

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE	)	RESOLUTION NO. 97-2483
OFFICER TO EXECUTE CURRENT AND FUTURE	)	Introduced by Mike Burton
LEASES RELATED TO METRO'S OPEN SPACES	)	Executive Officer
PROPERTY ACQUISITIONS.	)	

WHEREAS, the Open Spaces Acquisition Division has a stated goal of acquiring up to 6,000 acres of property throughout the region; and

WHEREAS, several parcels will offer opportunities to enter into interim leases pending the outcome of future master planning activities; and

WHEREAS, residential leases will be short term (month-to-month or less than one-year term) and will usually involve monthly lease payments within the range of \$300 to \$2,000; and

WHEREAS, to date, Metro staff has secured a residential lease during the course of closing the Thomas property, an Open Space acquisition in the Forest Park Target Area; and

WHEREAS, agricultural leases, annually renewed with long-term tenant farmers, were in place in numerous properties acquired through the Open Spaces Acquisition Division, and

WHEREAS, Resolution 96-2352 authorizes the Metro Executive Officer to execute leases of Metro real property when such leases a) relate to an acquisition of an Open Spaces parcel, b) contain a term of less than one year, and c) provide for lease payments of not more than \$1,000 per month; and

WHEREAS, fair market value of residential leases has often been found to exceed \$1000 per month; and

WHEREAS, agricultural leases may require a multi-year planting strategy to rotate crops according to best management practices and/or to reap the highest financial return, and

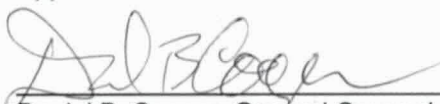
WHEREAS, Metro code, at Section 2.04.033, requires Metro Council approval of the lease of real property owned by Metro; now, therefore

BE IT RESOLVED,

1. That the Metro Council ratifies the previous execution of the lease attached as Exhibit A and authorizes the extension of that lease for an additional 3 months.
2. That the Metro Council authorizes 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 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.

ADOPTED by the Metro Council this 17<sup>th</sup> day of April, 1997.

Approved as to Form:

  
 Daniel B. Cooper, General Counsel

  
 Jon Kvistad, Presiding Officer

FORM No. 616 ©1996 NS  
STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR 97204

RENTAL AGREEMENT (Dwelling Unit - Residence Oregon)

THIS AGREEMENT, entered into in duplicate this 16th day of December, 1996, by and between METRO, A Municipal Corporation, lessor, and LINDA THOMAS, 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 does hereby demise and let unto the lessee and lessee hires from lessor for use as a residence those certain premises described as single family home located at 7729 NW THOMPSON ROAD, PORTLAND, OR 97229

on a month to month tenancy beginning \_\_\_\_\_, 19\_\_\_\_ (Indicate which)  
 for a term of 3 months commencing January 10, 1997, and ending April 10, 1997  
at a rental of \$ 1,300.00 per month, payable monthly in advance on the 10th day of each and every month. Rents are payable at the following address: 600 NE GRAND AVE, PORTLAND OR 97232; Attn: ACCOUNTING DEPT

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):  \$ \_\_\_\_\_, 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 payment is late.\* Any dishonored check shall be treated as unpaid rent and be subject to the same late charge, plus a \$ 20.00 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:
- The premises shall be occupied by no more than 4 occupants.
  - Lessee shall not violate any city or county ordinance or state or federal law in or about the premises.
  - Lessee shall not sub-let the demised premises, or any part thereof, or assign this lease without the lessor's written consent.
  - 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.
  - 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 \$ -0-
  - 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.\*\*
  - There shall be working locks on all outside doors; lessor shall provide lessee with keys for same.

- Lessee  Lessor (Indicate which) shall properly cultivate, care for and adequately water the lawn, shrubbery and grounds.
- Lessor shall supply electric wiring, plumbing facilities which produce hot and cold running, safe drinking water and adequate heating facilities.
- 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"/>		<input checked="" type="checkbox"/>

- Lessor shall provide lessee with a working smoke detector, including working batteries, at the time tenancy commences. Lessee shall test any detector so provided at least once every six months, replace batteries as needed, notify lessor in writing of any operating deficiencies, and shall not remove or tamper with any properly functioning detector or remove working batteries from the same.
- 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.
- Nothing herein shall be construed as waiving any of the rights provided by law of either party hereto.
- 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.
- The lessor, after 24 hours' written notice specifying the causes, may immediately terminate this agreement and take possession in the manner provided in 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.
- Lessee shall not allow any undrivable 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 the lease agreement; 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 tenants pursuant to ORS 90.

