

CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

COAST GUARD CITY, USA



phone: 541.574.0629

fax: 541.574.0644

<http://newportoregon.gov>

mombetsu, japan, sister city

October 26, 2022

Robert Etherington  
3249 NE Big Creek Road  
Newport, Oregon 97365

**RE: 12-Month Release of Right of First Refusal (Instrument No. 2013-04689)**

Dear Mr. Etherington,

On Monday, October 24, 2022, the City received an email from you requesting that it formally release a right of first refusal related to the potential sale of property at 3249 and 3245 NE Big Creek Road. The terms of the right of first refusal are contained in a document recorded under Instrument No. 2013-04689 of the Lincoln County Deed Records. Your correspondence indicates that you are in the process of listing both properties, and City's releases of the right of first refusal at this time might avoid complications down the road once you receive a bona fide offer.

The City Council has had an opportunity to consider whether or not to acquire the properties, and has determined that it is not in the public interest to do so at this time. Accordingly, with this letter the City hereby provides formal notice that it will not exercise the right of first refusal for a period of 12-months, ending October 24, 2023. There is no need for you to provide the City notice pursuant to the terms of the right of first refusal during this 12-month period, and City waives any and all rights to purchase the properties should you receive a bona fide offer and elect to convey the properties within this timeframe.

I trust this letter meets your needs. Should there be any related matters that need attention, please don't hesitate to contact our Community Development Director, Derrick Tokos, at 541-574-0626 or [d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Nebel", is written over the word "Sincerely,".

Spencer Nebel  
City Manager  
City of Newport



## Derrick Tokos

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**From:** rcetherington@charter.net  
**Sent:** Monday, October 24, 2022 2:41 PM  
**To:** Derrick Tokos; 'steve@stevelovas.com'  
**Subject:** Sale of 3249 & 3245 NE Big Creek Rd

**[WARNING]** This message comes from an external organization. Be careful of embedded links.

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You don't often get email from rcetherington@charter.net. [Learn why this is important](#)

This is to formally request a release from the Right of First Refusal held by the City of Newport for the two properties noted above. I am in the process of listing Both properties (Tax lot 300 - 3245 NE Big Creek Rd. & Tax lot 302 - 3249 NE Big Creek Rd.) for sale at this time.

Thanks: Robert C. Etherington







00074605201300046890050052

I, Dana W. Jenkins, County Clerk, do hereby certify  
that the within instrument was recorded in the Lincoln  
County Book of Records on the above date and time.  
WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



After recording, please return to:  
Peggy Hawker, City Recorder  
City of Newport  
169 SW Coast Highway  
Newport, Oregon 97365  
541.574.0613

### RIGHT OF FIRST REFUSAL

DATE: MAY 7, 2013 ("Effective Date")

PARTIES: Robert Etherington and ("Owner")  
Linda Etherington, husband and wife  
("Owner" means one or both of the above individuals)

City of Newport, ("Grantee")  
a municipal corporation of the  
State of Oregon

### RECITALS

- A. Owner is the owner of a certain parcel of real property (the "Property") located in Lincoln County, Oregon, as described in Exhibit A attached to and made part of this Agreement.
- 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 agreeing not to include Owner's property in the urban growth boundary (except for a 60-foot strip along Big Creek Road), Owner gives to Grantee this Right of First Refusal on the property described in Exhibit A and further agrees Owner will not appeal a decision by the City in case 2-UGB-12 to the Land Use Board of Appeals.

**1. Right of First Refusal.** Owner agrees not to sell, transfer, exchange, grant an option to purchase or otherwise dispose of the Property without first offering the Property to Grantee on the terms and conditions set forth in this Agreement. Provided, however, Owner shall be entitled to gift the property to Owner's lineal descendants while Owner is living or transfer the property by testate or intestate succession or a trust to Owner's lineal descendants upon the death of Owner.

