

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 00-3009
EXECUTIVE OFFICER TO PURCHASE)
PROPERTY ON AMBLESIDE DRIVE IN THE)
EAST BUTTES AND BORING LAVA DOMES) Introduced by Mike Burton,
TARGET AREA) 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 and Boring Lava Domes regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, on August 13, 2000, Metro entered into a purchase and sale agreement to acquire a 2.4 acre homesite and residence located within the East Buttes and boring Lava Domes regional target area, on Ambleside Drive in Gresham (the Property, identified in the attached Exhibit A), owned by Richard and Sue Schacht; and

WHEREAS, a condition of the purchase and sale agreement is the execution 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 2.4-acre homesite for up to five years after closing; and

WHEREAS, the Lease is for a one-year term, renewable annually at the option of the Lessee for up to five years; and

WHEREAS, the proposed rental rate has been determined based on estimated market rents, and the rental rate will be adjusted yearly to assure a market-rate return to Metro; and

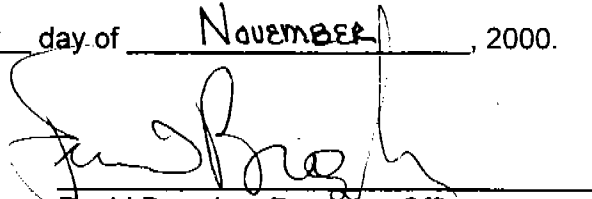
WHEREAS, Metro Council approval is needed to authorize the Executive Officer to enter into leases for a term of more than one year; and

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 lease for a period of more than one year; now therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to purchase property in Gresham, as identified in Exhibit A, subject to a Lease for a period of five one-year terms with Richard and Sue Schacht, and to execute said Lease at Closing, as provided in the Purchase and Sale Agreement between Metro and Seller, in substantially the form attached as Exhibit B.

ADOPTED by the Metro Council this 30th day of November, 2000.

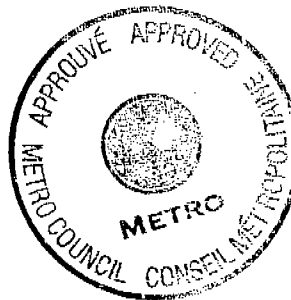


David Bragdon, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel



Resolution No. 00-3009
Exhibit A Page 1
Legal Description

A tract of land in Sections 14 and 15, Township 1 South, Range 3 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:




Commencing at a point in the West line of said Section 14, 18 rods South of the Southwest corner of the Northwest quarter of the Southwest quarter of said Section 14, running thence East 20 rods, more or less, to the East line of a tract deeded to Annie Beers by R.L. Durham, Trustee, and R. B. Curry, by R. L. Durham, his attorney in fact, January 17, 1900 and recorded in Deed Records, County of Multnomah, State of Oregon, in Book 263, at Page 182, January 17, 1900; thence North along the East line of said Annie Beers Tract and producing said line to the South boundary line of the Portland Railway Light and Power Company's right of way; thence following said South boundary line of the said Portland Railway Light and Power Company's right of way in Northwesterly direction to a point where said South boundary line intersects Road No. 608; running thence Southwesterly and thence Southeasterly following the line of said road to a point in West line of said Section 14, 1120 feet North of the Southwest corner of said Section 14; thence North along the West line of said Section 14 to the place of beginning.

SAVE AND EXCEPTING THEREFROM, however, a strip of land 20 feet in width along the South boundary line of said Portland Railway Light and Power Company's right of way extending from County Road No. 608 to the East boundary line of the tract of land herein described reserved for the use of Alfred J. Stout and Grace A. Stout, his wife, the grantors, and Wm. H. Black, the grantee, their heirs, and assigns, as a roadway only, and

