

2010-014506

Klamath County, Oregon



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RETURN TO:

Swan Lake Moulding Co.

C/O James Uerlings

803 Main Street - Suite 201

Klamath Falls, OR 97601

-RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT-
(Common Areas, Utilities and Parking)

DATED: December 16, 2010

RECITALS

A. Swan Lake Moulding Company owns three parcels of real property in Klamath County, Oregon further described as Parcels 1, 2 and 3 of Land Partition 12-10 located in the NW $\frac{1}{4}$ & SW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, that being a replat of a portion of Tract 33B of Enterprise Tracts (the "3 Parcels").

B. As a condition of approval for Land Partition 12-10, the Planning Director of Klamath County, in a Final Order dated June 21, 2010, requires Swan Lake Moulding Company to record a shared parking and access agreement for the 3 Parcels and to create easements for access, utilities, irrigation and drainage where needed.

C. It is the intent of Swan Lake Moulding Company, by and through this Reciprocal Easement and Maintenance Agreement to set forth conditions, covenants and restrictions and to bind the current and future owners of the 3 Parcels.

D. The final plat of LP 12-10 creates a 45 foot wide access easement across the 3 Parcels, which is located generally along the most northerly 45 feet of the 3 Parcels (hereinafter the "Easement Area").

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions hereafter set forth:

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AGREEMENT

1. The Common Area Covenants and Restrictions.

1.1. Swan Lake Moulding Company, as the owner of the 3 Parcels hereby imposes these conditions, covenants and restrictions by creating, upon the plat to Land Partition 12-10, a reciprocal, non-exclusive, perpetual and appurtenant easement in, to, over, under, along, across and beneath the Easement Area for the benefit of the current and future owners of the 3 Parcels, its tenants (and the customers, invitees and employees of such tenants), customers, invitees, employees, agents, heirs, successors and assigns. Such covenant shall dedicate the Easement Area for the mutual and beneficial use of the 3 Parcels. The Easement Area, the walkways, steps and exterior improved open spaces (such as paved squares, sidewalks and steps) are located for the purpose of pedestrian, workmen and delivery person's use of an ingress and egress to the 3 Parcels; and, for the purpose of use, repair, replacement and/or maintenance of any utilities running over, under, across or beneath the Easement Area serving the 3 Parcels.

1.2. As a further covenant, none of the owners of the 3 Parcels shall:

1.2.1. Take or permit any action which causes the Easement Area to be dedicated for public use or maintenance; or

1.2.2. Locate or permit any fence or other barrier which would unreasonably prevent or destruct the use of the passage of pedestrian or vehicular traffic for the purposes herein permitted within or across the Easement Area; provided, however, that the foregoing provisions shall not prohibit maintenance activities or the installation of convenience facilities (such as mailboxes, public telephones, benches or public transportation shelters), of landscaping, berms or planters, nor limited curbing or other forms of traffic controls. In no case shall the installation of convenience facilities, landscaping, berms, planters, nor limited curbing or other forms of traffic controls interfere with the ability of the owners of the 3 Parcels (and their tenants, customers, invitees, employees, agents, etc.) to utilize the Easement Area for vehicular access and customer parking.

1.3. The owners of the 3 Parcels shall each bear their own respective costs to use, maintain, repair or replace the utilities located on their respective parcels and shall, at

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their own cost, maintain, repair and/or replace the paved squares, sidewalks, steps and landscaping on their respective parcels in a safe, attractive condition and state of repair and in compliance with all applicable laws, rules, covenants, conditions, regulations, orders and ordinances, and this Agreement.

1.4. The owners of the 3 Parcels (their successors and assigns) shall bear all costs and expenses in relation to the Easement Area, including but not limited to:

1.4.1. Maintenance, repair, painting and repainting stripes, arrows and drive lanes;

1.4.2. The removal of snow within a reasonable time after snow fall;

1.4.3. The cleaning, lighting and utilities;

1.4.4. The paving, repaving and sealing;

1.4.5. The installation and maintenance of proper draining;

1.4.6. The installation and maintenance of landscaping, to include weeding and replacing the bushes, trees and other landscape vegetation to keep them in a healthy condition;

1.4.7. To sand and control ice;

1.4.8. To remove rubbish;

1.4.9. To repair and replace any sidewalks and steps;

1.4.10. To repair, maintain and replace any signs;

1.4.11. All property taxes and assessments; and

1.4.12. To provide insurance for the Easement Area.

1.5. The owners of the 3 Parcels (their successors and assigns) shall be responsible for costs and expenses of items 1.4.1. through 1.4.12 above incurred in relation to the Easement Area. Provided, that should any of the aforementioned costs and expenses be incurred due to the intentional or reckless conduct

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of one of the other parcel owners, that the offending parcel owner shall be solely responsible for the payment of said costs and expenses.

1.6. The use of the Easement Area is reserved for parking on and for vehicular or pedestrian ingress and egress across the Easement Area to the 3 Parcels, their owners, their tenants (and the customers, invitees and employees of such tenants), customers, invitees, employees, agents, heirs, successors and assigns.

1.7. No party shall place or permit any obstacle, commercial vehicle, tent, portable structure, kiosk, construction equipment or any other obstacle on the Easement Area without the written consent of all 3 parcel owners.