**1.1** When Owner receives from a third party (the "Third-Party Offeror") a bona fide offer to purchase the Property, or a part of it, or an interest in it, that Owner desires to accept, Owner must give Grantee written notice (the "Notice") of the price, terms, and conditions of the offer and deliver a copy of the executed contract evidencing the offer (the "Offer") to Grantee.

**1.2** When Grantee receives the Notice and a copy of the Offer, Grantee will 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 will take place within 60 days after the date that Grantee elects to exercise the right of first refusal.

**1.3** Grantee will have 30 days from the date that Grantee receives the Notice and a copy of the Offer to notify Owner whether Grantee elects to purchase the Property under 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 30-day period, Grantee also must 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.

**1.4** If Grantee fails to timely exercise its right to purchase the Property under the terms of this Agreement, then Owner will be entitled to sell the Property according to the terms of the Offer to the Third-Party Offeror.

**1.5** If Grantee fails to timely exercise its right to purchase the Property under the terms of this Agreement, then Grantee's Right of First Refusal in the property shall terminate and Owner shall have no further obligation to offer the property to Grantee.

**2. Term.** The term of this Right of First Refusal commences on the date of this Agreement and terminates on the earlier to occur of (1) the expiration of 25 years after the Effective Date or (2) after Grantee has elected not to exercise its right of first refusal. Grantee will 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, in accordance with Section 8.

**3. Excluded Transfers.** The right of first refusal created by this Agreement does not apply to any gift of the Property by Owner to a lineal descendant of Owner before Owner's death or a transfer after death by testate or intestate succession or by transfer under a trust. This agreement will be binding on the lineal descendants of Owner.

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

To Owner: Robert & Linda Etherington  
3249 NE Big Creek Road  
Newport, OR 97365

To Grantee: City of Newport  
169 SW Coast Hwy.  
Newport, OR 97365

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

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

**6. Restriction on Assignment.** This right of first refusal is personal to Grantee, and Grantee may not assign or otherwise transfer Grantee's rights under this Agreement without the prior written consent of Owner.

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

**8. Recording.** On request of Grantee, Owner agrees to join in executing a memorandum of this Agreement, to be filed for record in the Official Records of Lincoln County, Oregon, to give notice to the public of the rights of Grantee under this Agreement. Grantee will pay the cost of recording the memorandum. The memorandum must note the date that this



Agreement expires, and Grantee will 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 will not be bound by any terms, conditions, statements, warranties, or representations not contained in this Agreement. No change or modification of this Agreement will 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 will not be deemed to be a waiver of that right or of any other right.