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

METRO BY: [Signature] Lessor  
LINDA THOMAS BY: [Signature] 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.)

- 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 pursuant to ORS 90.425, lessor may give lessee not less than 15 days' written notice by personal delivery or first class mail indorsed "Please Forward", to the premises, any post-office box held by lessee and known to lessor, and the most recent forwarding address of lessee provided to lessor, 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 proceeds of sale, if any, applied as provided by law.
- The owner (or agent for service) is Metro  
Address 600 NE Grand Ave  
Portland OR 97232 Phone 797-1916  
The manager is Pam Novitsky (cell phone 799-3819)  
Address same as above  
Phone \_\_\_\_\_

- 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 securely to the main entrance of that portion of the premises of which lessee has possession and/or has leased hereby.
- Any holding over by lessee after the expiration of this agreement or any extension thereof, shall be as a tenancy at sufferance.
- 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 termination notice, whereupon the tenancy shall terminate on the date designated.
- Lessor acknowledges receipt of \$ 1,300.00 as a prepaid rent deposit to be dealt with in accordance with ORS 90.300.
- Lessor acknowledges receipt of \$ 2,600.00 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 \$ -0- to insure the return of all keys to the dwelling unit. This sum shall be refunded upon the return of all such keys.
- Pets are  allowed  not allowed (indicate which). If allowed, "pets" consist of dogs already on premises. Lessee will be held responsible for all damage caused by pets and pay an additional non-refundable fee of \$ -0- prior to bringing a pet onto the leased premises.
- Failure by the lessor at any time to require performance by the lessee of any provision 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.
- The following personal property is included and to be left upon the premises when tenancy is terminated: none

- If premises constructed prior to 1978, Lead-Based Paint Disclosure (S-N Form No. 504, or equivalent) is attached.
- Additional provisions: Agreement of Purchase & Sale & 12/16/96 Amendment incorporated into this lease.  
\* Charge no more than permitted by ORS 90.260.  
\*\* Thereafter, comply with ORS 90.335.  
\*\*\* See ORS 90.320.

**SECOND AMENDMENT TO  
AGREEMENT OF PURCHASE AND SALE**

THIS AMENDMENT (the "Amendment") is entered into this 16 day of December, 1996, by and between Blaine A. and Linda M. Thomas ("Seller") and Metro, a municipal corporation and political subdivision of the State of Oregon, ("Metro").

**RECITALS**

WHEREAS, Blaine A. and Linda M. Thomas and Metro entered into an agreement of Purchase and Sale dated September 17, 1996 as amended October 17, 1996, (the "Agreement"), wherein Blaine A. and Linda M. Thomas agreed to sell, and Metro agreed to purchase certain property commonly known as 7729 NW Thompson Road, Multnomah County, Oregon, ("the Property");

WHEREAS, Linda Thomas and her three children or any of them, (hereafter called "Thomas") desire to retain possession of the residence beyond the Closing Date, December 16, 1996;

WHEREAS, Metro is willing to delay taking possession of the premises until January 9, 1997

AND WHEREAS, both parties wish to continue to complete their obligations under the Agreement and provide for said possession delay;

NOW THEREFORE, in consideration of the mutual agreements herein, Seller and Metro hereby agree to amend the Agreement as follows:

1. Possession until January 9, 1997 Paragraph 5 (a) vii of the Agreement shall be amended as follows: Thomas may retain possession of the residence on the property for a period from the Closing Date through January 9, 1997 ("Possession Period");
  - a) Possession Charge Thomas agrees to pay into escrow, in advance at closing, a possession charge of \$20 per day for 24 days, for a total of \$480.
  - b) Security Deposit for possession until January 9, 1997 Thomas agrees to pay into escrow, in advance at Closing, a Security Deposit in the amount of \$2,600. Said security deposit will earn no interest. The security deposit may be applied to any unpaid fees, rent, repairs necessitated by Thomas' possession, etc. after Thomas vacates the premises. If Thomas remains on the property the security deposit will become part of the security deposit for the Lease as set forth below. If Thomas vacates by January 9, 1997 and no unpaid fees or repairs are due, the \$3,900 will be returned to Thomas within 30 days.
2. Presence on Property after January 9, 1997/Conversion to Leasehold If Thomas remains on the premises after January 9, 1997, such holder shall convert into a leasehold and shall be governed by the executed lease attached hereto as Exhibit A



("Lease"). The Lease shall become effective immediate on January 10, 1997, and shall be for a term of ~~(4)~~ months, terminating on ~~May 10~~, 1997.

