

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY ON RODLUN ROAD IN THE EAST BUTTES / BORING LAVA DOMES TARGET AREA ) RESOLUTION NO. 00-2996  
)  
)  
) Introduced by Mike Burton,  
) Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, on July 25, 1996, via Resolution 96-2361, the Metro Council adopted a refinement plan for the East Buttes/Boring Lava Domes regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, on June 1, 1999, Metro entered into an Option to Purchase Agreement (the "Option") to acquire an approximately 11 acre home-site and residence located within the East Buttes/Boring Lava Domes regional target area, along SW Rodlun Road in the City of Gresham (the "Property") and owned by Albert H. Mirati, Jr., (the "Seller") as identified in the attached Exhibit A; and

WHEREAS, a condition of the sale of the Property under the Option is the execution by Metro of a residential Lease back to the Seller, in substantially the form attached as Exhibit B, allowing the Seller to continue to occupy the existing single-family residence and 11 acre home-site after closing; and

WHEREAS, the term of the Lease would be three (3) years and the proposed rental rate has been determined based on estimated market rents, with set annual rental rate adjustments; and

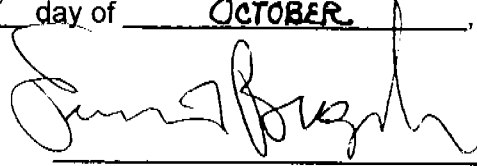
WHEREAS, Metro Council approval is needed to authorize the Executive Officer to enter into leases for a term of more than one year; and

WHEREAS, the Open Spaces Implementation Work Plan adopted by the Metro Council via Resolution No. 96-2424 requires the Metro Council to specifically approve acquisitions which involve "unusual circumstances;" such as a 3 year lease-back to the Seller; now therefore

BE IT RESOLVED,

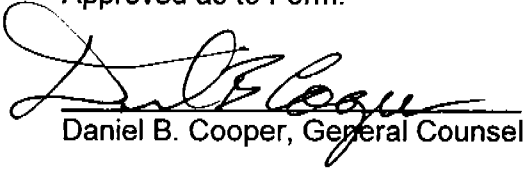
That the Metro Council authorizes the Metro Executive Officer to purchase property on Rodlun Road, as identified in Exhibit A, subject to a 3-year Lease with Albert H. Mirati, Jr., and to execute said Lease at Closing, as provided in the Option Agreement between Metro and Seller, in substantially the form attached as Exhibit B.

ADOPTED by the Metro Council this 19<sup>th</sup> day of OCTOBER, 2000.



David Bragdon, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel



EXHIBIT A-Resolution No. 00-2996

Portions of Government Lots 8 and 11 in Section 20 and a portion of Government Lot 2 in Section 21, Township 1 South, Range 3 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, and more particularly described as follows:

