

mtc 2432
MEMORANDUM OF AGREEMENT

THIS AGREEMENT made this first day of May, 1991 between DIANA L. SMITH, hereinafter called SELLER and ROUGH & READY LUMBER CO., an Oregon corporation, hereinafter called BUYER,

1. PURCHASE OF REAL PROPERTY: Concurrently herewith SELLER is purchasing the following described real property from Thomas T. Bourgeois and Sally M. Bourgeois, as tenants by the entirety, and Orval R. Layton and Christina H. Layton, as tenants by the entirety, all as tenants in common, to-wit:

N1/2 SE1/4 of Section 3, Township 38 South, Range 15 East of the Willamette Meridian, Klamath County, Oregon.

2. LOAN FROM BUYER: To enable SELLER to make the aforementioned purchase, BUYER is loaning SELLER the sum of Twenty Seven Thousand Dollars (\$27,000.00), payable on or before June 30, 1991. The aforementioned loan is to be evidenced by a promissory note and secured by a first trust deed on the above described real property. The note shall not bear interest except in the event of default, in which case interest shall be payable from the date of default at ten percent (10%) per annum. SELLER shall pay for and furnish to BUYER a policy of title insurance in the amount of \$27,000.00 insuring that BUYER's trust deed is a first lien upon the property.

3. CONSIDERATION: In consideration of said loan SELLER agrees to sell and BUYER agrees to buy all merchantable Ponderosa Pine now growing on said real property. All timber is to be cut, removed and delivered (at SELLER's sole cost and expense) to BUYER's mill at Cave Junction, Oregon prior to June 30, 1991. All logging shall be done in a workmanlike manner to insure that the logs are delivered in the best condition possible under the circumstances surrounding the logging operation, with a minimum amount of blue stain. All risk of loss to timber and logs shall be on the SELLER until same are delivered to the BUYER's mill.

4. PAYMENT AND DELIVERY: On or about the 10th day of each month, ROUGH & READY LUMBER CO. shall pay the SELLER for all logs delivered during the last half of the preceding month; and on or about the 25th day of the month, for all logs delivered during the first half of such month. BUYER agrees to pay SELLER for all logs delivered at the following rate per thousand board feet, net scale:

Ponderosa Pine-----\$350.00 per thousand board feet

All logs shall be scaled at BUYER's mill at Cave Junction, Oregon by the Southern Oregon Log Scale Bureau according to Scribner's Decimal C Eastside (Short Log) scale. Duplicate scale tickets shall be furnished SELLER at the time of scaling.

5. WITHHOLD FOR LOAN PAYMENT: BUYER shall withhold the sum of Two Hundred Fifty Dollars (\$250.00) per thousand board feet of Ponderosa Pine from all sums due SELLER, which withholding shall be applied to the balance due BUYER under the promissory note described in paragraph 2 hereof until the note has been paid in full.

6. COMPLETION OF LOGGING BY BUYER: In the event SELLER has not completed the logging and removal of timber by June 30, 1991 BUYER shall have the option of completing the logging and removal

itself or by a logging contractor hired by it. In such event the purchase price for logs shall be reduced to the following amounts:

Ponderosa Pine-----\$230.00 per thousand board feet

The withhold to apply on the note, shall also be reduced to \$230.00 per thousand board feet for Pine until the promissory note is paid in full. Thereafter the total purchase price for logs delivered shall be paid to SELLER as delivered.

In the event BUYER shall complete the logging as provided above, all severance tax payable as a result of such logging operations shall be paid by BUYER and deducted from the amounts to be credited against the repayment of the loan.

7. SECURITY INTEREST: This agreement is intended by the parties as a security agreement for purposes of the Oregon Uniform Commercial Code and DIANA L. SMITH expressly grants to ROUGH & READY LUMBER CO. a first security interest in all Ponderosa Pine cut and removed from the real property hereinabove described. DIANA L. SMITH will promptly join with ROUGH & READY LUMBER CO. in execution of financing statements as may be required to create a valid first security interest of ROUGH & READY LUMBER CO. in said timber and to reflect that ROUGH & READY LUMBER CO. has obtained a first security interest and lien on said timber to secure DIANA L. SMITH's payment and performance of this agreement. ROUGH & READY LUMBER CO. shall be entitled to all rights and remedies provided under the Uniform Commercial Code.