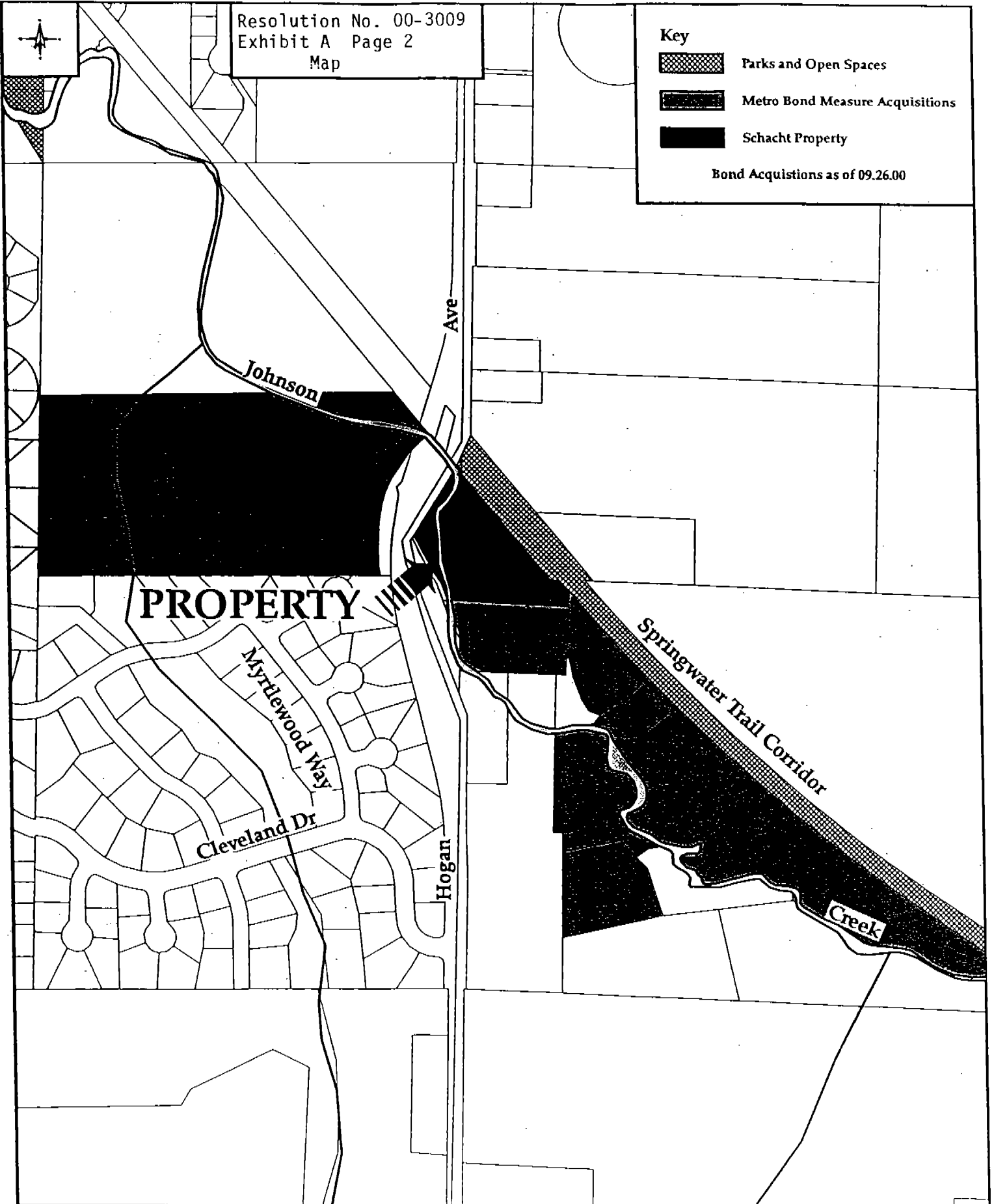
EXCEPTING THEREFROM the south 2 acres thereof.

AND FURTHER EXCEPTING THEREFROM that portion contained in Deed to Multnomah County for road purposes recorded May 14, 1991 in Book 2413, Page 603, Multnomah County Deed Records.

Key

-  Parks and Open Spaces
-  Metro Bond Measure Acquisitions
-  Schacht Property

Bond Acquisitions as of 09.26.00



STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR
97204

RENTAL AGREEMENT (Dwelling Unit - Residence Oregon)

THIS AGREEMENT, entered into in duplicate on _____, 2000, by and between
Metro, a municipal corporation, lessor,
and RICHARD D. SCHACHT AND SUE SCHACHT, lessee;

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

located at 2415 SE Ambleside Drive, Gresham, OR 97080

on a month to month tenancy beginning _____ (Indicate which)
 for five (5) one-year terms (see Addendum attached) beginning

at a rental of \$ 1,150.00 per month, payable monthly in advance on the 1st day of each and every month. Rents are payable
at the following address: Metro Parks Dept., 600 NE Grand Ave, Portland, OR 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): \$ 50.00, as a flat amount;
 \$ _____, 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 pay-
ment is late.* Any dishonored check shall be treated as unpaid rent and be subject to the same late charge, plus a \$ 25.00 special handling fee and must be made good by
cash, money order or certified check within 24 hours of notification.

It is further mutually agreed between the parties as follows:

1. The premises shall be occupied by no more than 2 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 with-
out 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 condi-
tion 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 \$ n/a

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 ade-
quately 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:

	Lessee	Lessor	Lessee	Lessor
Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Garbage Service***	<input type="checkbox"/>
Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Oil</u>	<input type="checkbox"/>

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 immedi-
ately upon receipt of such notice. Lessee shall not remove or tamper with any such prop-
erly functioning device or remove working batteries from the same.