2. General Provisions.

2.1. This Easement is appurtenant to the 3 Parcels in Land Partition 12-10; however, in the event that any of the parcels are partitioned, sub-divided or sold in more than one parcel, this Agreement shall remain appurtenant to each of the parcels created and the owners of each of the parcels shall together have the rights and obligations granted and imposed herein.

2.2. As used in this Agreement, "utility" shall include any and all pipes, wires, conduits or any other items used or to be used for drainage, sewer, water, electricity, telephone, internet, communications, natural gas or any similarly related services to the 3 Parcels.

2.3. The owners of the 3 Parcels warrant that they will defend the title and the other parcel owners' interest under this Agreement against any trust deed, encumbrance, mortgage, tax lien or construction lien claim affecting the parcels on which the Easement Area is located, which asserts priority over the interest of the other parties to this Agreement and which is attributable to the party itself or its tenants.

2.4. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects the parties respective interests pursuant to this agreement; provided, however, that upon any sale under foreclosure of any mortgage(s) or under the provisions of deed(s) of trust, any purchaser at such sale and its successors and assigns shall hold any and all

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property interest so purchased subject to all of the provisions of this Agreement.

2.5. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that owner may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants or conditions.

2.6. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other parties such sums as the court may adjudge reasonable as attorney's fees at trial, on appeal of such suit or action and on any petition for review and/or in any bankruptcy proceeding, in addition to all other sums provided by law.

2.7. Each party shall defend, indemnify and hold the other harmless from any claim, loss, liability or expense (including reasonable attorney's fees) arising out of or in connection with the parties own negligence or failure to comply with the terms, restrictions and provisions of this Agreement.

2.8. This Agreement supersedes and replaces all written and oral agreements previously made or existing with respect to the matters set forth above.

2.9. This Agreement will be governed and construed in accordance with the laws of the State of Oregon. Any suit or action brought to enforce the terms and provisions of this Agreement shall be brought exclusively in the Circuit Court for the State of Oregon for the County of Klamath.

2.10. Notices given under this Agreement shall be in writing and will be deemed given and effective when delivered in person to the other party three (3) business days after being deposited in the U.S. mail, postage prepaid and sent by registered or certified mail to the other parties' address for notices. The address of the 3 Parcels shall be used for each parcel owners respective notice address. Any notice under this Agreement may be given by physical delivery.

2.11. Except as otherwise set forth herein, this Agreement may not be modified, amended or terminated except by the written agreement of the all 3 parcel owners. A party may waive one or more of its rights under this Agreement in writing

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signed by the party and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Agreement shall be binding unless signed by all 3 parcel owners and recorded in the real property records for Klamath County.

2.12. The covenants, conditions and obligations created hereunder and the Easement Area created upon the plat to Land Partition 12-10 shall be perpetual, shall run with the land and shall be binding upon the parties, their heirs, successors and assigns.

2.13. Except as otherwise expressly herein provided, nothing herein contained shall be deemed to be a gift or dedication of any portion of the 3 Parcels, or of any portion thereof, to the general public or for any public use or purpose whatsoever.

2.14. Except as herein specifically provided, no right, privileges or immunities of any of the parcel owners hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.

2.15. Whenever performance is required of any party hereunder, that party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty or any cause beyond the reasonable control of the party, that the time for performance as herein specified shall be appropriately extended by the amount of delay time actually caused. The provisions of this section shall not operate to excuse any of the parcel owners from the prompt payment of any monies required by this Agreement.

2.16. Invalidation of any provision contained in this Agreement, or of the application thereof to any party by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other party and the same shall remain in full force and affect.

2.17. In all situations arising out of this Agreement, all parties shall attempt to avoid and minimize the damages resulting from the conduct of the other parcel owners.

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2.18. It is expressly agreed that no breach of this Agreement shall:

2.18.1. Entitle any owner to cancel, rescind or otherwise terminate this Agreement; or

2.18.2. Defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the 3 Parcels. However, such limitation shall not affect in any manner any other rights or remedies which a parcel owner may have hereunder by reason of any such breach.

2.19. Time is of the essence of this Agreement.

2.20. Each party shall, in a timely fashion, take all actions and execute with acknowledgment or affidavit (if required) any and all documents, amendments and other writings, including but not limited to amendments to this Agreement and grants of additional easements, that may be reasonable and necessary or proper to achieve the purposes and objectives of this Agreement.

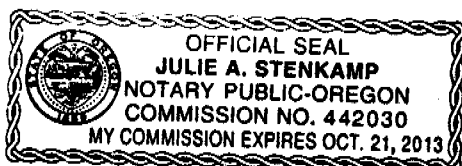
IN WITNESS WHEREOF, Swan Lake Moulding Company hereby executes this Agreement with the intent that it be a condition, covenant and restriction upon the 3 Parcels and that it run with and become appurtenant to the 3 Parcels.

SWAN LAKE MOULDING COMPANY
An Oregon Corporation

By: James R. Verling
Its: Vice President
James R. Verling

STATE OF OREGON)
)
County of Klamath)

This Instrument was acknowledged before me this 16th day of December 2010 by James R. Verling as Vice President of Swan Lake Moulding Company.



Julie Stenkamp
Notary Public for Oregon
My Commission Expires: 10/21/2013

7. RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT