

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of the Acquisition of)
Real Property for the Department of)
Environmental Services, Division of)
Assessment and Taxation and the)
Information Services Division)

O R D E R
94-49

WHEREAS, the Division of Assessment and Taxation presently occupies building space under a ten year lease which expires June 30, 1995; and

WHEREAS, the Information Services Division presently occupies space in the Kelly Building and Multnomah County has been advised that the Kelly Building will require substantial seismic upgrade for continued occupancy under present City of Portland zoning and safety codes; and

WHEREAS, a real property suited for the operations of Assessment and Taxation and Information Services Division has been located and determined to be available at a reasonable price which is better suited to the operations of said Divisions and may be operated more economically than the present space occupied; and

WHEREAS, the real property is held by a trustee in a bankruptcy proceeding and that other interested parties may overbid Multnomah County within ten days after execution of the EARNEST MONEY AGREEMENT and COUNTEROFFER TO EARNEST MONEY AGREEMENT before the Board this date; and

WHEREAS, Multnomah County would be willing to pay a maximum of \$200,000.00 in excess of the sale price stated in said EARNEST MONEY AGREEMENT and COUNTEROFFER TO EARNEST MONEY AGREEMENT in the event of such overbid by other interested parties; and

WHEREAS, it appearing that the purchase of the real property situated at 1411 S.W. Morrison Street, Portland, Oregon, and described in the EARNEST MONEY AGREEMENT and COUNTEROFFER TO EARNEST MONEY AGREEMENT before the Board this date will benefit Multnomah County; and the Board being fully advised in the matter; now therefore

IT IS HEREBY ORDERED that the Multnomah County Board of Commissioners approves the EARNEST MONEY AGREEMENT and COUNTEROFFER TO EARNEST MONEY AGREEMENT before the Board this date and any other documents required for completion of this purchase, at a purchase price not to exceed \$3,575,000.00; and

IT IS FURTHER ORDERED that the County Chair be, and she is hereby, authorized and directed to execute the EARNEST MONEY AGREEMENT and COUNTEROFFER TO EARNEST MONEY AGREEMENT on behalf of Multnomah County.

ADOPTED this 10th day of March, 1994.

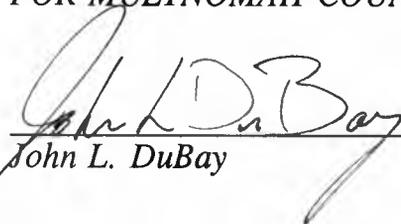


**BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**



Beverly Stein, Chair

**REVIEWED:
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON**



John L. DuBay



EARNEST MONEY AGREEMENT

CB COMMERCIAL REAL ESTATE GROUP, INC.
BROKERAGE AND MANAGEMENT
LICENSED REAL ESTATE BROKER

1300 S.W. 5th Ave. #2600
Portland, OR 97201
(503) 221-1900

Portland, Oregon
March 1, 1994

Multnomah County, a political subdivision of the
State of Oregon

Received from _____, hereinafter called Purchaser, the sum of
One and No/100----- Dollars (\$ 1.00) evidenced by

_____, as an earnest money deposit on account of the purchase price of
Three Million Two Hundred Seventy Five Thousand----- Dollars (\$ 3,275,000.00) for that certain
property situated in the City of Portland, County of Multnomah,

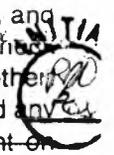
State of Oregon, and described as follows, to-wit:
situated at 1411 SW Morrison, Portland, Oregon

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 311, City of Portland

Flood Zone: No [x] Yes _____ (Attach Form 5230.)

TERMS OF SALE

- 1. If earnest money is given in the form of a check, the earnest money deposit check shall be (check one) _____ deposited by CB Commercial Real Estate Group, Inc. ("Broker") into its trust account or _____ promptly delivered to the Escrow Holder identified hereinafter. If the deposit is placed into Broker's trust account, then upon opening of escrow and acceptance or payment of the check, such deposit shall be placed into the escrow account by Broker for the account of Purchaser. If the earnest money is given in the form of a promissory note, the note shall be held by Broker until _____. At that time Purchaser shall replace the note with cash or certified check in like amount payable and delivered to Broker and deposited by Broker as provided above. Purchaser and Seller understand and agree that due to the large number of Broker's clients and the resulting aggregate cash balances in Broker's trust account, Broker may derive direct benefits which shall