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 will-
ful act of lessee or lessee's invitees or guests, in or upon any part of the demised prem-
ises, 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 nec-
essary disbursements. On appeal, if any, similar reasonable attorney fees, costs and dis-
bursements 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 prem-
ises 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 mainte-
nance 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

x Richard D. Schacht x Sue Schacht
Lessor

17. Upon termination of this Rental Agreement or the surrender or abandonment of
the premises, and it reasonably appearing to lessor that lessee has left property upon the
premises with no intention of asserting further claim to such property or the premises, or
if lessee has been continuously absent for 7 days after termination of the tenancy by an
unexecuted court order, or if lessor elects to remove such property, lessor may give
lessee notice in accordance with ORS 90.425 that the property is considered abandoned
and unless the property is removed from the premises or place of safekeeping by a date
specified in the notice, the property will be sold or otherwise disposed of and the pro-
ceeds of sale, if any, applied as provided by law.

18. The owner (or
agent for service) is Metro
Address 600 NE Grand Avenue
Portland, OR 97232 Phone 503/797-1554

The manager is Laurie Wulf
Address (Same as above)

Phone _____

19. A notice of nonpayment of rent or 24-hour termination is deemed served on the
day it is both mailed by first class mail to lessee at the premises and also attached secure-
ly to the main entrance of that portion of the premises of which lessee has possession
and/or has leased hereby.

20. A notice from lessee to lessor is deemed served on the day it is both mailed by
first class mail to the above owner/agent (see 18) and also attached securely to the
following location Metro Building
Open Spaces Division Door

21. Any holding over by lessee after the expiration of this agreement or any exten-
sion thereof, shall be as a tenancy at sufferance.

22. If this is a month-to-month tenancy only, then, except as otherwise provided by
statute, this agreement may be terminated by either party giving the other at any time not
less than 30 days' notice in writing prior to the date designated in the tenancy termina-
tion notice, whereupon the tenancy shall terminate on the date designated.

23. Lessor acknowledges receipt of \$ n/a as a prepaid rent deposit to be
dealt with in accordance with ORS 90.300.

24. Lessor acknowledges receipt of \$ 1,150. as a security deposit, of which
lessor may claim all or part thereof reasonably necessary to remedy lessee's defaults in
the performance of this agreement and to repair damage to the premises caused by lessee,
not including ordinary wear and tear. To claim all or part of this deposit, lessor shall give
lessee, within thirty (30) days after termination of the tenancy and delivery of possession
of the premises to lessor, a written accounting which states specifically the basis or bases
of the claim, and the portion not so claimed shall be returned to lessee within thirty days.
Lessor may recover damages in excess of the security deposit to which lessor may be
entitled. Lessor also acknowledges receipt of the sum of \$ _____ to insure the
return of _____ keys to the dwelling unit. This sum shall be refunded upon return
of all such keys.

25. Pets are allowed not allowed (indicate which). If allowed, "pets" consist
of _____
Lessee will be held responsible for all damage caused by pets and pay an additional non-
refundable fee of \$ _____ prior to bringing a pet onto the leased premises.

26. Failure by the lessor at any time to require performance by the lessee of any pro-
vision hereof shall in no way affect lessor's right hereunder to enforce the same, nor shall
any waiver by the lessor of any breach of any provision hereof be held to be a waiver of
any succeeding breach of any provision, or as a waiver of the provision itself.

27. The following personal property is included and to be left upon the premises
when tenancy is terminated: _____

28. If the premises were constructed prior to 1978, Lessor's Lead-Based Paint
Disclosure (S-N Form No. 504) is attached.

29. Additional provisions: lessee/owner will keep minnow
basin sink in down stairs bath, refrigerator
washer + dryer and outdoor preps

Addendum

Term.

This Rental Agreement shall be for a period of five (5) one-year terms. The initial one-year term shall be renewable at the option of the Lessee for additional, successive one year terms, for a total of five (5) one-year terms. 30 days written notice of renewal shall be provided at the location set forth in section 18 herein.

Rental Rate.

The rental rate for the first one-year term shall be \$1,150.00 per month. Thereafter, the monthly rental rate for the second and third one-year terms shall be adjusted upon renewal in an amount equal to any increase in the Consumer Price Index – seasonally adjusted. The Rental Rate for the fourth one-year term shall be adjusted based on a reappraisal of the market rental rate for the Leased Premises. The cost of said reappraisal shall be borne by Metro.

