

Below is an Order of the Court.



FRANK R. ALLEY
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

ARLIE & COMPANY,

Debtor.

Case No. 10-60244-aer11

**ORDER GRANTING AUTHORITY TO
SELL PROPERTY OF THE ESTATE
AND APPROVING SALE FREE AND
CLEAR OF LIENS (JASPER
PROPERTY)**

This matter came on for hearing on January 26, 2011 at 10:00 a.m. on the Debtor's Notice of Intent to Sell Real or Personal Property, Compensate Real Estate Broker, and/or Pay any Secured Creditor Fees and Costs; Motion for Authority to Sell Property Free and Clear of Liens; and Notice of Hearing (hereinafter, the "Motion") relating to the proposed sale of approximately 15.25 acres of land at Lane County Tax Lot 18-02-09-00-00102 to Springfield School District No. 19. A legal description of the property to be sold is attached hereto as Exhibit A (the "Property"). The Court having reviewed the Motion and finding that good cause exists therefor, and the Court otherwise being fully advised; now therefore,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Proper, timely, adequate, and sufficient notice of the Motion and the hearing on the Motion have been provided in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, and no other or further notice is required. The Motion has been duly

and properly served on all required persons and entities, including all persons and entities claiming an interest in the Property; and

B. The proposed sale of the Property on the terms set forth in the Motion is in the best interests of the estate and has been negotiated in good faith and at arms-length. Based on the foregoing,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED;
2. The Debtor is authorized to sell the Property to Springfield School District No. 19 (hereinafter, "Buyer") on the terms set forth in the Real Estate Purchase and Sale Agreement between the Debtor and Buyer attached hereto as Exhibit B, or on substantially the same terms that are no materially less favorable to the Debtor;
3. Pursuant to Sections 363(b) and (f) of the Bankruptcy Code, upon closing of the sale, Buyer shall acquire all of the Debtors' and the bankruptcy estate's right, title and interest in and to the Property, free and clear of all mortgages, security interests, conditional sale or other title retention agreements, pledges, liens, judgments and encumbrances of any kind or nature (collectively, all "Interests"), whether arising before or after the commencement of the above-captioned chapter 11 case, with all such Interests released, terminated and discharged as to the Property. This release, termination and discharge of Interests specifically includes any claim or interest held against the Property by Lane County Assessment & Taxation ("Lane County") and Siuslaw Bank. The liens held by Siuslaw Bank and Lane County shall be paid in full upon the closing of the sale. Net proceeds of the sale shall be free and clear estate property, not subject to the lien of Siuslaw Bank.
4. The stay imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived.

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Presented by:

By: /s/ Brad T. Summers

Brad T. Summers, OSB No. 911116

tsummers@balljanik.com

David W. Criswell, OSB No. 925930

dcriswell@balljanik.com

BALL JANIK LLP

101 SW Main Street, Suite 1100

Portland, OR 97204

Attorneys for Debtor

cc: Attached List of Parties

EXHIBIT A

REAL ESTATE SALE AND PURCHASE AGREEMENT

DATED: December 30, 2010

SELLER: **Arle & Company**, an Oregon corporation
2911 Tennyson Avenue, Suite 400
Eugene, OR 97408

BUYER: **Springfield School District No. 19**
c/o Dwight G. Purdy
1011 Harlow Road, Suite 300
Springfield, OR 97477

RECITAL:

Seller desires to sell to Buyer and Buyer desires to purchase from Seller the real property comprised of approximately 15.25 acres at Tax Lot 18-02-09-00-00102, the legal description of which is contained on Exhibit A (the "Property").

AGREEMENT:

For valuable consideration, the parties hereby agree as follows:

1. **Sale and Purchase:** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) (the "Purchase Price").

2. **Payment of Purchase Price:** Upon execution of this Agreement, Buyer shall deposit \$50,000.00 with the parties' escrow agent as Earnest Money toward the Purchase Price (the "Earnest Money"). Any interest on the Earnest Money shall be credited to Buyer at closing. At closing, Buyer shall pay Seller the balance of the Purchase Price in cash.

3. **Closing:** Closing shall take place on or before February 25, 2011 (the "Closing Date"). Escrow services shall be provided by Evergreen Land Title Company, 1651 Centennial Boulevard, Springfield, Oregon 97477. The parties shall each pay one-half of all escrow fees.