8. SALE OF PREMISES: If any portion of the premises subject of the trust deed is sold, notwithstanding the restriction on transfer set out in said trust deed, SELLER shall pay the entire net proceeds of such sale to BUYER to apply on the balance owing on the promissory note.

9. ATTORNEY FEES: If litigation arises from this agreement, the prevailing party shall be entitled to reasonable attorney's fees to be fixed by the Court including reasonable attorney's fees on any appeal. In addition, the judgment shall include all reasonable expenses of litigation including investigation, deposition, and other like expenses.

10. GUARANTY: In order to induce BUYER to enter into this agreement with SELLER and in consideration thereof, James D. Smith unconditionally guarantees unto BUYER, its successors and assigns, the due payment by SELLER of all monies to be paid, and performance of all things to be done, pursuant to each and every condition and covenant contained in said agreement, or in any supplements or amendments thereto or renewals thereof, or in any instrument given in pursuance thereof.

Said guarantor agrees that this is a guaranty of payment and performance and shall not be impaired by any modification or extension to which the parties to said agreement may hereafter agree nor by any modification, extension, release or other alteration of any of the obligations hereby guaranteed or of any security therefor, to all of which the guarantor hereby consents; that his liability hereunder is primary, direct and unconditional and may be enforced without requiring BUYER first to resort to any other right or remedy which it may have against the SELLER. Release by BUYER of SELLER of any and all claims against SELLER shall not impair the liability of the guarantor not so released.

BUYER and SELLER shall have full right to conduct their dealings with each other in any manner they see fit, without affecting or impairing the liability of the undersigned guarantor; further, this guaranty shall also attach to and follow any assignment of this agreement or any reassignment of the accounts assigned pursuant thereto and/or any part thereof.

The guarantor waives all statutory rights to extensions, exemptions and appraisals, notice of acceptance hereof, notice of default, presentment, demand, protest and notice thereof as to any instrument, and all other notices and demands to which he might otherwise be entitled. BUYER agrees that in the event of default, notice thereof shall be given guarantor prior to exercise of its remedies.

11. LEGAL REPRESENTATION: This agreement was prepared for BUYER by the law firm of Schultz, Salisbury, Cauble & Versteeg, and the firm represents BUYER only. If SELLER desires legal assistance, it is advised to contact an attorney of its own choice. If the legal fees of Schultz, Salisbury, Cauble & Versteeg have been divided between the parties, SELLER must not assume that it is in any manner being represented by Schultz, Salisbury, Cauble & Versteeg.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first hereinabove written.

Diana L. Smith
Diana L. Smith
SELLER

Rough & Ready Lumber Co., an
Oregon corporation
by Donald W. Johnson
Authorized Officer
BUYER

James D. Smith
James D. Smith
GUARANTOR

STATE OF OREGON, County of Josephine) ss. May 1, 1991

The foregoing instrument was acknowledged before me by Donald W. Johnson, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument, an authorized officer of Rough & Ready Lumber Co., an Oregon corporation, on behalf of the corporation.

Lorrie Smith Bellamy
Notary Public for Oregon
My Commission Expires: 2/9/92

STATE OF OREGON, County of Josephine) ss. May 1, 1991

The foregoing instrument was acknowledged before me by Diana L. Smith and James D. Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the foregoing instrument, and acknowledged said instrument to be their voluntary act and deed.

Lorrie Smith Bellamy
Notary Public for Oregon
My Commission Expires: 2/9/92

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 7th day of May A.D., 19 91 at 12:03 o'clock P.M., and duly recorded in Vol. M91 of Deeds on Page 8543.

FEE \$38.00

Evelyn Biehn, County Clerk

By Pauline Muelandore