

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF DECLARING
CERTAIN PROPERTY SURPLUS AND
AUTHORIZING THE EXECUTION OF
A SUBLEASE

) RESOLUTION NO. 91-1389
)
) Introduced by Rena Cusma,
) Executive Officer

WHEREAS, The Metropolitan Service District has leased
the building at 2000 SW First Avenue, Portland, Oregon for
10 years; and


WHEREAS, Pursuant to ORS 271.310(3) it has been
determined that 4,729 square feet is not immediately needed for
public use; and

WHEREAS, Pursuant to ORS 271.360 a sublease has been
proposed with Moskowitz & Thomas for 1,512 square feet, attached
hereto as Exhibit A, and incorporated herein; now therefore,

BE IT RESOLVED,

1. That surplus is declared to exist at 2000 SW First
Avenue; and
2. That the Executive Officer is authorized to
execute the attached contract with Moskowitz & Thomas for
sublease of surplus property.

ADOPTED by the Council of the Metropolitan Service
District this 24th day of January, 1991.



Jim Gardner, Deputy Presiding Officer

OFFICE SUBLEASE

This Sublease made as of this FIRST day of FEBRUARY 1, 1991, between the METROPOLITAN SERVICE DISTRICT, a municipal corporation and public body of the state of Oregon, hereinafter referred to as "LESSEE," and MOSKOWITZ & THOMAS, hereinafter referred to as "SUBLESSEE."

RECITALS

1. LESSEE has leased the premises described herein from Lessor Amco-Portland, Inc., a corporation, under a separate Lease Agreement between Lessor and LESSEE, herein referred to as the "Master Lease" and attached hereto as Exhibit "A".

2. SUBLESSEE desires to sublease a portion of those premises from LESSEE.

3. The parties desire to have a Sublease Agreement defining the terms of the Sublease.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Description of Premises. SUBLESSEE subleases from LESSEE a portion of the premises demised to LESSEE by Lessor

under the Master Lease, which portion of the premises subleased hereunder is described in Exhibit "B" which is attached hereto and incorporated herein.

2. Warranty by Lessee. LESSEE warrants and represents to SUBLESSEE that the Master Lease has not been amended or modified except as expressly set forth herein. In addition, LESSEE is not now, and as of the commencement of the term of this Sublease will not be, in default or breach of any of the provisions of the Master Lease, and LESSEE has no knowledge of any claim by Lessor that LESSEE is in default or breach of any of the provisions of the Master Lease.

3. Term of Sublease. The term of this Sublease shall commence FEBRUARY 1, 1991, and end on JANUARY 31, 1992, or ONE (1) year after the commencement date, ("termination date"), unless otherwise sooner terminated in accordance with the provisions of this Sublease or incorporated provisions of the Master Lease or unless extended as described in paragraph 13. If for any reason LESSEE does not deliver possession to SUBLESSEE on the commencement date, LESSEE shall not be subject to any liability for such failure, the termination date shall not be extended by the delay, and validity of this Sublease shall not be impaired, but rent shall abate until delivery of possession. Notwithstanding the foregoing, if LESSEE has not delivered possession to SUBLESSEE by FEBRUARY 1, 1991 then at any time

thereafter and before delivery of possession, SUBLESSEE may give written notice to LESSEE of SUBLESSEE's intention to cancel this Sublease. Such notice shall set forth an effective date for such cancellation which shall be at least fifteen (15) days after delivery of said notice to LESSEE. If LESSEE delivers possession to SUBLESSEE on or before such effective date, this Sublease shall remain in full force and effect. If LESSEE fails to deliver possession to SUBLESSEE on or before such effective date, this Sublease shall be cancelled, in which case all consideration previously paid by SUBLESSEE to LESSEE on account of this Sublease shall be returned to SUBLESSEE, this Sublease shall thereafter be of no other further force and effect, and LESSEE shall have no further liability to SUBLESSEE on account of such delay or cancellation. If LESSEE permits SUBLESSEE to take possession prior to FEBRUARY 1, 1991, such early possession shall not advance the termination date and shall be subject to the provisions of this Sublease, including without limitation, the payment of rent.