4. **Obligations of Seller Prior to Closing:** Seller shall perform the following obligations prior to Closing:

4.1 **Preliminary Title Report:** Within five (5) days after full execution of this Agreement, Seller shall furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Buyer has ten (15) days from receipt of the Title Report to review the Title Report and notify Seller, in

writing, of Buyer's disapproval of any exceptions shown in the Title Report. Those exceptions not objected to by Buyer are referred to below as the "Permitted Exceptions." Zoning ordinances, building restrictions and reservations in federal patents and state deeds shall be deemed Permitted Exceptions. If Buyer notifies Seller of disapproval of any exceptions, Seller shall have ten (10) days after receiving the disapproval notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes. If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within ten (10) days after expiration of such ten (10) day period, in which event the Earnest Money shall be refunded to Buyer and this Agreement shall be null and void.

5. **Condition:** Buyer's obligation to purchase the Property is contingent on obtaining approval of the U.S. Bankruptcy Court for this Agreement and such other approvals that will reasonably satisfy Buyer that Seller has the legal authority to enter into this Agreement and sell the Property and formal approval of the Springfield School Board. Further, Seller shall terminate all leases on the property by the Closing Date.

6. **Deed:** On the Closing Date, Seller shall execute and deliver to Buyer a statutory warranty deed, conveying the Property to Buyer, free and clear of all liens and encumbrances except for Permitted Exceptions as set forth above.

7. **Title Insurance:** Within fifteen (15) days after closing, Seller shall furnish Buyer with an ALTA owner's policy of title insurance in the amount of the purchase price, standard form, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

8. **Taxes; Prorates:** Real property taxes for the current tax year shall be prorated and paid as of the Closing Date.

9. **Possession:** Buyer shall be entitled to possession immediately upon closing.

10. **Seller's Representations:** Seller represents and warrants to Buyer as follows:

10.1 Seller has received no written notice of any liens to be assessed against the Property.

10.2 Seller has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Property.

10.3 Seller is not a "foreign person" as that term is defined in IRC Section 1445. On the Closing Date, Seller shall execute and deliver to Buyer a certification of nonforeign status on a form required by the IRS.

10.4 That to Seller's knowledge: (a) the Property has never been used for the

storage or disposal of any hazardous material or waste; (b) there are no environmentally hazardous materials or wastes contained on or under the Property; and (c) the Property has not been identified by any governmental agency as a site upon which environmentally hazardous materials or wastes have been or may have been located or deposited.

10.5 Seller makes no warranty with regard to the condition of the Property. Buyer accepts the Property "AS IS" including any and all wetlands that exist on the Property.

11. **Binding Effect/Assignment Restricted:** This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective legal representatives, successors and assigns. Buyer may assign its rights and obligations under this Agreement.

12. **Remedies:** If the condition to this Agreement has been satisfied or waived by Buyer, and Buyer fails to close this transaction for any reason other than the fault of Seller, Seller shall receive the Earnest Money. Such receipt shall not limit Seller's right to sue Buyer for damages or specific performance of this Agreement. In the event Seller fails, through no fault of Buyer, to close this transaction, Buyer shall have the right to a refund of all Earnest Money. Such refund shall not limit Buyer's right to sue Seller for damages or specific performance of this Agreement.

13. **Attorney Fees:** In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal or review, as set by the appellate courts.

14. **Notices:** All notices and communications in connection with this Agreement shall be given in writing and shall be transmitted by regular mail, to the appropriate party at the address first set forth above. Any notice so transmitted shall be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

15. **Entire Agreement:** This Agreement constitutes the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

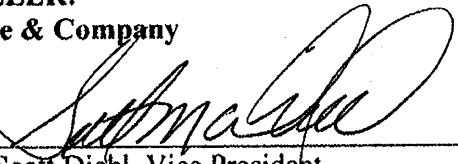
16. **Applicable Law:** This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon. Venue for any dispute involving this Agreement shall be Lane County Circuit Court.

17. **Construction:** This Agreement has been reviewed and negotiated by the parties with the benefit of the assistance of legal counsel, and shall not be construed against any party by presumption. The titles and captions contained in this Agreement are inserted for convenience and shall not be deemed to define, limit, extend or modify any provision of this Agreement.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.


SIGNED AND AGREED TO

SELLER:
Arlie & Company

By: 

Scott Diehl, Vice President

BUYER:
Springfield School District No. 19

By: 

Name: Laurie Adams
Title: Board Member

EXHIBIT A
Legal Description

A tract of land located in the Southwest quarter of Section 3, Township 18 South, Range 2 West of the Willamette Meridian, being more particularly described as follows:

