

## ASSIGNMENT OF MORTGAGE

COMES NOW Donald E. Colwell, surviving joint tenant, and hereby sells, assigns and transfers to the Donald E. Colwell and Barbara B. Colwell Family Trust under instrument dated May 4, 1990 (survivor's trust) all right, title and interest in and to that certain mortgage made and entered on the 1st day of September, 1971 in which Weyerhaeuser Company, a corporation, was the mortgagor, and Donald E. and Barbara B. Colwell, were the mortgagees, which mortgage is unrecorded but which is fully described in the attached Exhibit A by reference incorporated herein. Assignor by this instrument hereby grants, bargains, sells, assigns and transfers all right, title and interest in and to said mortgage, together with the note or obligation therein described; to have and to hold the same for assignee's use and benefit subject only to the provisions of said mortgage. The consideration for this transfer is other good and valuable consideration.

DATED this 1 day of August, 1990.

James D. DeLong  
DONALD E. COLWELL BY JERRY D.  
DEPUY UNDER POWER OF ATTORNEY

SUBSCRIBED AND SWORN to before me this 1 day of August, 1990.

Bradford  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: Feb 3, 1991

After recording return to:  
Aspell, Della-Rose & Richard  
122 South 5th  
Klamath Falls, OR 97601

04 4 40  
PM 1  
AUG 90

THIS MORTGAGE, Made this \_\_\_\_\_ day of \_\_\_\_\_, 1971, by and between WEYERHAEUSER COMPANY, a corporation, hereinafter called "Mortgagor", and D. E. COLWELL (sometimes known as Donald E. Colwell) and BARBARA D. COLWELL (sometimes known as Barbara B. Colwell) or the survivor of them, hereinafter called "Mortgagee",

WITNESSETH, That Mortgagor, for and in consideration of the sum of Two Hundred Eight Thousand Two Hundred Sixty-five and no/100ths (\$208,265.00) Dollars, lawful money of the United States of America, to Mortgagor in hand paid by Mortgagee, the receipt of which is hereby acknowledged, and in order to secure the repayment thereof according to the promissory note hereinafter mentioned and also to secure the repayment of any further sum or sums advanced or paid by Mortgagee to or for the account of Mortgagor as herein provided, does hereby grant, bargain, sell, convey and confirm unto Mortgagee, as joint tenants with the right of survivorship and not as tenants in common, their assigns and the heirs of the survivor of them, those certain premises situate in the County of Klamath and State of Oregon, and described as follows, to-wit:

Township 39 South, Range 8 East of the Willamette Meridian

Section 22: The  $E\frac{1}{2}SE\frac{1}{4}$  lying Southeasterly of the Klamath Falls-Ashland Highway.

Section 23: That part of the  $SW\frac{1}{4}NW\frac{1}{4}$  lying South of the Klamath Falls-Ashland Highway.

All of the  $SW\frac{1}{4}$ , EXCEPT that part lying Northwest of the Klamath Falls-Ashland Highway.

ALSO that part of Government Lot 1 (also referred to as  $S\frac{1}{2}SE\frac{1}{4}$ ) lying North and West of Klamath River.

Section 26: Government Lots 1, 2 and 3 (also referred to as the  $NW\frac{1}{4}$ ,  $W\frac{1}{2}SW\frac{1}{4}$ , and the  $NW\frac{1}{4}NE\frac{1}{4}$ ) lying North and West of Klamath River.

Section 27: The  $E\frac{1}{2}NE\frac{1}{4}$ , and the  $NE\frac{1}{4}SE\frac{1}{4}$ .

EXCEPTING from the above described property a strip of land 60 feet in width deeded to Weyerhaeuser Timber Company by deed recorded May 5, 1928, in Deed Volume 78 at page 483.

SUBJECT TO:

1. Acreage and use limitations under provisions of the United States Statutes and regulations issued thereunder.
2. All contracts, water rights, proceedings, taxes and assessments

relating to irrigation, drainage, and/or reclamation of said lands.

3. Right of Way for pole line across S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 22, Township 39 South, Range 8 East of the Willamette Meridian, executed by H. H. Van Valkenburg, et ux, to the California Oregon Power Company, dated April 2, 1926, recorded April 26, 1926, in Deed Volume 69 at page 493, Records of Klamath County, Oregon.

