

RIGHT OF FIRST REFUSAL

Owner: Duane Grieb

Grantee: Maniscalco Properties, LLC

After Recording return to:

pt c/c Michael L. Spencer

DATE: May 15, 2006 ("Effective Date")

PARTIES: Duane Grieb ("Owner")
Maniscalco Properties, LLC ("Grantee")

RECITALS

- A. Owner is the owner of a certain parcel of real property located in Klamath County, Oregon, as described in Exhibit A attached to and made a part of this Agreement (the "Property").
- B. Grantee is interested in acquiring the Property from Owner, but Owner is unwilling to sell it at the present time.
- C. Owner is willing to grant to Grantee the right to purchase the Property before offering the Property for sale to third parties. Owner and Grantee desire to evidence their agreement regarding this purchase right.

AGREEMENT

Therefore, in consideration of Grantee's purchase of other property of Owner and other good and valuable consideration to Owner, the receipt and sufficiency of which is here acknowledged, Owner and Grantee agree as follows:

1. **Right of First Refusal.** Owner agrees not to sell, transfer, exchange, grant an option to purchase, lease, or otherwise dispose of the Property or any part of, or interest in, the Property without first offering the Property to Grantee on the terms and conditions set forth in this Agreement. As used in this Agreement, the term sell includes a ground lease of the Property with primary and renewal terms of more than 15 years in the aggregate.

B. When Grantee receives the Notice and a copy of the Offer, Grantee shall have the prior and preferential right to purchase the Property (or the part of or interest in the Property covered by the Offer, as the case may be) at the same price and on the same terms and conditions as are contained

in the Offer, except that if Grantee exercises the right of first refusal by electing to purchase the Property then (1) the closing of the transaction contemplated by the Offer shall take place no earlier than 90 days after the date that Grantee elects to exercise the right of first refusal, and (2) Grantee shall receive a credit against the sale price of the Property in an amount equal to any brokerage commission that Owner may save by selling the Property to Grantee rather than the Third-Party Offeror.

C. Grantee shall have 15 days from the date Grantee receives the Notice and a copy of the Offer to notify Owner whether Grantee elects to purchase the Property pursuant to the terms of the Offer. If Grantee elects to exercise its right to purchase the Property, then, in addition to giving Owner written notice of its election within the 15-day period, Grantee also shall tender an amount equal to the earnest money deposit, if any, specified in the Offer, which will be held and used in accordance with the terms of the Offer.

D. If Grantee fails to timely exercise its right to purchase the Property pursuant to the terms of this Agreement, then Owner shall be entitled to sell the Property according to the terms of the Offer to the Third-Party Offeror, subject to the terms of paragraph 1.E. below.

E. If Grantee fails to timely exercise its right to purchase the Property pursuant to the terms of this Agreement, and for any reason Owner shall not sell or convey the Property to the Third-Party Offeror on the terms contained in the Offer within six months of Grantee's election not to purchase, then Owner must resubmit the Offer as well as any other offer to Grantee before selling the Property, and such offers shall be subject to Grantee's right of first refusal under this Agreement.

2. Term. The term of this Right of First Refusal commences as of the date of this Agreement and terminates on the earlier to occur of (1) the expiration of 5 years after the Effective Date, or (2) the consummation of a sale of the Property to a third party within 60 days] after Grantee has elected not to exercise its right of first refusal. Grantee shall cooperate in providing Owner with any instruments that Owner reasonably may require for the purpose of removing from the public record any cloud on title to the Property attributable in any manner to the grant or existence of this right of first refusal, pursuant to paragraph 8.

3. Excluded Transfers. The right of first refusal created by this Agreement shall not apply to any sale or conveyance of the Property by Owner to any partnership, limited partnership, joint venture, corporation, or other entity in which Owner owns and controls at least a *% ownership interest.

4. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given and received two days after deposit in the United States Mail, certified or registered form, postage prepaid, return receipt requested, addressed as follows:

To Owner: 6016 O'Connor Rd, Klamath Falls, OR 97603
To Grantee: 419 Main St., Klamath Falls, OR 97601

Notice given in any other manner shall be effective when it is received by the party for whom it is intended. Either party may change its address by giving 10 days' advance notice to the other party.

5. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Oregon.

6. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors, and assigns. Grantee may freely assign its rights under this Agreement.

7. **Headings.** The captions and headings used in this Agreement are for reference only and shall not be construed to define or limit the scope or content of this Agreement.

8. **Recording.** Upon request of Grantee, Owner agrees to join in executing a memorandum of this Agreement, to be filed for record in the Official Records of Klamath County, Oregon, to give notice to the public of the rights of Grantee under this Agreement. Grantee shall pay the cost of recording the memorandum. The memorandum shall note the date this Agreement expires and Grantee shall join in executing a termination agreement when this Agreement has expired or terminated, failing which, Owner may execute the termination agreement on behalf of Grantee.

9. **Entire Agreement.** This Agreement contains the final and entire understanding between Owner and Grantee with respect to its subject matter and is intended to be an integration of all prior negotiations and understandings. Owner and Grantee shall not be bound by any terms, conditions, statements, warranties, or representations not contained in this Agreement. No change or modification of this Agreement shall be valid unless it is in writing and is signed by both Owner and Grantee.

10. **Waiver.** A failure by Owner or Grantee to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

11. **Attorney Fees.** If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court that hears the matter.

12. **Real Estate Commission.** Owner and Grantee each agree to pay any commission or finder's fees that may be due on account of this transaction to any broker or finder employed by it and to indemnify the other against any claims for commissions or fees asserted by any broker claiming by, through, or under the indemnifying party.

13. Counterparts; Pronouns. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall be effective when one or more counterparts have been signed and delivered by Owner and Grantee. With respect to any pronouns used herein, each gender used shall include the other gender and the singular and the plural, as the context may require.

14. Time Is of the Essence. Time is of the essence regarding this Agreement.

15. Authority to Execute. Each person executing this Agreement on behalf of Owner and Grantee, respectively, warrants his or her authority to do so.

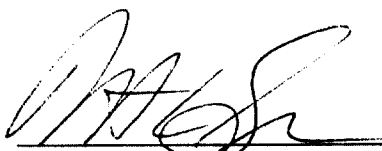
16. Statutory Disclaimer. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

17. Warranties. Owner warrants and represents to Grantee that (1) Owner owns fee title to the Property; (2) Owner has the authority to execute this Agreement, and executing it does not violate any agreement to which Owner is a party or any covenant by which the Property is bound; and (3) Owner has no knowledge of any condition affecting the Property that would materially and adversely affect the ability of Grantee to use the Property for * purposes, except as disclosed to Grantee in writing.

Executed as of the day and year first above written.

OWNER:

Duane Smith



By: Maniscalco Properties, LLC
Name: Michael L. Spencer
Title: Manager

GRANTEE:



By: Maniscalco Properties, LLC
Name: Lisette M. Spencer
Title: Manager

STATE OF OREGON, County of Klamath)ss.

Personally appeared the above named Duane Grieb and acknowledge the foregoing instrument to be their voluntary act and deed.



Before me: Jennifer R. Pagan
Notary Public for Oregon

STATE OF OREGON, County of Klamath)ss.

BE IT REMEMBERED that on this 15th day of May, 2006, personally appeared before me Michael L. Spencer and Lisette M. Spencer, who are known to me to be the identical persons described in and who executed the above instrument, and who acknowledged to me that they executed the same freely and voluntarily on behalf of Maniscalco Properties, LLC. In witness whereof, I have hereunto set my hand and affixed my seal this day and date written above.

(S E A L)



Before me: Jennifer R. Pagan
Notary Public for Oregon

Exhibit "A"

The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$; the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$; the S $\frac{1}{2}$ of the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$; the S $\frac{1}{2}$ of the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 13, Township 40 South, Range 9 East of the Willamette Meridian EXCEPTING that portion conveyed to the United States of America by deed dated December 7, 1949, recorded November 2, 1951, on page 618 of Volume 250 of the Deed Records of Klamath County, Oregon.