rescission is the Seller, the earnest money, upon demand, shall be forfeited to Seller.

(This paragraph must be read and initialled by the buyer pursuant to ORS 696.241.)


Buyer's Int.

4.2 Time of Essence - Remedies. Buyer and Seller hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision. If this Agreement does not close, through no fault of

Seller, prior to the close of business on the closing date specified above, Buyer shall forfeit the earnest money to Seller as liquidated damages. If Seller cannot furnish marketable title at closing or otherwise fail to consummate this transaction, the earnest money shall be refunded to Buyer.

ARTICLE 5
Miscellaneous

5.1 Applicable Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Oregon in existence at the time of its execution.

5.2 Attorney Fees. If an attorney is employed to enforce any of the provisions of this Agreement or take any action in any bankruptcy, insolvency, or similar proceeding affecting either parties' rights generally (including, without limitation, prosecution or a motion for relief from stay, proposal of a Chapter 11 plan, objection to a disclosures statement, or Chapter 11 or 13 plan, or objection to a proposed use, sale or lease of property), the successful party in said proceedings shall be entitled to recover from the other party, their reasonable attorneys' fees and other costs incurred irrespective of whether any legal proceeding has commenced. If any such legal action, arbitration, or other proceeding is commenced, then the successful party therein shall be entitled to recover their reasonable attorneys' fees and costs incurred in

connection therewith, both at trial and on any appeal therefrom or petitions for review thereof.

5.3 Assignment and Successors. All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the respective parties, provided, that Buyer may not assign this instrument without the prior written consent of Seller, which consent may be withheld for any reason deemed sufficient by Seller.

5.4 Notices. Any notice which may be or is required to be given under the terms of this Agreement shall be delivered or sent certified mail, postage prepaid, return receipt requested, and addressed as follows:

NOTICE TO SELLER TO BE SENT TO:

Multnomah County Oregon
Department of Environmental Services
Division of Facilities and Property Management
2505 S.E. 11th Avenue
Portland, OR 97202

NOTICE TO BUYER TO BE SENT TO:

Bolliger & Sons, Inc.
511 S.E. Belmont
Portland, OR 97214

5.5 Further Requirements. Each of the parties hereto shall execute such documents and take such actions as may be reasonably requested by the other party to carry out the terms of this Agreement, including a release of this Agreement in form for

recording in the event Buyer does not exercise its rights within the time limitations and in the manner specified herein.

5.6 Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. In the event the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

5.7 Integration. This Agreement (including any exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The

parties do not intend to confer any benefit hereunder on any person, firm, or corporation other than the parties hereto.

5.8 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

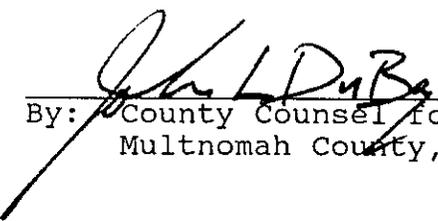
5.9 Waiver. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

5.10 As-Is. Other than Seller's representations and warranties contained in this Agreement and those contained in any instrument delivered to Buyer at closing, Buyer acknowledges that it is purchasing the Property AS IS.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

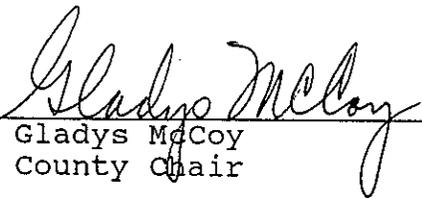
IN WITNESS WHEREOF, the parties have executed this document on the date(s) set forth below.

APPROVED AS TO FORM:


By: County Counsel for
Multnomah County, Oregon

SELLER:

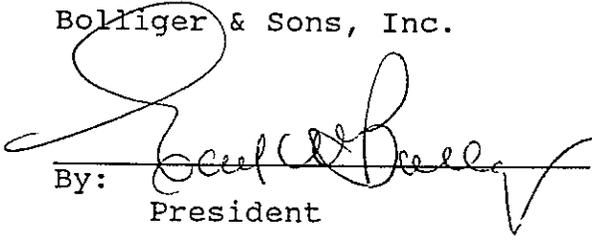
Multnomah County, Oregon


By: Gladys McCoy
County Chair

Date: 3/19/92

BUYER:

Bolliger & Sons, Inc.


By: Paul W. Bolliger
President

Date: Jan 29 - 1992

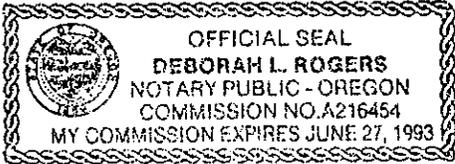

By: Barbara J. Dranson
Secretary

Date: Jan 24 - 92

STATE OF OREGON)
) ss
County of Multnomah)

Personally appeared Gladys McCoy, the above-named Multnomah County Chair, acknowledged the foregoing instrument to be the voluntary act and deed of Multnomah County, Oregon, a political subdivision.

