

AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT, made and entered into by and between DOROTHY CHAPMAN STEWART, herein called Assignor, and JELD-WEN, inc., an Oregon corporation, herein called Assignee.

RECITALS:

A. On October 10, 1983, United States National Bank of Oregon, co-personal representative of the estate of Lawrence E. Chapman, as Seller, and D. G. Shelter Products, Klamath Division, as Purchaser, entered into a contract in writing entitled "Buck Creek Timber Sale" (the "Contract") covering the agreement to sell and purchase "merchantable timber" on a logging unit of approximately 760 acres in Klamath County, Oregon, of which 350 acres are timbered, as follows:

Township 37 South, Range 11 1/2 East, Willamette Meridian;

Portion of Section 7;

All of Section 8;

Portion of Section 9.

Merchantable timber, as defined therein, includes all trees approximately ten (10) inches and larger in diameter at a point four and one-half (4 1/2) feet from the ground which contain one (1) or more merchantable sixteen (16) foot log to a six (6) inch top.

B. By Order of Distribution dated December 12, 1983, the Lane County Circuit Court distributed to Dorothy Chapman Stewart, formerly Dorothy F. Chapman, the real property the subject of the Contract and by Assignment of Timber Sale Contract, the co-personal representatives of the estate of Lawrence E. Chapman, deceased, assigned to Assignor all right, title and interest of the estate of Lawrence E. Chapman, deceased, in and to the Contract.

C. On March 30, 1984, Assignee acquired from Assignor the real property in Klamath County, Oregon underlying the timber the subject of the Contract, but subject to the terms and provisions of the Contract.

D. By "Agreement" dated May 10, 1984, Assignor evidenced her agreement to sell to Assignee all right, title and interest of Assignor in and to the Contract and the timber the subject thereof.

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E. Assignor and Assignee have agreed to modify and restate their Agreement dated May 10, 1984 and desire to evidence their modified agreement by this document.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals and the performance and observance of the terms, covenants and conditions herein contained on the part of the respective parties to be kept and performed, the parties hereto agree as follows:

1. Agreement to Assign. Assignor does hereby agree to sell, assign, transfer and set over unto Assignee all of her right, title, interest and estate in and to the Contract, particularly including, but not limited to, the right to receive all payments to be made by the Purchaser under said Contract.
2. Purchase Price and Terms. The sale and purchase price for the assignment to be made by Assignor is and shall be the sum of \$155,300, which sum Assignee agrees to pay to Assignor on or before June 30, 1985. The purchase price shall not bear interest until its due date. If, however, the purchase price is not paid in full on or before the due date, the purchase price shall bear interest at the rate equal to 2% over the prime rate of interest charged by First Interstate Bank of Oregon, N.A., during the period of such delinquency.
3. Termination of USNB Interest. Assignor has heretofore, at her sole cost and expense, arranged for the termination of all rights, duties and obligations of United States National Bank of Oregon under the Contract.
4. Prohibition Against Timber Removal. Assignee agrees that no timber the subject of the Contract will be cut, logged or removed from the real properties therein described prior to the payment in full of the purchase price by Assignee to Assignor.
5. Assignment and Escrow. By Assignment of Timber Sale Contract dated May 10, 1984, Assignor executed form of Assignment under which Assignor sold, assigned, transferred and set over unto Assignee all of her right, title, interest and estate in and to the Contract. Said Assignment was lodged in escrow with Mountain Title Company, 407 Main Street, Klamath Falls, Oregon, under its escrow No. 5612, with instructions authorizing and directing said Mountain Title Company to deliver to Assignee the Assignment at such time as said escrow agent had received for the account of Assignor the purchase price of \$155,300, plus any interest which may be due and payable thereon, as provided therein. The parties hereto

agree that this document shall serve as amended escrow instructions to Mountain Title Company and each agrees to execute such other documents as may be requested by said Mountain Title Company to evidence the change of payment date. All cost and expense of said escrow agent in connection with the establishment, carrying out and termination of said escrow shall be paid by Assignee.