4. Rent. SUBLESSEE shall pay to LESSEE as rent, without deduction, setoff, notice, or demand, at 2000 S.W. First Avenue or at such other place as LESSEE shall designate from time to time by notice to SUBLESSEE, the following sums:

- a. During the first FIVE (5) MONTHS of the term, February 1, 1991 through June 30, 1991 the sum of \$1,322.71 per month in advance on the first day of each month of the term.

- b. Sub-paragraph 4a is based upon a rate of \$10.50 per square foot per year on 1512 square feet of subleased space.
- c. During the last SEVEN (7) MONTHS of the term, July 1, 1991 through January 31, 1992 the sum of \$1,524.60 per month in advance on the first day of each month of the term.
- d. Sub-paragraph 4c is based upon a rate of \$12.10 per square foot per year on 1512 square feet of subleased space.
- e. Subleased floor space in sub-paragraphs 4b and 4c includes a 10% load factor for use of common space which provides use of lobbies, elevators, rest rooms and other common areas and facilities.
- f. SUBLESSEE shall pay to LESSEE upon execution of this Sublease the sum of \$1,322.71 as rent for the first month of the term and \$1,524.60 for the last month of the term. If the term begins or ends on a day other than the first or last day of the month, the rent for the partial month shall be prorated on a daily basis. If Sublessee fails to pay rent or other charges when due under this Sublease, or fails to perform any of its obligations hereunder, Lessee may use or apply all or any portion of the last month rent for the payment of any rent or other amount when due hereunder and unpaid, for the payment of any other sum for which Lessee may become obligated by reason of Sublessee's default or breach, or for any loss or damage sustained by Lessee as a result of Sublessee's default or breach. If Lessee so uses any portion of the last month rent, Sublessee shall, within ten (10) days after written demand by Lessee, restore the last month rent to the full amount originally deposited, and Sublessee's failure to do so shall constitute a default under this Sublease. Lessee shall not be required to keep the last month rent separate from its general accounts, and shall have no obligation or liability for payment of interest on the last month rent. In the event Lessee assigns its interest in this Sublease, Lessee shall deliver to its assignee so much of the last month rent as is then held by Lessee.

- g. SUBLESSEE shall have the right to sublease up to five (5) parking spaces. The rate for each space shall be \$70.00 per month. The rate for each space shall be \$70.00 per month the first year. The rate shall not increase more than 10 (ten) percent each year thereafter. SUBLESSEE shall be obligated to sublease 4 (four) parking spaces. Rent for each space subleased shall be due and payable on the first day of the month. SUBLESSEE may terminate one (1) parking space sublease by giving LESSEE written notice thirty (30) days in advance of SUBLESSEE's to terminate. Neither failure by sublessee to sublease the fifth space at any time nor a termination by SUBLESSEE of the subleased space shall prevent SUBLESSEE thereafter from subleasing the fifth space as provided herein.

5. Operating Costs. It is understood that LESSEE is responsible under the Master Lease to pay all operating costs of the premises and that the monthly rent for the first year of the term of this Sublease includes payments by SUBLESSEE of its share of operating costs.

6. Extraordinary Operating Costs. The parties recognize that, by virtue of extraordinary use of the subleased premises by SUBLESSEE, SUBLESSEE's actual share of LESSEE's operating costs under the Master Lease could exceed 3.55 percent. Therefore, the parties agree that the above percentage is based only upon use of the premises during ordinary business hours under ordinary office use conditions and employing ordinary office equipment and occasional use during extraordinary business

hours. SUBLESSEE agrees not to incur higher operating costs due to extraordinary use of the premises and to pay as additional rent any such expenses incurred within forty-five (45) days of demand by LESSEE.

7. Use of Premises. The premises shall be used and occupied only for office purposes as allowed under the Master Lease and for no other use or purpose. No heating or air conditioning services will be available from 7:00 p.m. to 7:00 a.m. or on weekends. Elevator service will be available at all times.

8. Assignment and Subletting. SUBLESSEE shall not assign this Sublease or further sublet all or any part of the premises without the prior written consent of both LESSEE and the Lessor under the Master Lease. LESSEE agrees not to unduly withhold consent which allows SUBLESSEE to sublet a portion of the premises.