5. Property taxes, assessments, rentals, premiums on insurance acceptable to Purchaser, interest on encumbrances, and operating expenses, if any, shall be prorated as of the date of closing. At closing, Seller shall deliver to Purchaser a (circle one): x statutory warranty deed, _____ contract of sale, _____ assignment of contract of sale, _____ other _____ . Purchaser and Seller shall each pay one-half of the escrow fees and any transfer or excise taxes. ~~Purchaser shall also reimburse Seller at closing for sums held in any reserve account on indebtedness which remains of record after the close of escrow.~~

6. Unless Seller has agreed to finance any part of purchaser price, then without being relieved of any liability under the contract resulting from Seller's acceptance hereof, Purchaser reserves the right to take title to the subject property in a name or nominee other than shown above.

from acceptance hereof by Seller

7. Purchaser shall have 60 days to investigate at Purchaser's expense, the property, its zoning, environmental matters, its value, its condition — including, but not limited to the presence of asbestos, hazardous materials and underground storage tanks — and its suitability for Purchaser's intended use. Purchaser and its agents shall have reasonable access to the property in order to do so, and shall indemnify Seller against any damages or expenses or liens resulting from its investigation. Seller hereby warrants that to the best of its knowledge the property 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 with the exception of the following, to wit: none

If Purchaser has given written notice to Seller by 5:00 P.M. of the final date of the above-referenced period, of dissatisfaction with any of the referenced matters, and Seller and Purchaser have not entered into a mutually agreeable resolution of the matter by 5:00 P.M. 10 days thereafter, this Contract shall be deemed cancelled and Purchaser shall be entitled to return of the deposit. If Purchaser fails to give written notice of dissatisfaction by 5:00 P.M. of the first-referenced period, then Purchaser's right to object to such matters shall be deemed waived.

8. Possession of the subject property is to be delivered to Purchaser at close of escrow.

9. Any addendum attached hereto and either signed or initialed by the parties shall be deemed a part hereof. See addendum to Earnest Money Agreement for additional provisions.

10. (a) In the event of breach of this contract by Purchaser, Seller's sole remedy shall be retention of the earnest money described herein, which shall be paid to Seller as liquidated damages and distributed one-half to Seller and one-half to Broker in payment for services rendered in connection with this transaction. In no event, however, shall Broker be paid more than the commission which it would have earned if the transaction had been consummated. The amount to be paid as liquidated damages hereunder has been agreed by the parties to be reasonable compensation for Purchaser's default, since the precise amount of such compensation would be difficult to determine. Seller _____ Purchaser _____ (insert initials)

(b) In the event of breach of this Contract by Seller, Purchaser may elect to treat this Contract as cancelled, in which case all payments and things of value received hereunder from Purchaser shall be returned and Purchaser may recover such damages as may be proper, or Purchaser may elect to treat this contract as being in full force and effect and Purchaser shall have the right to specific performance, or damages, or both.

11. In the event suit or action is instituted by Seller, Purchaser ~~or Broker~~ related to this contract, the prevailing party shall be _____

Seller agrees to pay Broker a real estate brokerage commission for services rendered in effecting this sale, in the amount called for in Seller's contract with Broker for the sale of the Property, if any, and otherwise in the amount of _____ percent (____%) of the accepted sales price. This commission is earned as of the mutual execution of this contract. If earnest money or similar deposits made by Purchaser are forfeited, in addition to any other rights of Broker, Broker shall be entitled to one-half (1/2) thereof, but not to exceed the total amount of the anticipated commission.

Seller's Initials _____

Proceeds of escrow sufficient to pay the commission are hereby assigned to Broker and Escrow Holder is hereby instructed to pay said commission to Broker out of Seller's proceeds at the close of escrow. This instruction shall not be withdrawn or modified without Broker's written consent. Nothing contained herein shall negate any additional rights Broker may have under any other contract between Seller and Broker for the sale of the Property.

- 18. The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

The Purchaser hereby agrees to purchase said property upon the terms and conditions herein stated. All tenders and notices required hereunder shall be made and given to either of the parties hereto at their respective addresses herein set forth with copies thereof to the office of Broker. Purchaser hereby acknowledges receipt of a copy of this contract.

