

RIGHT OF FIRST REFUSAL

DATE:

("Effective Date")

PARTIES:

Swan Lake Moulding Co.

("Owner")

The De Young Revocable Family Trust dated December 17, 1987 ("Grantee")
(Burton J. De Young and Yolanda De Young, Trustees)

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. 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 payment of \$1.00 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.
- A. 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, Owner shall 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.
- 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.
- C. Grantee shall have 45 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 45-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.
- 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, then this Agreement is terminated and Owner shall have no further obligation to offer the Property for sale to Grantee before selling to a Third-Party Offeror.

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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 15 years after the Effective Date (specifically, 5:00 p.m. PST on January 31, 2013), or 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 9.

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 20% ownership interest.

4. **Default under lease.** Should Grantee be in default under its lease with Owner, on the above described property at the time any third-party offer is received, this Agreement shall be null and void, without notice to Grantee, and Owner shall have no obligation to offer the Property for sale to Grantee.

5. **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: Swan Lake Moulding Co.
PO Box 428
Klamath Falls, OR 97601

To Grantee: Burton J. and Yolanda De Young
1437 No. Refugio Road
Santa Ynez, CA 93460

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.

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

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

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

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

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

17. **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.

18. **No Warranties.** Owner makes no warranties as to title. Grantee, upon the exercise of first right of refusal, takes the Property, subject to all liens, encumbrances, and restrictions of record, those apparent on the land.

Executed as of the day and year first above written.

OWNER:

Swan Lake Moulding Co.

By: *Dorothy Collier*
Name: Dorothy Collier
Title: President

GRANTEE:

De Young Revocable Family Trust dated Dec. 17, 1987

By: *Burton Jacob De Young* 2/26/98
Name: Burton Jacob De Young
Title: Trustee

Attachment:
Exhibit A-Property

By: *Yolanda De Young*
Name: Yolanda De Young
Title: Trustee

EXHIBIT "A"- Ground Lease
Legal Description

The real property in Klamath County, Oregon, described as follows:

Parcel 1:

Beginning at an iron axle on the Northerly right of way line of Shasta Way, which marks the Southeast corner of "Elm Park" Subdivision, and which iron axle also lies North 89°08' East along the section line a distance of 2370.3 feet and North 0°49' West a distance of 15.0 feet from the iron pin which marks the Southwest corner of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, in Klamath County, Oregon, and running thence: Continuing North 89°08' East along the Northerly right of way of Shasta Way a distance of 232.0 feet to an iron pipe; thence North 0°49' West parallel to the East line of "Elm Park" a distance of 116.0 feet to an iron pipe; thence North 89°08' East 60.0 feet to an iron pipe; thence North 0°49' West 184.0 feet to an iron pipe; thence North 89°08' East 5.0 feet to an iron pin; thence North 1°17' East a distance of 372.0 feet to an iron pin which lies on the Southerly right of way line of the U.S.R.S. "A" Canal; thence North 50°26' West along course "E" following the Southerly right of way line of the U.S.R.S. "A" Canal a distance of 406.4 feet to an iron pin which lies on the East line of the "Elm Park" extended Northerly; thence South 0°49' East along the East line of "Elm Park" and its extension, a distance of 935.4 feet; more or less, to the Point of Beginning; said tract containing 5.35 acres, more or less of land in Enterprise Tracts No. 26 and 22A situated respectively in the SE1/4SW1/4 and the SW1/4SE1/4 of Section 34, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of James Uerlings, Attorney the 12th day
of March A.D., 19 98 at 2:45 o'clock P M., and duly recorded in Vol. M98,
of Deeds on Page 8104.

FEE \$25.00

Return to: James Uerlings

110 N 6th St.

Klamath Falls, OR 97601

By Bernetha G. Letsch, County Clerk
Kathleen Rosa