

OPTION AGREEMENT

DATED : November __, 1984

BETWEEN : The City of Portland
Bureau of Buildings
1120 SW Fifth Avenue
Portland OR 97204 "OPTIONOR"

AND : N. Robert Stoll
735 SW First Avenue
Portland OR 97204 "OPTIONEE"

Optionor is the owner of the real property, including the improvements thereon, described as Lots 1 through 8, inclusive, Block 30, CITY OF PORTLAND, EXCEPT a 5.00 foot strip on the East taken by the City of Portland, for the widening of SW Second Avenue, in the City of Portland, County of Multnomah and State of Oregon (the "Property"). The Property is subject to no liens or encumbrances.

NOW, THEREFORE, for the consideration set forth in this Option Agreement (the "Agreement"), Optionor grants Optionee an option and agrees as follows:

SECTION 1 - GRANT OF OPTION.

Optionor hereby grants to Optionee the exclusive and irrevocable right and option to acquire the Property on the terms and conditions set forth in this Agreement (the "Option").

SECTION 2 - TERM.

2.1 This Option may be exercised by Optionee at any time prior to 5:00 p.m. on January 7, 1985.

2.2 Optionee may renew or extend this Option for an addi-

tional period ending at 5:00 p.m. on April 1, 1985, by giving written notice to Optionor within the initial option period and by paying to Optionor additional consideration as provided in Section 3.2.

2.3 Optionee may again renew or extend this Option for an additional period ending at 5:00 p.m. on July 3, 1985, by giving written notice to Optionor within the first extended option period and by paying to Optionor additional consideration as provided in Section 3.3.

SECTION 3 - OPTION CONSIDERATION.

3.1 Initial Option Period.

As consideration for the Option and Optionee's rights under this Agreement, Optionee shall pay to Optionor upon execution of this Agreement the sum of \$40,000. The option consideration shall not be refundable, except pursuant to Section 7.1, if Optionee elects not to exercise the Option. In the event Optionee does exercise the Option, the option consideration shall be applied to the purchase price to be paid for the Property.

3.2 First Extension.

In the event the Option is extended as provided in Section 2.2, Optionee shall pay to Optionor the additional sum of \$60,000. Such sum shall be paid in the form of an irrevocable letter of credit. The letter of credit shall provide that Optionor may draw upon it in any of the following events:

(a) On or after April 5, 1985, in the event Optionee does not elect to either extend or exercise the Option during the

first extended option period;

(b) On or after July 7, 1985, in the event Optionee does not exercise the Option during the second extended option period; and

(c) On or after June 5, 1986, in the event Optionee does elect to exercise the Option, whether the election is during the first extended option period or the second extended option period.

3.3 Second Extension.

In the event the Option is again extended as provided in Section 2.3, Optionee shall pay to Optionor the additional sum of \$100,000. Such sum shall be paid in the form of an irrevocable letter of credit. The letter of credit shall provide that the Optionor may draw upon it in either of the following events:

(a) On or after July 7, 1985, in the event Optionee does not exercise the Option during the second extended option period; and

(b) On or after June 5, 1986, in the event Optionee does exercise the Option during the second extended option period.

SECTION 4 - MANNER OF EXERCISE.

Optionee may exercise the Option during the initial or extended option periods by delivering to escrow an irrevocable letter of credit in the following amount, as applicable:

(a) During the initial option period, in the amount of \$2,385,000;

(b) During the first extended option period, in the amount of \$2,325,000; and

(c) During the second extended option period, in the amount of \$2,225,000.

The letter of credit shall provide that the Optionor may draw upon it on or after June 5, 1986.

SECTION 5 - LETTER OF CREDIT.

Any letter of credit delivered by Optionee to Optionor or escrow shall be satisfactory if (a) it is in the form of Exhibit "A" attached hereto (or such other substantially similar form); (b) it is issued in favor of Optionor against the account of Optionee at the Bank of California, N.A., First Interstate Bank of Oregon, United States National Bank of Oregon, or SeaFirst National Bank; and (c) it provides for an expiration date no sooner than June 30, 1986.

SECTION 6 - PURCHASE AND SALE; EXCHANGE.

6.1 Binding Agreement.

Upon exercising the Option in the manner specified in Section 4, a binding agreement shall exist between the parties, without any further act by Optionor or Optionee, for the sale and purchase of the Property, all pursuant to the terms of this Agreement.

6.2 Purchase Price.

The total consideration to be paid by Optionee to Optionor shall be \$2,425,000, of which \$1,800,000 is principal

and \$625,000 is interest, payable on demand no later than June 5, 1986, in accordance with the terms of this Agreement.