Purchaser: Multnomah County

A(n) political subdivision of the State of Oregon

By: Robert J. Oberst

Title: Property Manager, Multnomah County

CB Commercial Real Estate Group, Inc.
Licensed Real Estate Broker

By: James F. Crumpacker
James F. Crumpacker

By: _____

Title: _____

Address: _____

- Seller hereby rejects the foregoing offer.
- Seller hereby makes the attached counter-offer, and hereby acknowledges receipt of a copy of said counter-offer.
- The undersigned Seller hereby agrees to sell said property on the terms and conditions herein set forth and

**ADDENDUM TO EARNEST MONEY
DATED MARCH 1, 1994
BY AND BETWEEN
MULTNOMAH COUNTY,
A SUBDIVISION OF THE STATE OF OREGON, AS PURCHASER
AND
SPOUSE-REITZ STORES INC., AS SELLER**

APPROVAL BY MULTNOMAH COUNTY COMMISSIONER:

This Earnest Money Agreement shall not become binding upon the parties hereto until approval by the Multnomah County Board of Commissioners. Purchaser shall have fifteen (15) days from the date that Seller agrees to sell the property on terms and conditions herein set forth, or the date that Seller submits a counter offer to Purchaser, within which to obtain the approval of the Multnomah County Board of Commissioners of this Earnest Money Agreement or such counter offer by Seller.

OVERBID PROTECTION:

Seller recognizes that Purchaser has and will continue to incur major expenses while conducting its due diligence. Seller shall, therefore, within sixty (60) days following the acceptance of this offer, obtain from the United States Bankruptcy Court for the District of Oregon an order authorizing the sale of said property to the Purchaser. The property will be free and clear of all liens as set forth in Section 363(b) and (f) of the Bankruptcy Code.

Within five (5) days after the date of acceptance of this offer, Seller shall file a motion for an order authorizing the sale of the property. The motion will contain a request for overbid protection and provide that the minimum overbid will be at least One Hundred Twenty-Five Thousand and No/100 (\$125,000.00) Dollars greater than the acceptable purchase price and that the purchase will be an all-cash transaction. Any such overbid will be accompanied by a non-refundable deposit of One Hundred Twenty-Five Thousand and No/100 (\$125,000.00) Dollars. The motion will also provide that in the event the property is purchased by a party other than Multnomah County for the overbid amount or greater, then Purchaser shall be entitled to forty (40%) percent of the difference between the purchase price set forth herein and the total overbid price but, in any event, not to exceed Fifty Thousand and No/100 (\$50,000.00) Dollars. At the time the motion is filed, the motion shall be accompanied by a deposit of Fifty Thousand and No/100 (\$50,000.00) Dollars.

COUNTEROFFER TO EARNEST MONEY AGREEMENT

This Counteroffer amends that certain Earnest Money Agreement dated March 1, 1994 which pertains to the real property located at 1411 S.W. Morrison, Portland, Oregon which is legally described as Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 311, City of Portland ("the Real Property"). The Earnest Money Agreement, which names Multnomah County, a political subdivision of the State of Oregon, as "Purchaser" and Sprouse-Reitz Stores Inc. as "Seller", contains a one page Addendum also dated March 1, 1994. Reference herein to the Earnest Money Agreement shall include the March 1, 1994 Earnest Money Agreement as amended by the March 1, 1994 Addendum.

Seller agrees to sell the Real Property to Purchaser if the following modifications are made to the Earnest Money Agreement:

1. The Purchase price shall be increased from \$3,275,000 to \$3,375,000.

2. In addition to the Real Property, Seller will include the following personal property as part of the transaction:

all audio visual equipment, podiums, stands and conferencing equipment in the main conference room and attached projection room which are located on the third floor of the building. Such personal property shall also include the conference table and chairs located in the main conference room. All other personal property and equipment shall be retained by Seller. It is understood that the internal room dividers shall ~~not~~ be deemed personal property and shall not be included as part of this transaction. It is also understood that all computer hardware, software and related equipment shall not be included in this transaction.

3. In paragraph 2 of the Earnest Money Agreement, "Oregon Title Insurance Company" shall be substituted for "Ticor Title Insurance Company" as the "Escrowholder". The transaction shall be closed at the Oregon Title Insurance Company office located at 1515 S.W. Fifth Avenue, Suite 105, Portland, Oregon.