- a) Lease Rate As set forth in the Lease, the rental rate shall be \$1,300 per month.
- b) Security Deposit for Lease As set forth more specifically in the lease, at closing, Thomas shall deposit three (3) months rent into escrow for a total of \$3,900. The \$2,600 security deposit for the Possession Period shall also serve as part of the Lease security deposit. If Thomas remains on the premises after January 9, 1997, then \$1,300 of the deposit shall be released to Metro automatically, with no further direction required by Thomas, as the first month's rent. The other \$2,600 shall be retained as a security deposit. At the end of the lease terms the security deposit shall be refunded as provided by law.
3. Inspection At a mutually agreeable time at least 5 days prior to closing, Metro may inspect the premises for the purposes of determining the condition and working order of mechanical and plumbing systems, and general condition of the premises.
4. Utilities Thomas shall pay for all electricity, water, and telephone service. Metro shall pay for trash collection and all other services.
5. Indemnification Thomas agrees to indemnify, defend and hold Metro harmless from all losses, damages, liabilities and expenses which may arise or be claimed against Metro or its agents, employees, or contractors arising from the use of or occupancy of said residence by Thomas, or consequent upon or arising from any acts, omissions, neglect, or fault of Thomas, their agent, employees, licensees or invitees.
6. Keys It is understood that, at the Closing, Thomas will give Metro a working set of keys to the property. Thomas agrees not to change or tamper with the locks. Failure to turn over the keys to Metro at the expiration of the Possession Period, or the lease period if Thomas remains in possession, will result in a charge of \$50.00 against the security deposit.
7. Personal Property/ Risk of Loss Thomas agrees that the risk of loss/theft/destruction of all personal property placed in or about said premises shall be solely borne by Thomas. Metro shall not be liable for injury or destruction of the same from any cause whatsoever.
8. Abandonment Thomas agrees that if Thomas vacates the premises prior to January 9, 1997, and the Lease does not become effective, Metro has the right to remove all personal belongings left in the residence or on the property after January 9, 1997. Thomas further understands that perishable items of no marketable value will be disposed of immediately. Items of marketable value will be held and disposed of as provided by law.
9. Use of the Premises Thomas may occupy the residence for residential purposes only and no commercial use of any kind, with the exception of the current dog breeding operation use, will be allowed. The total number of persons to reside in the residence will not exceed four. Thomas will maintain the residence in a clean and sanitary

EXHIBIT A  
Resolution 97-2483

condition free from any accumulation of debris, rubbish and garbage. Day care or baby-sitting services will not be allowed on the premises. Minors under the age of ten (10) are required to be under the supervision of an adult at all times as required by federal state and local law. Thomas will not store inflammable or hazardous materials on the premises.

10. Pets No animals or pets that are not already owned by Thomas as of the effective date of this Amendment will be permitted.
11. Repair Damages and Maintenance Thomas is not to tamper with equipment or make alterations of any nature on or to the premises during the Possession Period. During the Possession Period, Thomas agrees to pay for the expense of making any and all repairs to the property, including but not limited to, repairing blocked plumbing pipes, and fixtures and any resulting damage to the property caused by Thomas' negligence. Thomas is to immediately notify Metro in writing of any damage to the residence.
12. Repairs by Metro Thomas agrees that after closing Metro may perform repairs to the residence, including but not limited to roof and deck repairs, and that Thomas will cooperate with Metro's or its contractors requests for access to facilitate such repairs. If repairs are initiated by Metro as a result of the inspection performed on the property dated 9/30/96, said repairs shall be at Metro's expense.
13. Right of Access Thomas agrees that Metro and its contractors will have access to the premises at all reasonable times to facilitate repairs.
14. No-waiver Failure by Metro to exercise any of its rights under this Amendment or Metro's acceptance of rent after default shall not be considered or construed to waive any rights of Metro or affect any notice or legal proceeding therefore given or commenced.
15. Notice Any notice of termination, notices of inspection, and any other applicable notices are deemed served on the day in which they are both mailed by first class mail and attached in a secure manner to the main entrance of the premises.
16. Unenforceable Provision If at some future date a portion of this amendment should be ruled unenforceable by the courts, it only affects that portion of said Amendment, and all other provisions remain in full force.
17. Loss Recovery Metro reserves the right to recover from Thomas any loss caused by fire, vandalism, negligence, or any other acts of Thomas, their agents, or invitees. Thomas agrees to assume all liability for damages beyond ordinary wear and tear during the Possession Period and Lease Period.
18. Possession of Property by Metro At the expiration of the Possession Period, or Lease term if applicable, the Property must be in a clean condition with no animals or personal property remaining. All animal cages and surrounding areas must be cleaned and shall be removed by Thomas.