6.3 Closing.

The closing of the conveyance of the Property to Optionee shall occur on a date (the "Closing Date") to be agreed upon by Optionor and Optionee, but in no event shall the closing occur later than the 15th day after the effective date of the exercise of the Option. If Optionor and Optionee cannot agree upon a Closing Date, the closing shall occur on the 15th day after the effective date of the exercise of the Option. The transaction shall be closed in escrow in the offices of Stewart Title Company, 200 Market Building, Portland, Oregon. Each party shall pay one-half of the escrow fees. The terms and provisions of this Agreement shall constitute joint instructions to the escrow holder; provided, however, that the parties shall execute such additional instructions as requested by the escrow holder and as are not inconsistent with the provisions hereof.

6.4 Prorations.

All ad valorem real property taxes and assessments shall be prorated between the parties as of the Closing Date.

6.5 Title Insurance.

As soon as reasonably possible following the execution of this Agreement, Optionor shall pay for and furnish to Optionee a preliminary title report on the Property. Optionee shall have until November 30, 1984, to notify Optionor and the escrow holder, in writing, of Optionee's disapproval of any exception

shown in the title report. In the event of such disapproval, Optionor shall have 30 days after notice is given within which to attempt to eliminate any disapproved exceptions from the policy of title insurance to be issued in favor of Optionee. Failure of Optionee to disapprove any exception within the described time limit shall be deemed an approval of the preliminary title report. Within 10 days after the Closing Date, Optionor shall pay for and deliver to Optionee a policy of title insurance on the Property, which title insurance shall be a Title Insurance Services Council of Oregon Form Policy insuring Optionee as the purchaser of the Property for the total purchase price for the Property, subject only to those liens, encumbrances and exceptions approved by Optionee and the standard printed exceptions of the title insurance policy.

6.6 Deed.

At Closing, Optionor shall deliver to Optionee a good and sufficient statutory warranty deed conveying the Property free and clear of all liens and encumbrances except those liens and encumbrances approved by Optionee.

6.7 Possession.

Optionee shall be entitled to exclusive possession of all the Property not later than the Closing Date.

SECTION 7 - FEASIBILITY.

7.1 Contigencies.

Optionor's right to retain the Option consideration

shall be contingent upon satisfaction of the following contingencies:

(a) Final approval of this Agreement by the City Council, City of Portland, prior to January 7, 1985; and

(b) Final approval of preliminary title report by Optionee prior to November 30, 1984.

In the event either of these contingencies is not satisfied, Optionor shall promptly refund the Option consideration to Optionee, if so requested by Optionee.

7.2 Entry.

Optionee shall be entitled to come upon the Property at any reasonable time during the term of the Option (including extensions) for the purpose of inspecting the Property, surveying the Property, conducting feasibility, construction and engineering studies and conducting any other studies or tests which Optionee in Optionee's sole discretion believes necessary to determine the feasibility of the Property for Optionee's intended development.

7.3 Governmental Approvals.

Optionor shall fully cooperate with Optionee in applying for all governmental permits and approvals for Optionee's development of the Property which cooperation shall include but not be limited to executing applications for such permits and approvals and advising governmental entities that Optionor consents to Optionee's application or request. Optionee shall have complete discretion to determine how the Property is

to be developed and the permits or approvals to be sought, and shall be free to pursue or not pursue, delay pursuit of, or abandon the pursuit of such permits or approvals. Notwithstanding the generality of the foregoing, Optionor acknowledges that Optionee intends to apply for designation of the Property as a "certified historic structure" (as defined in Section 48(g)(3) of the Internal Revenue Code), and Optionor consents to and agrees to support Optionee's application.

7.4 Contest of Taxes.

During the term of this Option, Optionor assigns to Optionee the right to contest the amount of ad valorem real property taxes levied against the Property and the assessed valuation of the Property determined by the Multnomah County Tax Assessor. Optionor shall fully cooperate with Optionee, if Optionee elects to contest the taxes and the assessed valuation. At Optionee's request, Optionor will execute petitions and comparable documents to be filed in connection with such a contest and shall support Optionee's attempt to have the assessed value reflect the purchase price.

7.5 Optionee's Work Product.

In the event Optionee cancels this Option pursuant to Section 7.1 or elects not to exercise the Option, Optionor shall be entitled to copies of the feasibility, construction and engineering studies described in Section 7.2 and to the financial projections of Optionee; provided, however, Optionee shall not be deemed to have warranted the accuracy, correctness or reliability

of such work product.