4. Right of Way for pole line across S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 22 and NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 27, Township 39 South, Range 8 East of the Willamette Meridian, executed by H. H. Van Valkenburg, et ux, to the California Oregon Power Company, dated March 31, 1928, recorded June 13, 1928, in Deed Volume 80 at page 478, Records of Klamath County, Oregon.

5. Pumping Contract, between the United States of America and H. H. Van Valkenburg and Emma Van Valkenburg, husband and wife, dated July 29, 1935, recorded August 21, 1935, in Deed Volume 105 at page 135, Records of Klamath County, Oregon. Affects 20.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ , 30 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 22; 30 acres in W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 27; 30 acres in W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 27; and 40 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 26, Township 39 South, Range 8 East of the Willamette Meridian.

6. Financing Statement filed September 20, 1965, under #466, D. E. and Barbara D. Colwell, debtor and the Prudential Insurance Company of America, secured party.

7. Mortgage, including the terms and provisions thereof, dated September 8, 1965, recorded September 20, 1965, in M-65 at page 1822, given to secure the payment of \$100,000.00, with interest thereon and such future advances as may be provided therein, executed by D. E. Colwell sometimes known as Donald E. Colwell and Barbara D. Colwell, sometimes known as Barbara B. Colwell, to the Prudential Insurance Company of America, which mortgage covers other property, as well.

8. Easements and rights of way apparent on the land.

9. 1971-72 Klamath County Real Property Taxes and assessments now a lien, but not yet payable

together with all and singular the tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging, or in anywise appertaining, and all improvements now or hereafter thereon together with all fixtures now or hereafter a part of, or used in connection with any improvements thereon, and together with pumps, sprinkler systems, pumping stations, motors, engines, reservoirs, pipes and flumes or other equipment now or hereafter used for the production of water thereon or for the irrigation or drainage thereof, and the reversions, remainders, rents, issues and profits thereof, and also hereby releasing and waiving all rights under and by virtue of any homestead, stay, appraisalment and exemption laws now in force,

or which may hereafter become laws, and together with all the rights to the use of water for irrigating said premises and for domestic use thereon to which Mortgagor, or the premises hereby conveyed, is now or may hereafter become entitled, or which now are or may hereafter be used on said premises, however the same may be evidenced, and together with all shares of stock or shares of water in any ditch or irrigation company which in any manner entitled Mortgagor to water for irrigating or domestic purposes upon said premises; all of the foregoing is included in and hereinafter called the "mortgaged property."

TO HAVE AND TO HOLD the same unto the said mortgagee as joint tenants with the right of survivorship and not as tenants in common, and to their assigns and the heirs of the survivor forever.

This mortgage secures the payment of the principal sum hereinabove mentioned as the consideration herefor, with interest thereon, according to the tenor and effect of that certain promissory note (and any renewals or extensions or modifications thereof) of even date herewith, in the sum of \$208,265.00, the final payment of said principal sum being due and payable on December 1, 1991; said note being hereby secured and by reference made a part hereof, is executed and delivered by Mortgagor and is payable to the order of Mortgagee in lawful money of the United States of America at Klamath Falls, Oregon, or at such other place as the holder thereof may designate in writing, and also to secure the repayment of any further sum or sums advanced or paid by Mortgagee to or for the account of Mortgagor as herein provided.

The Mortgagor warrants that the sums represented by the above described note and this mortgage are for business or commercial purposes other than agricultural purposes.

And said Mortgagor covenants to and with the Mortgagee, and their successors in interest, that he is lawfully seized in fee simple of said premises and has a valid, unencumbered title thereto except as above set forth, that Mortgagee shall quietly enjoy and possess the same, and that Mortgagor will forever warrant and defend the title to the mortgaged property unto Mortgagee against any and all lawful claims of all persons whomsoever.

This mortgage is a second mortgage inferior to the security interests of the Prudential Insurance Company of America, a New Jersey corporation, evidenced by the Financing Statement and Mortgage above described. That the note secured by said Financing Statement and Mortgage, and the liens so created, are the obligations of Mortgagee and Mortgagor assumes no obligation. That a condition of this mortgage is that mortgagee shall fully pay said Prudential Insurance Company of America according to the terms and conditions of Mortgagee's obligations thereto as required by the note secured by the aforesaid Financing Statement and Mortgage as well as the terms and conditions of said Financing Statement and Mortgage themselves.