BEGINNING at the Southeast corner of said Government Lot 8 as defined in that private survey dated March 1920 on file in the Multnomah County Surveyor's office as Survey No. 1A/51 and as defined on that private survey dated March 1920 and June 1938 on file in the Multnomah County Surveyor's office as Survey No. 1A13/50, said corner being the Southeast corner of that parcel of land deeded to Albert J. Plant and Margaret Miller Plant by that Special Warranty Deed recorded June 15, 1945 in Multnomah County Deed Book 941, Page 570, said Plant Parcel being described as the five acres from off the East end of Government Lot 8 in Section 20, Township 1 South, Range 3 East of the Willamette Meridian, being part of the land patented by the U.S. Government to John Busbee by patent recorded in Book 129, Page 283 of the Records of Deeds of said County; thence South  $88^{\circ} 43' 45''$  West along the South line of said 1A/51 survey parcel and along the South line of said Plant Parcel, a distance of 319.3 feet to the Southwest corners thereof; thence North  $0^{\circ} 54'$  East along the West line of said 1A/51 survey parcel and along the West line of said Plant Parcel, a distance of 455 feet, more or less, to the South bank of a stream; thence East along said South bank 12 feet, more or less, to a point that is 12 feet East of the West line of the East 5 acres of said Government Lot 8; thence North  $0^{\circ} 54'$  East parallel to and 12 feet East of the West line of the said East 5 acres, distance of 225 feet, more or less, to a point on the South line of Government Lot 11 in said Section 20; thence North  $0^{\circ} 54'$  East along the Northerly extension of the East line of the West 12 feet of the East 5 acres of said Government Lot 8, a distance of 141.75 feet to the Northwest corner of that tract of land conveyed to Margaret M. Baker by Quitclaim Deed recorded August 26, 1976 in Multnomah County Deed Book 1123, Page 1417; thence South  $89^{\circ} 40'$  East along the North line and North line projected Easterly of said Baker Tract, a distance of 307.3 feet to the center line of Rodlun Road; thence South  $0^{\circ} 54'$  West along said center line, a distance of 65.07 feet, more or less, to an angle point therein; thence South  $9^{\circ} 09'$  East along said center line, a distance of 71.00 feet to an angle point therein; thence South  $43^{\circ} 05'$  East along said center line, a distance of 624.00 feet to an angle point therein; thence South  $47^{\circ} 04'$  East along said center line, a distance of 210.00 feet to an angle point therein; thence South  $25^{\circ} 05'$  East along said center line, a distance of 119.52 feet, more or less, to a point in the South line of said Government Lot 2; thence Westerly along the South line of said Government Lot 2, a distance of 653.46 feet, more or less, to the Southwest corner of said Government Lot 2; thence Northerly along the West line of Section 21, a distance of 16.25 feet to the above referenced point of beginning.

This description is prepared without the benefit of a boundary survey and relies upon the data contained within surveys filed in the Multnomah County Surveyor's Office as private survey's 1A/51, 1A13/50, 19413, 27975, 30768 and 34684.

RENTAL AGREEMENT (Dwelling Unit - Residence Oregon)

THIS AGREEMENT, entered into in duplicate on METRO PARKS AND GREENSPACES, by and between and ALBERT H. MIRATI, JR., lessor, lessee;

WITNESSETH: That for and in consideration of the payment of the rents and the performance of the terms of lessee's covenants herein contained, lessor hereby rents to the lessee, and lessee rents from lessor, for use as a residence, those certain premises described as residence located at

on a month to month tenancy beginning for a term of 3 years commencing and ending

at a monthly rate of \$825.00 for months 1-12; \$865.00 for months 13-24; and \$910.00 for months 25-36 payable monthly in advance on the first (1st) day of each and every month. Rents are payable at: METRO, 600 NE Grand Avenue, Portland, Oregon 97232.

If rent is not received by the fourth day of the period for which it is due, lessee shall pay a late charge of (check exactly one): \$20.00 as a flat amount; or \$ charged on a per day basis beginning on the fifth day of the period; or 5% of the amount of the payment for each five-day period, or portion thereof the payment is late.

It is further mutually agreed between the parties as follows:

- 1. The premises shall be occupied by no more than five (5) occupants.
2. Lessee shall not violate any city or county ordinance or state or federal law in or about the premises.
3. Lessee shall not sublet the premises, or any part thereof, or assign this lease without lessor's written consent.

4. If lessee fails to pay rent or other charges promptly when due, or to comply with any other term or condition hereof, lessor at lessor's option, and after proper written notice, may terminate this tenancy.
5. Lessee shall maintain the premises in a clean and sanitary condition at all times, and upon the termination of the tenancy shall surrender same to lessor in as good condition as when received, ordinary wear and tear and damage by the elements excepted; a fee is herewith paid, no part of which is refundable, for cleaning up and restoring the premises in the amount of \$

6. To permit lessor at any and all reasonable times, upon 24 hours' notice to lessee, to enter and go upon the premises for the purpose of examining their condition, or to make such repairs and alterations as lessor shall deem necessary or to show the leased premises to prospective purchasers, mortgagees, tenants, workers or contractors, provided always that in case of emergency lessor may enter the premises without notice.

7. There shall be working locks on all outside doors; lessor shall provide lessee with keys for same.

8. Lessee Lessor (indicate which) shall properly cultivate, care for and adequately water the lawn, shrubbery and grounds.