4. In paragraph 7 of the Earnest Money Agreement, the word "none" which appears in the blank lines of this paragraph is deleted and the following language substituted therefor:

"Seller has previously delivered to Purchaser a copy of a Phase I Environmental Assessment of the Real Property dated August, 1992 prepared by Hazcon, Inc. To the extent that environmental issues have been addressed in that report, Purchaser acknowledges disclosure thereof. Seller cannot, and does not, warrant the operation of the HVAC system in the building. While the HVAC system appears to be in working order, because of the number of compressors and other components of the HVAC system, Seller is not able to warrant or represent that all of such components and compressors are in good working condition. Purchaser acknowledges that it will rely on its own examination and inspection of the HVAC system."

5. With respect to the commission to be paid to CB Commercial Real Estate Group, Inc. as described in paragraph 17 of the Earnest Money Agreement, this will confirm that such commission will be paid by Seller pursuant to the terms of an Exclusive Sales Listing Agreement between Seller and CB Commercial Real Estate Group, Inc. dated November 22, 1993.

6. The three paragraphs which appear on the Addendum to Earnest Money Agreement under the heading "Overbid Protection" are hereby deleted in their entirety and the following provisions substituted therefor:

"Overbid Protection. Within five business days after the date that Purchaser notifies Seller that the Earnest Money Agreement, as amended by this Counteroffer, has been approved by the Multnomah County Board of Commissioners, Seller shall give written notice of the essential terms and conditions of this proposed transaction to: (i) the Designated Parties as defined in the Plan of Arrangement confirmed by the United States Bankruptcy Court for the District of Oregon ("the Bankruptcy Court") on December 21, 1993, and (ii) to all parties who have previously expressed an interest in acquiring the Real Property ("Interested Parties"). If none of the Designated Parties objects to the proposed transaction on or before a date that is ten business days after the notice is given and none of the Interested Parties submits a "Qualified Competing Bid" (as defined below) within such ten day period, then this proposed transaction shall proceed in accordance with

the terms and conditions of the Earnest Money Agreement, as amended by this Counteroffer, and approval of the Bankruptcy Court will not be required. If within the ten day period one of the Designated Parties objects to this proposed transaction or if Seller receives a Qualified Competing Bid, then Seller shall file a motion with the Bankruptcy Court for an order authorizing the sale of the Real Property to the highest qualified bidder (the "Motion Authorizing Sale".) The Motion Authorizing Sale will contain a request for overbid protection for Purchaser by requiring that the minimum overbid must be at least \$100,000 greater than the Purchase Price set forth herein (i.e., \$3,375,000), and that the purchase must be an all cash transaction. In recognition of the fact that Purchaser has and will continue to incur expenses while conducting its due diligence, the Motion Authorizing Sale will also contain a provision that in the event the Real Property is purchased by a party other than Multnomah County pursuant to the terms of a Qualified Competing Bid, then Purchaser shall be entitled to 20% of the difference between the Purchase Price set forth herein (i.e., \$3,375,000) and the total overbid price; provided, however, the amount paid to Purchaser pursuant to this overbid protection shall not exceed \$50,000. At the time the Motion Authorizing Sale is filed, it shall be accompanied by a separate motion to shorten notice on the Motion Authorizing Sale. For purposes of this paragraph 6, the term "Qualified Competing Bid" shall mean a written all-cash offer which is \$100,000 or more in excess of the Purchase Price set forth herein (i.e., \$3,375,000). In the event a Qualified Competing Bid is received, each subsequent bid must exceed the previous offer by at least \$100,000 in order to be a Qualified Competing Bid."

7. All other terms and conditions set forth in the March 1, 1994 Earnest Money Agreement and the Addendum thereto,

which have not been modified by the provisions of this Counteroffer, shall remain unchanged.

"Seller"

SPROUSE-REITZ STORES INC.,
an Oregon corporation

By: Edward P. Holman for etc
Its: Signatory Agent
Date: 3-3-94

The above modifications are hereby accepted:

"Purchaser"

MULTNOMAH COUNTY,
a subdivision of the State of Oregon

By: Robert Overt
Its: Property Manager, Multnomah County
Date: March 7, 1994