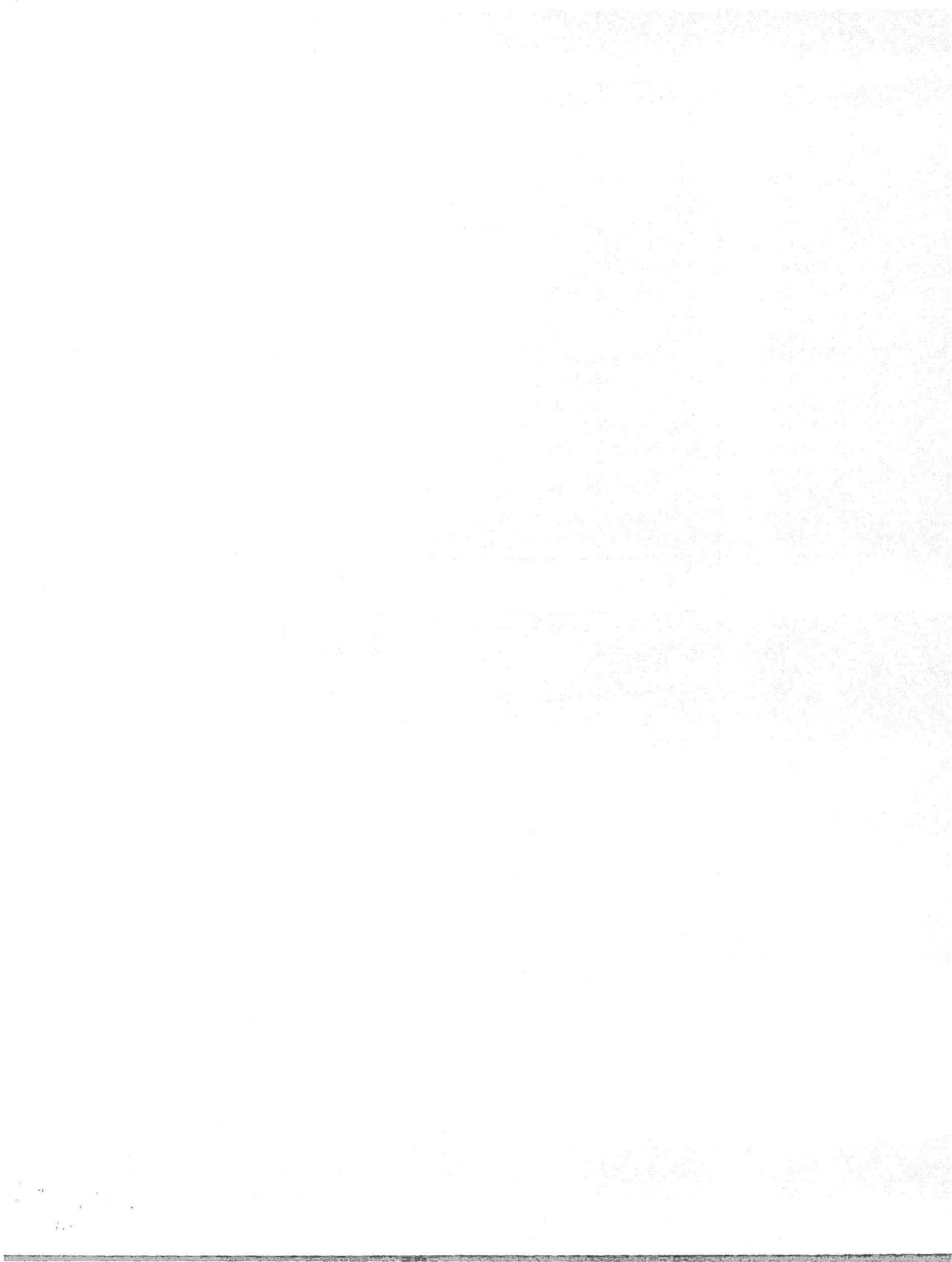
**11. Attorney Fees.** If litigation is instituted with respect to this Agreement (including any litigation undertaken in the context of bankruptcy proceedings), the prevailing party will be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney 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. Counterparts; Pronouns.** This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will 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 includes the other gender, the singular, and the plural, as the context may require.

**13. Time Is of the Essence.** Time is of the essence regarding this Agreement.

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

**15. Statutory Disclaimer.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930. IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

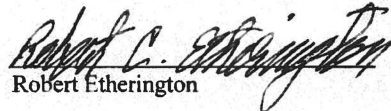


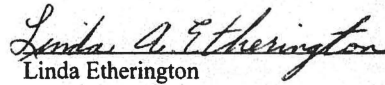
16. **Warranties.** Owner warrants and represents to Grantee that (1) Owner owns fee title to the Property, and (2) Owner has the authority to execute this Agreement, and executing it does not violate any agreement to which Owner is a party or any covenant by which the Property is bound. The parties further agree if the City exercises its first right of refusal, the conveyance to the City will be by means of a Bargain and Sale Deed. The property shall be transferred free of any monetary encumbrances (trust deeds, judgments, etc., but shall be subject to easements and other non-monetary encumbrances of record). If Grantee desires a survey of the property lines, said survey shall be at Grantee's expense.