Staff Report

CONSIDERATION OF RESOLUTION NO. 00-3009 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY ON AMBLESIDE DRIVE IN THE EAST BUTTES AND BORING LAVA DOMES TARGET AREA

Date: November 9, 2000

Presented by:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 00-3009 requests authorization for the Executive Officer to purchase property on Ambleside Drive in the East Buttes and Boring Lava Domes target area, and to execute a residential lease between Metro as the Lessor, and Richard and Sue Schacht as the Lessee, for a period of five one-year terms ("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. Metro Council Resolution 97-2483 authorized the Metro Executive Officer to execute future leases of Metro real property when such leases:

- a) relate to the acquisition of an Open Spaces parcel;
- b) contain a term of no more than one year; and, for any agricultural leases, may contain the option for renewal at the discretion of the Metro Executive Officer; and
- c) provide for lease payments of not more than \$2,000 per month.

The proposed Lease is for a period of five one-year terms, renewable at the option of the Lessees, and therefore must be approved by the Metro Council.

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 Ambleside Drive in Gresham. 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. Purchases that do not meet these criteria or have "unusual circumstances" (as that term is defined in the Work Plan) require specific Council approval. This resolution proposes to authorize the purchase of the Ambleside Drive property subject to the five one-year leaseback terms with the Seller in accordance with the terms of the Purchase and Sale Agreement executed by Metro and the landowner, and subject to approval by the Metro Council.

Background and Analysis

Metro executed a purchase and sale agreement on August 13, 2000, to acquire approximately 2.4 acres in the Ambleside area of Gresham, including an existing single-family residence, from Richard and Sue Schacht. The Property is a Tier 1a acquisition under the East Buttes and Boring Lava Domes Target Area Refinement Plan adopted via Resolution No. 96-2361, and is scheduled to close on or before November 30, 2000, so long as remaining contingencies are

met. The purchase and sale agreement is conditioned upon Metro's agreement to lease the Property to Mr. and Mrs. Schacht at closing, for a period of five one-year terms.

Mr. and Mrs. Schacht currently use the house as their primary residence and photography business, but are in the process of moving most of the photography business to another location. They will continue to live in the house and use some of the property for commercial photo shoots. Metro has had a professional inspection of the house and its condition is very good. The proposed Lease has provisions for yearly rate adjustments, in order to ensure that Metro receives the market rental rate. Metro has acquired three properties totaling 16 acres at Ambleside, an area traversed by Johnson Creek and bordered by the Springwater Corridor Trail and Hogan Road. Metro currently leases out three other houses at Ambleside and is receiving an Oregon Watershed Enhancement Board grant to remove water control structures in Johnson Creek at Ambleside, in an effort to improve fish passage.

Metro staff have requested approval of lease-backs to sellers in the past, recognizing that a degree of flexibility is needed in order to complete a real estate acquisition from a willing seller. In addition, the landbanking strategy in the Ambleside area has a particularly long-term focus due to the necessity to assemble several small parcels of land for effective habitat preservation and floodplain management. Therefore, the lease-back will not impede or be inconsistent with Metro's land management strategies in the near term.

In order to close the acquisition of the Property from Mr. and Mrs. Schacht, subject to a lease with five one-year terms, it is necessary for the Metro Council to authorize the Executive Officer to execute the Lease. The Open Spaces Acquisition Committee met in early November 2000, and recommended approval of this resolution by the Metro Council.

Findings

Authorizing the Executive Officer to acquire the Property for Metro, subject to an executed lease with Richard and Sue Schacht for a period of five one-year terms is recommended based on the following:

- The goal of the East Buttes and Boring Lava Domes Target Area Refinement Plan includes a goal of protecting biological linkages to other habitat areas outside the target area. Ambleside is a linkage point to Metro's Butler Ridge assemblage of properties, the City of Portland's Springwater Corridor trail, and other Johnson Creek natural areas.
- The Open Spaces, Parks and Streams bond measure cites the "Hogan Cedars - Acquisition along Johnson Creek near Telford Road/Springwater" as an acquisition target for the Multnomah County local share funds. Those funds are administered by Metro.
- The lease is an acceptable encumbrance upon the Property because the Property will be rented at market rental rates with annual adjustments, and saves Metro the management costs of vacancy and re-leasing. Since Metro has other rental homes at Ambleside, this Lease should not cause undue strain on Metro's property management staff. Mr. and Mrs. Schacht have proven to be good stewards of the land and residence.
- The lease will not prevent or impair Metro's riparian land management and restoration activities, and by accepting the lease as a condition of the sale, Metro facilitates the acquisition of this Tier 1a property.

Budget Impact

The Lease will provide Metro with \$13,800 in income for the first year, and will be adjusted to an index until reappraised in the fourth year of the lease. Metro's management and landbanking costs will be less as a result of leasing out a portion of the Property.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 00-3009.