9. Applicable Provisions of Master Lease. All applicable terms and conditions of the Master Lease are incorporated into and made a part of this Sublease as if LESSEE was the Lessor thereunder, SUBLESSEE the LESSEE thereunder, and the premises the master premises, except that the following sections of the Master Lease are expressly not applicable:

Section 2 (Renewal Term), Section 4 (Utilities and Government Impositions), Section 8.6 and 8.7, Section 10 (Insurance and Indemnification), Section 11.1 and 11.4, Sections 22.3, Section 36 (Net Lease), Section 37 (Appraisal), Section 21 (Right of First Offer), Section 38 (Fix Up Period and Fix Up Work), and Section 39 (Early Termination).

SUBLESSEE assumes and agrees to perform the LESSEE's obligations under the Master Lease during the term to the extent that such obligations are applicable to the premises, except that the obligation to pay rent to Lessor under the Master Lease shall be considered performed by SUBLESSEE to the extent and in the amount rent is paid to LESSEE in accordance with Section 4 of this Sublease. SUBLESSEE shall not commit or suffer any act or omission that will violate any of the provisions of the Master Lease. LESSEE shall exercise due diligence in attempting to cause Lessor to perform its obligations under the Master Lease for the benefit of SUBLESSEE. LESSEE shall perform the obligations assigned to LESSEE by Sections 4, 6, 8, and 11.1 of the Master Lease. LESSEE shall perform repair and maintenance items applicable to the subleased premises and common areas as described in Schedule 1 to Exhibit "B" to the Master Lease. If the Master Lease terminates, this Sublease shall terminate and the parties shall be relieved of any further liability or obligation under this Sublease, provided however, that if the Master Lease terminates as a result of a default or breach by

LESSEE or SUBLESSEE under the Sublease and/or the Master Lease, then the defaulting party shall be liable to the non-defaulting party for all damage suffered as a result of such termination. Notwithstanding the foregoing, if LESSEE exercises any right to terminate the Master Lease in the event of the partial or total damage, destruction or condemnation of the Master premises or the building of which the Master premises are a part, the exercise of such right by LESSEE shall not constitute a default or breach hereunder.

10. Signage. Subject to consent by Lessor under the terms of the Master Lease, LESSEE shall provide SUBLESSEE's name and/or logo on standard exterior building signage in accordance with design review requirements. In addition, SUBLESSEE shall be entitled to interior signage provided by LESSEE. SUBLESSEE shall have no entitlement to exterior wall signage or to signs in any exterior window.

11. Attorney's Fees. In the event of any suit or action by either party to enforce any provision of this Sublease, or in any other suit or action arising out of or in connection with this Sublease, the prevailing party shall be entitled to recover its costs of suit or action and reasonable attorney's fees whether at trial or on appeal.

12. Insurance. SUBLESSEE must provide to LESSEE proof of and maintain insurance coverage for bodily injury and property damage liability for a combined single limit of five hundred thousand (\$500,000.000) dollars. SUBLESSEE shall have LESSEE named as an additional insured on any liability insurance coverage SUBLESSEE carries for activities conducted on the premises. This insurance shall be exhausted first as primary insurance, notwithstanding that LESSEE may have other valid and collectible insurance covering the same risk.

13. Lease Extensions. Monthly extensions to this SUBLEASE may be negotiated between LESSEE and SUBLESSEE prior to the January 31, 1992 lease termination date, on mutual agreement of both parties. A reasonable rent to be negotiated with LESSEE, which shall not be less than the rent stated in paragraph 4. SUBLESSEE shall give notice of its intent to extend 90 days prior to the termination of this Sublease, and negotiations on the rent shall begin promptly thereafter. If no agreement on a reasonable rental is reached by sixty (60) days prior to the termination of this Sublease, the parties shall jointly agree on a realtor to make a binding determination of the fair rental value, which determination shall be made not later than thirty-one (31) days before the Sublease expires. If SUBLESSEE has not executed an extension of the Sublease at the new rent thirty (30) days after determination by the appraiser or realtor the lease extension option shall expire.