9. Lessor shall supply electric wiring, plumbing facilities which produce hot and cold running, safe drinking water and adequate heating facilities.

10. Lessee shall pay for all natural gas, electricity, and telephone service. All other services will be paid for by Lessor and Lessee as follows:

Table with columns: Lessee, Lessor, Lessee, Lessor. Rows: Water, Sewer, Garbage Service, Electricity.

11. Lessor shall provide lessee with one or more working smoke alarms or smoke detectors and working batteries in conformance with applicable law at the time tenancy commences. Lessee shall test any device so provided at least once every six months and notify lessor in writing of any operating deficiency, which lessor shall remedy immediately upon receipt of such notice.

12. Lessee agrees to assume all liability for, and to hold lessor harmless from, all damages and all costs and fees in the defense thereof, caused by the negligence or willful act of lessee or lessee's invitees or guests, in or upon any part of the demised premises, and to be responsible for any damage or breakage to lessee's equipment, fixtures or appliances therein or thereon, not caused by lessor's misconduct or willful neglect.

13. Nothing herein shall be construed as waiving any of the rights provided by law of either party hereto.

14. In the event any suit or action is brought to collect rents or to enforce any provision of this agreement or to repossess the premises, reasonable attorney fees may be awarded by the trial court to the prevailing party in such suit or action, together with costs and necessary disbursements. On appeal, if any, similar reasonable attorney fees, costs and disbursements may be awarded by the appellate court to the party prevailing on such appeal.

15. The lessor, after 24 hours' written notice specifying the causes, may immediately terminate this agreement and take possession in the manner provided by ORS 105.105 to 105.168, if (a) Lessee, someone in lessee's control or lessee's pet seriously threatens immediately to inflict personal injury, or inflicts any substantial personal injury, upon the lessor or other tenants; (b) Lessee, someone in lessee's control, or lessee's pet inflicts any substantial personal injury upon a neighbor living in the immediate vicinity of the premises or upon a person other than lessee on the premises with permission of lessor or another lessee; (c) Lessee or someone in lessee's control intentionally inflicts any substantial damage to the premises; (d) Lessee has vacated the premises, the person in possession is holding contrary to a written rental agreement that prohibits subleasing the premises to another or allowing another person to occupy the premises without the written permission of lessor, and lessor has not knowingly accepted rent from the person in possession; or (e) Lessee or someone in lessee's control commits any act which is outrageous in the extreme, on the premises or in the immediate vicinity of the premises.

16. Lessee shall not allow any undriveable vehicle to remain on the premises for more than 24 hours. No car repairs are to be made on the premises, including minor maintenance such as an oil change.

LESSEE FURTHER AGREES: 1. That lessee has personally inspected the premises and finds them satisfactory at the time of execution of this agreement; 2. That lessee has read this agreement and all the stipulations contained in it; 3. That no promises have been made to lessee except as contained in this agreement and lease; and 4. To comply with all obligations imposed upon lessee pursuant to ORS 90.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written. Lessee acknowledges receipt of a copy of this agreement.

METRO PARKS AND GREENSPACES Lessor ALBERT H. MIRATI, JR. Lessee

The words lessee and lessor shall include the plural as well as the singular. (S-N landlord and tenant notices include Form Nos. 829(NCR), 1264, 1265, 1266, 1267 and 1268.) \* Charge no more than permitted by ORS 90.260. \*\* Hereafter, comply with ORS 90.322. \*\*\* See ORS 90.320. \*\*\*\* See ORS 91.153.

## **Staff Report**

### **FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY ON RODLUN ROAD IN THE EAST BUTTES / BORING LAVA DOMES TARGET AREA**

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**Date: October 4, 2000**

**Presented by: Charles Ciecko  
Jim Desmond**

#### **Proposed Action**

Resolution No. 00-2996 requests authorization for the Executive Officer to purchase property on Rodlun Road in the East Buttes/Boring Lava Domes target area, and to execute a lease between Metro as the Lessor, and Albert H. Mirati, Jr., as the Lessee, for a term of three years ("Lease").