6. Default and Remedies. If Assignee shall fail to pay the purchase price hereunder at the time it is due or shall breach or violate any term or provision of this Agreement and shall fail to correct such default within five days after written demand from Assignor or if Assignee should become insolvent, make an assignment for the benefit of creditors, an order of relief shall be entered in bankruptcy, or a receiver or trustee in bankruptcy reorganization for its property be appointed, Assignor may, at her option, terminate this Agreement and make demand upon said escrow agent for the return of the Assignment mentioned above. In the event of such termination, all rights of Assignee hereunder shall immediately cease, title to the contract timber and all logs in and upon the real property the subject of the Contract shall be in Assignor, free from any claim by Assignee, and Assignor may retain any and all payments theretofore made on account of the purchase price as an agreed upon measure of minimum liquidated damages on account of Assignee's failure to perform hereunder. In such event, Assignor shall have the right to enter upon the real property the subject of the Contract at any time and from time to time within two years from September 30, 1985, for purposes of removing all timber and logs the subject thereof or to authorize others to do so. The foregoing rights on the part of Assignor are cumulative and Assignor may, in addition thereto, exercise any and all other remedies available to her under the laws of the State of Oregon, particularly including, but not limited to, the right to seek specific performance or to commence an action or actions for damages against Assignee.

7. Limitation on Assignment. This Agreement shall be personal to Assignee and Assignee shall have no right to sell, assign, transfer or encumber its interest under this Agreement or the timber the subject hereof without the prior written consent of Assignor being first had and obtained. Subject to the limitations contained in this paragraph, this Agreement shall be binding upon and the benefits shall inure to the parties hereto, the heirs, representatives and assigns of Assignor and the successors and assigns of Assignee.

8. Miscellaneous.

(a) The terms and provisions herein contained constitute the entire Agreement between the parties and shall supersede all previous communications, rep-

representations or agreements, either verbal or written, between the parties hereto with respect to the subject matter hereof.

(b) In the event suit, action or other proceeding is instituted upon this Agreement or any controversy arising herefrom, the prevailing party shall be entitled to recover from the other party and the other party agrees to pay to the prevailing party, in addition to costs and disbursements allowed by law, such additional sum as the court may adjudge reasonable as and for the prevailing party's attorney fees in both the trial and appellate courts.

(c) This Agreement shall be construed in accordance with the laws of the State of Oregon.

(d) Assignor has made no representations to Assignee directly or indirectly upon which Assignee has relied with respect to the quantity, quality or other kind of merchantable timber which is the subject of the Contract. Assignee expressly acknowledges that it has entered into this Agreement and agreed to acquire the interest of Assignor on the basis of its own knowledge and observations and not upon any representation or warranty of Assignor except as herein expressly contained.

DATED this 19 day of July, 1984.

*Dorothy Chapman Stewart*  
Dorothy Chapman Stewart,  
formerly Dorothy F. Chapman

JELD-WEN, inc., an Oregon  
corporation

By *RC Wendo*  
Title Assistant Secretary

STATE OF OREGON )  
County of Lane ) ss

On this 19 day of July, 1984 personally appeared the above named Dorothy Chapman Stewart, and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me:

*Phillip Raper*  
Notary Public for Oregon  
My Commission Expires: 2-13-85

STATE OF OREGON )  
County of Klamath ) ss

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On this the 31 day of July, 1984, personally appeared R. C. Wendt of Jeld-Wen, inc., and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act and deed.

Before me:

Cathy Wendt  
Notary Public for Oregon  
My Commission Expires: 5/01/21/84

STATE OF OREGON, )  
County of Klamath )

Filed for record at request of

on this 21 day of AUG. A.D. 19 84  
at 1:27 o'clock P M, and duly  
recorded in Vol. M84 of Deeds  
Page 14435

EVELYN BIEHN, County Clerk

By Ann Smith Deputy

Fee 20.00

*Return: NYC*

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