SECTION 8 - NOTICE.

All notices given under this Agreement must be in writing and shall be effective upon hand delivery or when placed in the mails as certified mail, return receipt requested, postage prepaid, and addressed to the parties at their respective addresses first shown above or to such address as either party may designate by notice to the other party.

SECTION 9 - WARRANTIES.

Optionor represents and warrants to Optionee that:

(a) Optionor is the owner of good and marketable title to the Property free of all liens and encumbrances.

(b) Optionor knows of no pending or contemplated condemnation of the Property.

(c) Optionor has not received nor is aware of any notification from any governmental agency having jurisdiction requiring any work to be done on the Property in order for it to conform to the applicable building code. Optionor further warrants that, in the event any such notice is received by Optionor prior to the Closing Date and Optionor is unable to or does not elect to perform the work required in the notice at Optionor's sole cost and expense on or before the Closing Date, the notice shall be submitted to Optionee within five days after receipt for Optionee's examination and approval.

(d) There is no pending or threatened litigation against or relating to the Property.

SECTION 10 - MISCELLANEOUS.

10.1 Successors and Assigns.

This Agreement shall be binding upon the parties and their respective legal representatives, successors, and assigns, and shall inure to the benefit of the parties and their respective legal representatives, successors, and assigns. This Agreement may not be assigned by Optionee without the prior written consent of Optionor, which consent shall not be unreasonably withheld. Optionee reserves the right to take title to the Property in a name or nominee other than shown above.

10.2 Attorney Fees.

In the event a suit or action is instituted to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover such amount as the court may adjudge reasonable as attorney fees at trial or on any appeal, in addition to all other amounts provided by law.

10.3 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

10.4 Entire Agreement.

This Agreement contains the entire agreement between the parties relating to the subject matter hereof, and all prior and contemporaneous agreements relating to the subject matter not contained herein are terminated. Amendments, variations, modifications, or changes to this Agreement shall be effective as to and binding upon the parties only if set forth in a document duly

executed by each party, and any alleged amendment, variation, modification, or change to this agreement which is not so documented shall not be effective as to or binding upon any party.

IN WITNESS WHEREOF, the parties have executed this Option Agreement this 20 day of Nov, 1984.

OPTIONOR:

By

E. A. Walsh

OPTIONEE:

By

J. J. Walsh

EXHIBIT "A"
LETTER OF CREDIT

Gentlemen:

For the account of _____ we hereby establish in your favor our irrevocable Letter of Credit No. _____ whereby we irrevocably authorize you to draw on us a total sum up to, but not exceeding U.S. One Million Dollars and No/100 (\$1,000,000,00) pursuant to the terms and conditions hereof, upon presentation of the documents described below to our Letter of Credit Department at:

Bank: _____

Address: _____

Attention: _____

Documents Required:

The following documents are required to be presented to us as a condition precedent to our forwarding any sums to you pursuant to this Letter of Credit:

1. A Drawing Certificate in the form of Exhibit 1 attached hereto, signed by the Executive Director of the Portland Development

Commission, and dated the date such Drawing Certificate is
- presented hereunder; together with

2. A sight draft in the form of Exhibit 2 attached hereto:
 - A. drawn by and payable to you on us;
 - B. bearing the same letter of credit number as the number of this Letter of Credit;
 - C. dated the same date as the Drawing Certificate referred to in (1) above; and
 - D. with a dollar amount therein not in excess of the maximum amount then available to be drawn under this Letter of Credit; together with
3. A copy of this Letter of Credit.

Drawing Limit:

At no time shall the maximum dollar amount available to be drawn hereunder exceed One Million Dollars and No/100 (\$1,000,000.00).

Expiration:

This Letter of Credit shall expire on: _____.

Other Terms:

This Letter of Credit and the Exhibits attached hereto set forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any other document whatsoever.

This Letter of Credit shall be governed by, and construed in accordance with, the terms of the Uniform Customs and Practice for Documentary Credits (1974 Revisions), International Chamber of Commerce Publication No. 290 and, to the extent not inconsistent therewith, the terms of the Uniform Commercial Code of the State of Oregon.

Communications with respect to this Letter of Credit shall be addressed to us at our address listed in the first paragraph hereof, specifically referring to the number of this Letter of Credit.

We agree to honor and pay the amount of a draft in immediately available funds if drawn and presented with the documents and otherwise in compliance with all of the terms of this Letter of Credit.