#### **Existing Law**

Metro Code 2.04.026 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase or lease of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 96-2424, was established to implement the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995. The Work Plan established acquisition parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Purchases that do not meet these criteria or have "unusual circumstances" (as that term is defined in the Work Plan) require specific Council approval. Via Resolution 96-2361, the Metro Council approved the East Buttes/Boring Lava Domes target area refinement plan tax-lot specific map, which includes the subject property on Rodlun Road. This resolution proposes to authorize the purchase of the Rodlun Road property subject to the unusual circumstance of a three-year lease-back with the Seller in accordance with the terms of the Option to Purchase Agreement executed by Metro and the landowner, and subject to approval by the Metro Council.

#### **Background and Analysis**

Metro executed an Option to Purchase Agreement (the "Option") dated June 1, 1999, to acquire approximately 11 acres, including an existing single-family residence in the East Buttes / Boring Lava Dome Target Area, from Albert H. Mirati, Jr., (the Property). The Property is a Tier 1a acquisition under the East Buttes and Boring Lava Domes Target Area Refinement Plan adopted on July 25, 1996, under Resolution No. 96-2361. The transaction is scheduled to close on or before November 1, 2000 so long as remaining contingencies are met. The sale of the Property under the Option is subject to the condition that Metro lease the Property back to Mirati for a term of three years after Closing. Mr. Mirati currently uses the existing single-family house as his primary residence. His intention is to relocate at some point during the three-year lease period, after which Metro will take full possession of the property. Kelly Creek, an important fish-bearing stream, traverses this 11-acre parcel before draining into Johnson Creek. This property is located adjacent to a 73-acre parcel previously acquired by Metro.

From the beginning of this long negotiation, the seller has insisted on a 3-year lease-back, contending that he needed sufficient time to plan a relocation to another state. Mr. Mirati has been a good steward of his land, and his continued presence at the Property should be complimentary to Metro's management of other land in the target area. Mr. Mirati is a recently retired, long time employee of the Oregon Department of Fish and Wildlife. He has previously reforested the Property and continues to monitor the health of the reforested areas. For some time now, he has also volunteered to share his considerable knowledge about fish and stream culverting with Metro staff. If Mirati had not requested the 3-year lease back, Metro would likely lease the Property to another private party on a month-to-month basis. The new tenant likely would not be as committed to caring for the land.

In order to close the acquisition of the Property subject to a three-year lease with Mr. Mirati, it is necessary for the Metro Council to authorize the Executive Officer to execute the Lease.

### **Findings**

Authorizing the Executive Officer to acquire the Property for Metro, subject to an executed 3-year lease with Albert H. Mirati, Jr., is recommended based on the following:

- The East Buttes and Boring Lava Domes Target Area Refinement Plan includes the following objective for Tier 1a properties:  
"Acquire a biologically significant, contiguous open space of approximately 400-600 acres in the Gresham and North Damascus Buttes areas."

Closing the acquisition of the Property and simultaneous execution of the Lease serves the following objectives:

- The important acquisition objectives of the East Buttes and Boring Lava Domes Target Area Refinement Plan set forth above will be fulfilled if this acquisition is completed. The Property represents one of the essential properties targeted for acquisition by Metro in its attempt to assemble a broad, forested corridor of open space stretching from Butler Butte to the south to City of Gresham owned open space to the north. The intent of this corridor is to protect a viable wildlife habitat area to buffer against urban encroachment. The Property also has approximately 2,132 feet of frontage along both sides of Kelly Creek, an important tributary of Johnson Creek, and a key natural feature of this target area.
- The Lease is an acceptable encumbrance upon the Property because it continues the current and historical use of the Property, it will be rented at market rental rates, and saves Metro the management costs of vacancy and re-leasing. Mr. Mirati has been and is expected to be a good steward of the land during the lease term.

### **Budget Impact**

The Lease will provide Metro with \$31,200 in income over the three-year lease term. Metro's management and landbanking costs will be substantially reduced as a result of leasing the property to Mr. Mirati.

**Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 00-2996.