Beginning at the Southeast corner of the PLAT OF JASPER MEADOWS SECOND ADDITION, as platted and recorded December 13, 2004, Reception No. 2004-094865, Lane County Oregon Records; thence North $88^{\circ} 16' 08''$ West 1086.61 feet to a point on the Easterly right-of-way of the Jasper Road Extension as described in Easement Recorded July 18, 2007, Reception No. 2007-048814, Lane County Oregon Records, said point being 100.07 feet, when measured at right angles, from the centerline thereof; thence along said Easterly right-of-way South $6^{\circ} 20' 16''$ East 497.33 feet; thence along the arc of a 1096.52 foot radius curve right having a central angle of $3^{\circ} 44' 44''$, an arc distance of 71.68 feet (long chord of which bears South $4^{\circ} 27' 54''$ East 71.67 feet) to a point on the Section line between Sections 3 and 10; thence leaving said Easterly right-of-way and following along said South line South $88^{\circ} 03' 44''$ East 1268.60 feet to a point on the Westerly boundary of a tract of land conveyed to Weyerhaeuser Timber Company, a Washington corporation, and The Booth-Kelly Lumber Company, an Oregon corporation, by Warranty Deed Recorded July 22, 1947, Book 352, Page 234, Lane County Oregon Records; thence along said Westerly boundary North $22^{\circ} 48' 58''$ West 624.69 feet to the Point of Beginning, all being in Lane County, Oregon.

LIST OF PARTIES TO RECEIVE COPY OF ORDER

In re Arlie & Company

U.S. Bankruptcy Court, District of Oregon Case No. 10-60244-aer11

By CM/ECF:

- JOHN D ALBERT darlene@albertandtweet.com, beth@albertandtweet.com
- JOHN F BARG jfb@bcltlaw.com, cgw@bcltlaw.com
- CONRAD K CHIU cchiu@daypitney.com
- BRADLEY S COPELAND bcopeland@agsprp.com, soconnor@agsprp.com
- JOHN D FIERO jfiero@pszjlaw.com,
ocarpio@pszjlaw.com;ksuk@pszjlaw.com;azaragoza@pszjlaw.com
- JOHN C FISHER
- MICHAEL W FLETCHER michael.fletcher@tonkon.com, tammy.brown@tonkon.com
- THOMAS A HUNTSBERGER tom@tahpc.com
- Thomas A Huntsberger thuntsberger@ecf.epiqsystems.com
- P REBECCA KAMITSUKA
- MICHAEL P KEARNEY mpk@kearneyatlaw.com, mholley@agsprp.com
- ALBERT N KENNEDY al.kennedy@tonkon.com, leslie.hurd@tonkon.com;larissa.stec@tonkon.com
- JUSTIN D LEONARD jleonard@bjllp.com, jweisenbach@balljanik.com
- JOHN CASEY MILLS casey.mills@millernash.com, brenda.hale@millernash.com
- WILSON C MUHLHEIM ecf@mb-lawoffice.com
- P SCOTT McCLEERY scottm@gartlandnelsonlaw.com, kassiea@gartlandnelsonlaw.com
- FRANK F MCGINN ffm@bostonbusinesslaw.com
- ANDREW P PARKS aparks@agsprp.com, lstevenson@agsprp.com
- TERESA H PEARSON teresa.pearson@millernash.com,
teri.cochran@millernash.com;lisa.conrad@millernash.com
- DANIEL P PEPPEL dpepple@pjcs.com, dawnanderson9@pjcs.com;jsteinert@pjcs.com
- JACKSON SCHMIDT jacksonschmidt@pjcs.com, dawnanderson9@pjcs.com;jsteinert@pjcs.com
- DOUGLAS R SCHULTZ schultz@gleaveslaw.com, kirsten@gleaveslaw.com
- BRAD T SUMMERS tsummers@balljanik.com, akimmel@balljanik.com
- US Trustee, Eugene USTPRegion18.EG.ECF@usdoj.gov
- PATRICK W WADE hhecfb@hershnerhunter.com
- HEATHER M WALLOCH heatherw@gartlandnelsonlaw.com, kassiea@gartlandnelsonlaw.com
- GILBERT B WEISMAN notices@becket-lee.com
- DOUGLAS R WILKINSON doug@thorp-purdy.com, skelley@thorp-purdy.com

By Regular Mail:

David E. Bomar
Balzhiser & Hubbard Engineers, Inc.
100 W 13th Ave
Eugene, OR 97401

Mike Broadsword
Eugene Sand & Gravel
POB 1067
Eugene, OR 97440

James R. Hanks
JRH Transportation Engineering
4765 Village Plaza Lp #201
Eugene, OR 97401

JONATHAN POLLAND
Rethink LLP
465 California St #310
San Francisco, CA 94104

Gregory Brokaw
Rowell Brokaw Architects, PC
1 East Broadway #300
Eugene, OR 97401

Micheal Roberts
1919 Myers Road
Eugene, OR 97401

Linda Cantor
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd 11th FL
Los Angeles, CA 90067

Jerry Vicars
Fabrication & Mechanical Group Inc
POB 42173
Eugene, OR 97404

WmThomas Construction
POB 2409
Florence, OR 97439