17. **Consents.** The parties agree to act in good faith and with fair dealing with one another in the execution, performance, and implementation of the terms and provisions of this Agreement. Whenever the consent, approval, or other action of a party is required under any provision of this Agreement, such consent, approval, or other action will not be unreasonably withheld, delayed, or conditioned by the party unless the provision in question expressly authorizes the party to withhold or deny consent or approval or to decline to take action in accordance with a different standard, in which case the consent, approval, or other action may be withheld, delayed, or conditioned in accordance with the different standard.


Executed as of the day and year first above written.

OWNER:

  
Robert Etherington

  
Linda Etherington

GRANTEE:  
CITY OF NEWPORT

By:   
Name: Jim Voelberg  
Title: City Manager

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## EXHIBIT A

### PARCEL 1

Beginning at the northeast corner of the E. A. White property described in Deeds, Volume 116, page 416, Lincoln County, Oregon; said property being located in the southwest quarter of Section 33, Township 10 south, Range 11 west, Willamette Meridian, Lincoln County, Oregon. This point of beginning is located south  $89^{\circ} 52' 40''$  west 659.1 feet, from the calculated center of Section 33, and is located on the east-west center line of said section; thence south  $00^{\circ} 16' 06''$  east 207.56 feet, more or less to a  $5/8$ " iron rod and the point of true beginning of the tract herein to be described; thence south  $86^{\circ} 39' 39''$  west 390.00 feet, more or less to a  $5/8$ " iron rod; thence north  $05^{\circ} 17' 51''$  west 233.94 feet, more or less to a  $5/8$ " iron rod; thence north  $89^{\circ} 37' 39''$  west 59.03 feet, more or less to a 2" iron pipe; thence south  $00^{\circ} 06' 55''$  west 660.07 feet, more or less to the center line of the Big Creek county road; thence in a north easterly direction along the center line of said county road to a point that is south  $00^{\circ} 16' 06''$  east 269.06 feet, more or less from the point of true beginning; thence north  $00^{\circ} 16' 06''$  west 269.06 feet, more or less to the point of true beginning.

EXCEPTING any portion lying within Big Creek Road, County Road 402.

#### Subject to:

1. The rights of the public in and to that portion of the herein described property lying within the limits of roads and highways.
2. An easement created by instrument, including the terms and provisions thereof, dated January 23, 1928, recorded February 7, 1928 in Book 53, Page 575, Lincoln County Records in favor of the City of Newport, a municipal corporation for the purposes of laying and maintaining a water pipe line. (Exact location unknown.)
3. 'Perpetual and Non Exclusive Road Easement Agreement with maintenance provisions, including the terms and provisions thereof, dated October 13, 1971, recorded October 17, 1971, in Book 29, Page 55, Lincoln County Records between Robert N. Etherington and Winifred Kate Etherington, husband and wife and Gunbarrels, Inc., an Oregon Corporation.
4. Overhead Right of Way Easement created by instrument, including the terms and provisions thereof, recorded August 27, 1979, in Book 104, Page 1367, Lincoln County Records in favor of Central Lincoln People's Utility District for a power line.

### PARCEL 2

Beginning at the northeast corner of the E.A. White property described in Book 116, page 416, Lincoln County Deed Records, being located in the Southwest Quarter of Section 33, Township 10 south, Range 11 west, Willamette Meridian, Lincoln County, Oregon which point of beginning is located south  $89^{\circ} 52' 40''$  west 659.1 feet, from the calculated center of Section 33, and is located on the east-west center line of said section; thence south  $00^{\circ} 16' 06''$  east 207.56 feet, more or less, to a  $5/8$  inch iron rod; thence south  $86^{\circ} 39' 39''$  west 390.00 feet, more or less to a  $5/8$  inch iron rod; thence north  $05^{\circ} 17' 51''$  West 233.94 feet, more or less to a  $5/8$  inch iron rod; thence south  $89^{\circ} 37' 39''$  east 410.00 feet, more or less to the point of beginning.