EXHIBIT A  
Resolution 97-2483

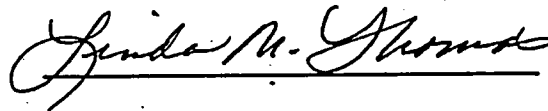
19. Ratification Seller and Metro hereby ratify and confirm this modification to the terms of the Agreement. All other terms of the Agreement shall remain in full force and effect.

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

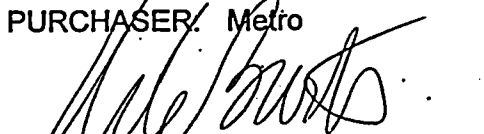
IN WITNESS WHEREOF, Seller and Metro have executed this Amendment as of the date first written above.

SELLER: Blaine A. Thomas

Linda M. Thomas



PURCHASER: Metro

  
Mike Burton, Executive Officer

**Staff Report**

**CONSIDERATION OF RESOLUTION NO. 97-2483 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE CURRENT AND FUTURE LEASES RELATED TO METRO'S OPEN SPACES PROPERTY ACQUISITIONS**

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**Date: March 26, 1997**

**Presented by:**

**Charles Ciecko**

**Jim Desmond**

**PROPOSED ACTION**

Resolution No. 97-2483 would provide Metro Council approval for an existing lease and prospective approval of certain future leases meeting stated parameters related to Open Spaces acquisitions. Future leases which fall within the parameters described below would be executed without further Metro Council review and approval.

**BACKGROUND AND ANALYSIS**

The Metro Open Spaces Acquisition Division has and will continue to acquire a large variety of property throughout the region in accordance with refinement plans approved by the Metro Council. Some of the properties include residences which may or may not be ultimately retained, depending on the outcome of future master planning activities. While the future of these residences is being determined, some are suitable for leasing and in many cases are occupied by tenants at the time of closing. In addition to residences, some of the acquired property is farmland with a potential for crop leases.

Metro staff estimates that over the course of the Open Spaces property acquisition process, Metro could have an additional 10 to 15 leases, primarily residential. The monthly rent from such residential tenancies is expected to range from \$300 to \$2,000 per month. Except for routine repair work and property taxes, expenses related to these leases should be minimal.

Currently, Open Spaces, Parks Operation and Maintenance and Property Services staff are coordinating the leasing activities. These activities include lease negotiations, preparation of lease documents, determination of fair market rental rate and property management services. All residential leases will be either month-to-month or short-term (up to one year) tenancies.

Apart from the lease payments which accrue from such tenancies, residential and crop leases provide other significant benefits. Crop leases ensure that the farmland will be continually cultivated, which corresponds with good farmland management. The residential leases provide a presence on typically remote and undeveloped property. This strategy has been previously identified as a method of reducing landbanking costs.

The Thomas property residence in the Forest Park Target Area was purchased in December of 1996, primarily for the large acreage (31.41 acres) lot on which it sits. The appraiser who performed the due diligence appraisal also did a market rent survey to determine the appropriate amount of rent for the property. Two rental schedules were established due to the amount of deferred maintenance and repair needed on the property; one amount for a new renter leasing a fixed up property, and another for the "as is" condition of the property. Since the current tenant is the former owner and no significant repairs have occurred, the "as is" monthly rent of \$1,300 is recommended to be charged. The tenant is having a new property prepared, but inclement weather has postponed the finish date, and they have asked for an extension up to three months, until July 10th, 1997.

Resolution 97-2483 provides for Metro Council approval of the existing Thomas property lease with the requested extension, and grants prospective approval of future leases which meet the following criteria:

- related to Open Spaces acquisition
- less than one year term, except for agricultural leases which may contain an option for renewal at the discretion of the Metro Executive Officer, and
- monthly lease payment of less than \$2,000.

**BUDGET IMPACT**

Rents collected as a result of existing and future leases are applied to the landbanking account within the Regional Parks and Expo Fund. Expenses associated with these tenancies would be made from this same account. Staff anticipate that repair and maintenance and property taxes will be the only major expense. The net income resulting from the lease will be available to pay other landbanking expenses related to Open Spaces acquisitions.

**Executive Officer's Recommendation**

The Executive Officer recommends adoption of Resolution 97-2483.