Very truly yours,

(BANK)

By: _____
Name:
Title:

EXHIBIT 1
- TO
LETTER OF CREDIT
DRAWING CERTIFICATE

I, _____, hereby certify that I am the Executive Director of the Portland Development Commission (the "Commission"), and that I am authorized to certify on behalf of the commission as follows, with respect to that certain Letter of Credit No. _____, dated _____ (the "Letter of Credit"), issued by _____ in favor of the Commission.

1. Rouse-Portland, Inc., a Maryland corporation, is obligated for payment of the amount of the draft attached hereto pursuant to Section _____ of that certain Agreement between the Commission and Rouse-Portland, Inc., dated _____, 1983 (the "Agreement").
2. The amount of the draft presented with this certificate does not exceed the amount allowed to be drawn on the Letter of Credit at this date pursuant to the terms of said Letter of Credit and/or pursuant to the terms of the Agreement.

IN WITNESS WHEREOF, this Certificate has been executed this _____ day of _____, 19_____.

EXECUTIVE DIRECTOR
Portland Development Commission

**"EXHIBIT 2"
TO
LETTER OF CREDIT
SIGHT DRAFT**

_____, 1983.

FOR VALUE RECEIVED, PAY ON DEMAND:

U.S. _____ Dollars
(U.S. \$ _____).

CHARGE TO THE ACCOUNT OF ROUSE-PORTLAND, INC.

IRREVOCABLE LETTER OF CREDIT NO. _____
DATED _____, 19 _____.

TO: (Name of Bank) _____
Address: _____
Attention: _____

Portland Development Commission

By: _____
Executive Director

ORDINANCE NO. 156877

An Ordinance declaring Block 30, Portland Addition, (The Police Block) surplus, authorizing and ratifying the execution by the Director of the Office of General Services of an Option Agreement granting N. Robert Stoll the right to acquire the property, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. The Bureau of Police has vacated Block 30, Portland Addition, (Police Block).
2. The Portland Development Commission has completed a study of use of the Police Block and on January 11, 1984, recommended that the City Council sell the property.
3. The City Council authorized an agreement with Coldwell Banker for real estate brokerage services in marketing the Police Block.
4. Coldwell Banker has submitted an Option Agreement to the City that grants N. Robert Stoll the exclusive right to acquire the Police Block on terms set forth in the Option Agreement (Exhibit A).
5. Coldwell Banker recommends that the City grant N. Robert Stoll this option and that the Director of General Services execute the Option because of the uncertain schedule of when the Council can take formal action.
6. The Council must authorize and ratify the execution of the Option Agreement to signify acceptance of the conditions by the Council.
7. The Agreement has been approved by the City Attorney.

NOW, THEREFORE, the Council directs:

- a. Lots 1-8, Block 30, Portland Addition is declared surplus.
- b. The Director of the Office of General Services is authorized to execute an Option Agreement on behalf of the City with N. Robert Stoll, said agreement shall be substantially as shown in Exhibit A attached hereto and by this reference made a part hereof.

ORDINANCE No.

Section 2. The Council declares that an emergency exists because delay may jeopardize the sale of the Police Block; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

IVANCE	
STRACHAN	
SCHWAB	
LENDER RO	
JORDAN	
BORRILL	

IVANCE	
STRACHAN	
SCHWAB	
LENDER RO	
JORDAN	
BORRILL	

Passed by the Council. **DEC 12 1984**

Commissioner Strachan
Earl Bradfish:en
November 28, 1984

Jewel Lansing
Auditor of the City of Portland
By
Edna Cervino Deputy

2661

Calendar No.

ORDINANCE No. 156877

Title

An Ordinance declaring Block 30, Portland Addition, (the Police Block) surplus, authorizing and ratifying the execution by the Director of the Office of General Services of an Option Agreement granting N. Robert Stoll the right to acquire the property, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS		
	Yeas	Nays
JORDAN	—	—
LINDBERG	✓	
SCHWAB	✓	
STRACHAN	✓	
IVANCIE	✓	

FOUR-FIFTHS CALENDAR	
JORDAN	
LINDBERG	
SCHWAB	
STRACHAN	
IVANCIE	

Filed NOV 30 1984

JEWEL LANSING
Auditor of the CITY OF PORTLAND

By Dennis Nelson
Deputy

INTRODUCED BY
Commissioner Strachan

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities <u>MDS/bc DS</u>
Works

BUREAU APPROVAL
Bureau: Office of General Services
Prepared By: Earl Bradfish:en Date: 12/28/84
Budget Impact Review: <input type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: Earl Bradfish

CALENDAR	
Consent <input checked="" type="checkbox"/>	Regular <input type="checkbox"/>

NOTED BY
City Attorney
City Auditor
City Engineer