DATED this 19th day of March, 1992.



Deborah L. Rogers
Notary Public for Oregon
My Commission Expires: 6/27/93

STATE OF OREGON)
) ss
County of Multnomah)

Personally appeared EARL BOLLIGER and BARBARA J. BRANSON, the above named President and Secretary, respectively, and acknowledged the foregoing instrument to be the voluntary act and deed of Bolliger & Sons, Inc., an Oregon corporation.

DATED this 24th day of JANUARY, 1992

[Signature]
Notary Public for Oregon
My Commission Expires: 8/20/92

Seller:
Multnomah County Oregon
Department of Environmental Services
Division of Facilities and Property Management
2505 S.E. 11th Avenue
Portland, OR 97202

Buyer:
Bolliger & Sons, Inc.
511 S.E. Belmont
Portland, OR 97214

AFTER RECORDING RETURN TO:

UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE SENT TO THE FOLLOWING ADDRESS:

PAGE 16 -- SALE AGREEMENT AND PURCHASE MONEY RECEIPT
\\RP\59\BOL91420.AGR/2

EXHIBIT "A"

That portion of Block 97, East Portland lying east of the off-ramp of the New Morrison Street Bridge, bounded on the north by S.E. Grand Avenue, on the south by S.E. Yamhill Street and on the west by the Union Avenue off-ramp of said Morrison Street Bridge, in the City of Portland, County of Multnomah, State of Oregon.



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION DIVISION
1620 S.E. 190TH AVE.
PORTLAND, OREGON 97233
(503) 248-5050

BOARD OF COUNTY COMMISSIONERS
GLADYS McCOY • CHAIR OF THE BOARD
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
RICK BAUMAN • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

PROPERTY DESCRIPTION

TRACT A PARKING LOT

AUGUST 8, 1991

PREPARED FOR: FACILITIES & PROPERTY MANAGEMENT DIVISION

A portion of Block 97, East Portland, located in the northwest one quarter of Section 2, Township 1 South, Range 1 East of the Willamette Meridian; Multnomah County, Oregon, more particularly described as follows:

Beginning at a point on the south line of Block 97, East Portland, which bears West 10.00 feet from the southeast corner of Block 97; thence North (N 0°00'00" W), ten feet from and parallel to the east line of Block 97, 183.30 feet; thence S 89°08'45" W 150.85 feet to the face of a concrete wall; thence following the face of this concrete wall along the arc of a non-tangent 127.00 foot radius curve, the chord of which bears S 21°38'50" E, 194.79 feet, a distance of 221.99 feet to a point on the south line of Block 97; thence East (S 90°00'00" E) along the south line of Block 97, 78.98 feet to the point of beginning.

2244W

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Dennis V. Fantz
OREGON
JULY 14, 1967
DENNIS V. FANTZ
794

SALE AGREEMENT AND EARNEST MONEY RECEIPT

Table of Contents

ARTICLE 1

	General Provisions	1
1.1	<u>Purchase Price</u>	1
1.2	<u>Earnest Money</u>	1
1.3	<u>Time for Acceptance</u>	2
1.4	<u>Closing</u>	2
1.5	<u>Date of Closing</u>	2
1.6	<u>Risk of Loss</u>	3
1.7	<u>Conveyancing</u>	3
	Fee Title	3
1.8	<u>Conditions</u>	4
	(a) Preliminary Title Report	4
	(b) Conditional Use	4
	(c) Condition of Waiver	6
1.9	<u>Inspection</u>	7

ARTICLE 2

	Buyer's Obligations	7
2.1	<u>Payment of Purchase Price</u>	8
	(a) Earnest Money	8
	(b) Additional Payment	8

ARTICLE 3

	Seller's Obligations	12
3.1	<u>Deed</u>	12
3.2	<u>Title Insurance</u>	12
3.3	<u>Proration</u>	13
3.4	<u>Possession</u>	13
3.5	<u>Seller's Representations</u>	14
	(a) Notice of Liens	14
	(b) Governmental Notice	14
	(c) Foreign Person	14
3.6	<u>Condition of Title</u>	15
3.7	<u>Condition of Property</u>	15
3.8	<u>Environmental Matters</u>	15
	(a) Environmental Laws	16
	(b) Hazardous Substance	16

ARTICLE 4

	Remedies/Default	17
4.1	<u>Default</u>	17
4.2	<u>Time of Essence - Remedies</u>	18

ARTICLE 5

	Miscellaneous	18
5.1	<u>Applicable Law</u>	18
5.2	<u>Attorney Fees</u>	19
5.3	<u>Assignment and Successors</u>	19
5.4	<u>Notices</u>	19
5.5	<u>Memorandum</u>	20
5.6	<u>Further Requirements</u>	20
5.7	<u>Construction</u>	20
5.8	<u>Integration</u>	21
5.9	<u>Partial Invalidity</u>	21
5.10	<u>Waiver</u>	21
5.11	<u>As-Is</u>	22