And Mortgagor for the consideration aforesaid hereby covenants and agrees to and with Mortgagee as follows:

1. To pay unto Mortgagee the indebtedness evidenced by said note together with all instalments of principal and/or interest payable by the terms thereof according to the tenor and effect of said note of even date herewith, and to pay all other sums that may hereafter be or become owing by Mortgagor to Mortgagee as provided for herein, together with interest thereon at the applicable rate set forth in said note or herein specified with respect thereto, in lawful money of the United States of America.

2. To keep the mortgaged property in good condition and repair, to keep in good cultivation the land described in this mortgage, not to commit nor permit any waste on the mortgaged property, to comply with all laws, rules and regulations made by Governmental authority and applicable to the mortgaged property, to keep the mortgaged property free from liens of every kind, and not to do nor to permit to be done anything which shall impair the security by this mortgage created.

3. To pay, before they become delinquent, all taxes, assessments and excises of every type or nature that may be levied, assessed or imposed upon the mortgaged property, or any part thereof.

4. In case of failure to pay aforesaid taxes, assessments and

excises required by Mortgagor to be paid before the same become delinquent or any interest or penalty accrues thereon, or in case there exists or shall arise at any time any claim, lien or encumbrance on the mortgaged property, or any part thereof, which is prior to this mortgage (except the principal and interest due by Mortgagee to the Prudential Insurance Company of America as evidenced by the note secured by the above described Financing Statement and Mortgage in favor of the Prudential Insurance Company of America) or in case there shall exist at any time during the continuance of this mortgage any statutory lien on the mortgaged property, or any part thereof, Mortgagee may pay such taxes, assessments and excises, or pay such claim, lien, encumbrance or statutory lien, and the sum or sums so advanced, including cost of evidence of title, shall immediately be due and payable and shall, with interest thereon at the rate of ten (10%) percent per annum from the time of payment, be deemed to be secured hereby.

5. Mortgagee may appear in or defend any action or proceeding at law or in equity, purporting to affect the security hereof, and in such event Mortgagee shall be allowed and paid, and Mortgagor hereby agrees to pay, all costs, charges and expenses, including costs of evidence of title and attorney's fees, including attorney's fees on appeal, in a reasonable sum, incurred in any such action or proceeding in which Mortgagee may appear.

6. No saw timber is to be cut or removed from the within described land without the written consent of Mortgagee and when such consent is given Mortgagor agrees to pay to Mortgagee fifty (50%) percent of the net proceeds which shall be applied on the indebtedness herein secured.

7. That all judgments, awards of damages and settlements, hereafter made as a result of or in lieu of any condemnation or other proceedings for public use of, or for any damage to, said premises or the improvements thereon and any award for change in grade of streets are hereby assigned and shall be paid to Mortgagee. Mortgagor agrees to execute such further assignments of any such award, judgment or settlement as Mortgagee may require, and to deliver to Mortgagee all proceeds of any such award, judgment or

settlement which may be received by Mortgagor. Mortgagee may apply any and all such sums on the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount so received by Mortgagee or any part thereof may be released. Neither the application nor the release of any such sums shall cure or waive any default.

8. In case of default in the payment of the indebtedness evidenced by said note or any installment of the said principal sum and/or interest thereon, or any part thereof, or in the repayment of any disbursement authorized by the terms of this mortgage and actually made by Mortgagee, Mortgagee may at once proceed to foreclose this mortgage for the amount due, or in case of default as aforesaid, or in the event of the violation, non-performance or breach of any of the covenants, conditions, agreements or warranties herein or in said promissory note contained, or if Mortgagor shall assign or attempt to assign the rents, issues or profits or any part thereof of the property mortgaged hereby without the written consent of Mortgagee, or in case of the actual or threatened demolition or removal of any building on or to be erected upon the mortgaged property, the entire principal sum of said note hereby secured and the whole amount of all indebtedness owing by or chargeable to Mortgagor under any provision of this mortgage or intended to be secured hereby shall, at the election of Mortgagee, become immediately due and payable without notice although the time expressed in said note for the payment thereof shall not have arrived and suit may immediately be brought without notice to Mortgagor, and a decree be had to sell the mortgaged property, or any part or parts thereof, either together or in parcels, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the moneys arising from such sale to repay the said indebtedness including both principal and interest, together with the costs and charges of making such sale and of suit for foreclosure and also the amounts of all sums advanced or paid by Mortgagee to or for the account of Mortgagor, with interest thereon, as herein provided, including such payments of liens, taxes or other encumbrances as may have been made by Mortgagee by reason of the provisions herein given, and the overplus, if any there be, shall be paid by the party making Mortgage, Page -6-

such sale, on demand, to Mortgagor.

9. In case suit or action is commenced to foreclose this mortgage, the court may, upon the motion of Mortgagee, appoint a receiver to collect the rents and profits arising out of the mortgaged property and to take possession, management and control of the mortgaged property during the pendency of such foreclosure or until payment of the debt hereby secured, and apply the said rents and profits to the payment of the amount due under this mortgage, first deducting all proper charges and expenses attending the execution of said trust.

10. Upon the commencement of any proceedings to collect the indebtedness or disbursements secured hereby, or any part thereof, by foreclosure of this mortgage or otherwise, there shall become due, and Mortgagor agrees to pay, in addition to the costs and charges allowed by law, a reasonable sum as and for attorney's fees, including any attorney's fees on appeal, as an additional indebtedness hereunder and under the note secured hereby and it is agreed that this mortgage shall stand as security therefor. It is also agreed that Mortgagor will pay any amount Mortgagee may incur or pay for any abstract or continuation of abstract of title, certificate or insurance of title or other evidence of title subsequent to this date on any of the mortgaged property, and this mortgage shall secure payment thereof.

11. Mortgagor further covenants and agrees, that in the event of a sale of the mortgaged property, or any part or parts thereof, under and by virtue of the provisions of this mortgage, the purchaser or purchasers thereof shall have immediate and peaceable possession of the same and that if Mortgagor remains in possession after the effective date of such sale, such possession shall be construed as a tenancy at sufferance only, giving unto the purchaser all remedies, by way of summary possession or otherwise, conferred by law in such case.

12. That Mortgagor hereby assigns and transfers as additional security to Mortgagee all damages, royalties and revenues of every



kind, nature and description whatsoever that Mortgagor may be entitled to receive from any person, company or corporation owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the premises above described, with the right in Mortgagee to receive and receipt therefor and apply the same to said indebtedness either before or after any default hereunder, and Mortgagee may demand, sue for and recover any such payments but shall not be required to do so.

13. That, without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of said note, and without notice or consent:

- a. Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation.
- b. Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof.
- c. Exercise or refrain from exercising or waive any right Mortgagee may have.
- d. Accept additional security of any kind.
- e. Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property herein described.

14. The invalidity or inapplicability of any one or more covenants, conditions, agreements, phrases, clauses, sentences or paragraphs of this mortgage shall not affect the remaining portions of the mortgage or any part thereof, and in such event this mortgage shall be construed as if such invalid or inapplicable covenants, conditions, agreements, phrases, clauses, sentences or paragraphs, if any, had not been inserted herein. The covenants herein contained shall bind, and the benefits and advantages hereof shall inure to, the respective heirs, legatees, devisees, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. This mortgage shall be construed

to be applicable to and include a corporation or corporations that may be a party or parties hereto.

15. Upon a full and complete performance of the covenants and agreements herein contained this mortgage shall be null and void, otherwise it shall be and remain in full force and effect.

IN TESTIMONY WHEREOF, Mortgagor has executed this mortgage the day and year first above written.

WEYERHAEUSER COMPANY

By \_\_\_\_\_

STATE OF OREGON                    )  
  ) ss. \_\_\_\_\_, 1971  
County of Klamath                )

Personally appeared \_\_\_\_\_ who, being duly sworn, did say that he is the \_\_\_\_\_ of Weyerhaeuser Company, a corporation, and that said instrument was signed 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:

(SEAL)

Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_ Aspell, Della-Rose & Richard the \_\_\_\_\_ day  
of \_\_\_\_\_ Aug. \_\_\_\_\_ A.D. 19 90 at 4:40 o'clock \_\_\_\_\_ P.M., and duly recorded in Vol. M90  
of \_\_\_\_\_ Mortgages \_\_\_\_\_ on Page 15386

FEE \$53.00

Evelyn Biehn County Clerk

By Darlene Muller