14. Indemnification. Throughout the term of this Sublease, SUBLESSEE and LESSEE will indemnify and hold harmless each other from loss, liability and damage for personal injury and property damage, or either, resulting from SUBLESSEE's or LESSEE's acts or failure to act or SUBLESSEE's OR LESSEE's use of the premises.

15. Grace Period. Except for the ten day (10) grace period for payment of rent and charges in paragraph 4, if SUBLESSEE fails to perform any other obligations hereunder LESSEE shall provide written notice specifying the nature of the alleged default to SUBLESSEE thirty (30) days thereafter to cure or if the nature of the default is such that it cannot be completely cured within the thirty (30) day period and proceed diligently to complete the cure as soon as possible before LESSEE may declare a default. After giving thirty (30) day notice to SUBLESSEE, which may run concurrently with the notice of default, LESSEE may use or apply any portion of the last month's rent to cure such default following the procedures described in paragraph 4.

16. Condemnation. SUBLESSEE and LESSEE agree that if a reduction in rent results from condemnation as described in Section 14 of the Master Lease which affects SUBLESSEE's premises, then LESSEE shall reduce SUBLESSEE'S rent proportionate to the reduction in square footage of SUBLESSEE space.

17. Consent by Lessor. This Sublease shall be of no force or effect unless consented to by Lessor by Lessor's Consent to Sublease which is attached hereto and incorporated herein.

SUBLESSEE

Date: _____

By: _____

Title: _____

LESSEE

Date: _____

By: _____

Title: _____

A: \SUBLEASE

EXHIBIT B

The Subleased space is described as follows:

Fifteen hundred and twelve square feet located on the Southwest side of the fourth floor of Metro Center, 2000 SW First Avenue, Portland, Oregon.

A:\SUBLEASEA:\SUBLEASE

FINANCE COMMITTEE REPORT

RESOLUTION NO. 91-1389, DECLARING CERTAIN PROPERTY SURPLUS
AND AUTHORIZING THE EXECUTION OF A SUBLEASE

Date: January 18, 1991 Presented by: Councilor McFarland

COMMITTEE RECOMMENDATION: The Committee at its January 17, 1991 meeting voted unanimously to recommend Council adoption of Resolution No. 91-1389. All Committee members were present and voting.

COMMITTEE DISCUSSION/ISSUES: Jennifer Sims, Financial Services Manager, presented the Staff Report. Ms. Sims indicated that the proposed lease with the law firm of Moskowitz and Thomas for office space is a short term lease designed to coincide with potential relocation of Metro's offices. The terms of the lease are consistent with the current Thomas/Klein lease and provide for increased costs for parking and Metro base lease costs. In response to a question, Ms. Sims said the lease covers Metro's base lease and operating costs.

STAFF REPORT

CONSIDERATION OF A SUBLEASE WITH MOSKOWITZ & THOMAS FOR SPACE AT 2000 SW FIRST AVENUE, PORTLAND, OREGON

January 24, 1990

Presented by: Jennifer Sims

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this staff report is to present to the Council a proposed sublease for approval. The proposed Sublessee is Moskowitz & Thomas. Highlights of the sublease are as follows:

1. \$10.50 per square foot lease cost from February 1, 1991 to June 30, 1991 and \$12.10 per square foot lease cost from July 1, 1991 to January 31, 1992
2. no lease hold improvements
3. 1,512 square feet (including load factor) of office space located on the southwest corner on the fourth floor at Metro Center
4. occupancy - February 1, 1991 through January 31, 1992
5. up to five allocated parking spaces at a rate of \$70 per month

Thomas/Klein Law Offices, previously held a sublease for this office space on the southwest side of the fourth floor. The Thomas/Klein sublease is terminating January 15, 1991. Chris Thomas, one of the principals of the partnership, will continue the Thomas/Klein sublease through the end of January, 1991 and begin the new sublease with a new partner on February 1, 1991.

The proposed sublease is short-term to coincide with the potential relocation of Metro's offices.

THE EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of the sublease agreement with Moskowitz & Thomas.