

2008-012138

Klamath County, Oregon



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08/29/2008 11:41:57 AM

Fee: \$46.00

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MTC57108

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Pepple Johnson Cantu & Schmidt, PLLC  
1501 Western Avenue  
Suite 600  
Seattle, WA 98101

[SPACE ABOVE THE LINE IS FOR RECORDER'S USE]

Loan Nos. 717609827 (Note A)  
42711300 (Note B)  
717610013 (Note C)

### RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this "*Covenant*") dated August 29, 2008, is made by COLLINS PRODUCTS LLC, an Oregon limited liability company, as grantor, ("*Grantor*") in favor of AMERICAN AGCREDIT, FLCA, an Agricultural Credit Association chartered pursuant to the Farm Credit Act of 1971, as amended, ("*AgCredit*") and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation ("*Prudential*", together with AgCredit, "*Lenders*") with respect to the real property legally described on the attached Exhibit A (the "*Land*").

#### Recitals

- A. Grantor is purchasing and making improvements to the Land using the proceeds of a loan ("*Loan C*") made by Prudential to COLLINS TIMBER COMPANY LLC, an Oregon limited liability company ("*Borrower*"). Loan C, together with certain other loans and obligations, is secured by the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated September 7, 2002, from Borrower as Trustor in favor of Lenders as Beneficiaries, recorded September 10, 2002, in Lake County, Oregon in Book 130 at Page 443, Lake County Mortgage Records, and in Klamath County, Oregon in Volume M02, Page 51350, Klamath County Mortgage Records, as amended by the Modification of Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated August 30, 2007, and recorded in such Counties, as further amended by a Second Modification of Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated the same as this Covenant and being recorded in Klamath and Lake Counties concurrently with this Covenant. The foregoing deed of trust and its amendments are together referred to as the "*Deed of Trust*". Grantor is an affiliate of Borrower.
- B. As a condition to making Loan C, Lenders require Grantor to agree to the provisions of these Covenants.

### Covenant

Therefore, in order to induce Prudential to make Loan C and in consideration of the benefits to Grantor from Loan C, Grantor hereby covenants as follows:

1. **Transfers Prohibited.**

- (a) Grantor shall not participate in, and shall not cause, allow or otherwise permit, a Transfer (other than a Permitted Transfer) without the prior written consent of Lenders, which consent may be given or withheld for any reason (or for no reason) or given conditionally, as determined by Lenders in their sole and absolute discretion, and any default, failure to observe, or breach of the provisions of this covenant shall constitute an immediate Event of Default hereunder.
- (b) ***"Transfer"*** means the occurrence of (i) any sale, conveyance, assignment, transfer, alienation, mortgage, conveyance of security title, encumbrance or other disposition of the Land or the improvements located on the Land (together, the ***"Property"***), of any kind, or any other transaction the result of which is, directly or indirectly, to divest any Grantor of any portion of its title to the Property, voluntarily or involuntarily, (ii) any merger, consolidation or dissolution involving, or the sale or transfer of all or substantially all of the assets of Grantor, or (iii) the transfer (at one time or over any period of time) of ten percent (10%) or more of the shares of, or the beneficial interest in or of Grantor.
- (c) ***"Permitted Transfer"*** means (a) the sale of obsolete equipment; (b) liens for taxes or assessments or other governmental charges or levies that are either not yet delinquent or to the extent that nonpayment thereof is permitted by the terms of Loan C; (c) pledges securing bids, tenders, contracts (other than contracts for the payment of money) or leases to which Grantor is a party as lessee made in the ordinary course of business; (d) workers', mechanics', suppliers' or similar liens arising in the ordinary course of business that are either not yet due and payable or that are being contested in good faith by appropriate proceedings and for which Borrower has established adequate reserves; (e) carriers', warehousemen's, or other similar possessory liens arising in the ordinary course of business; (f) an attachment or judgment lien that would not cause the aggregate amount of all such attachment or judgment liens to exceed \$10,000,000, but only for a period of thirty (30) days following attachment of such lien and such attachment or judgment lien shall cease to be a Permitted Transfer if the obligation that it secures has not been satisfied or bonded during such thirty (30) day period; (g) zoning restrictions, easements, licenses, hunting licenses, leases for cell towers, oil and gas leases, or other restrictions on the use of real property or other minor irregularities in title (including leasehold title) thereto, so long as the same do not materially impair the use, value, or marketability of such real property, leases or leasehold estates; (h) security interests securing purchase money indebtedness, but only if the specific indebtedness has been approved by Lenders; (i) other liens, if any, specifically consented to and approved by Lenders; (j) a merger of, or transfer of the shares of or the beneficial interest in, Grantor with or

to another subsidiary of Borrower; and (k) those matters set forth in a title report acceptable to Lenders relating to the Property.

2. **Release.** These Covenants may be released only by a non-electronic or faxed writing bearing the duly authorized handwritten signatures of Lenders, and upon the satisfaction of all conditions for such release in the Second Loan Modification Agreement (Collins Timber Loan) dated the same as these Covenants and made by Lenders, Borrower, and Collins Pine Company, an Oregon corporation. Upon reconveyance in full of the Deed of Trust, this Covenant shall also be released.

3. **General Terms.**

- (a) **Warranty.** Grantor warrants and represents to Lenders that (i) it owns the Property free and clear of liens or encumbrances, other than such liens and encumbrances that would be permitted hereunder as Permitted Transfers, (ii) it has full right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and (iii) it has no knowledge or reason to believe that any information or material submitted to Lenders in connection with Loan C is untrue or omits to state any material fact necessary in order to make the statements contained therein not misleading.
- (b) **Governing Law.** These Covenants shall be governed by and construed in accordance with the laws of the State of Oregon without regard to its conflict of laws rules.
- (c) **Integration, Amendment.** This document constitutes the entire agreement between the parties with respect to the covenants against Transfer and shall not be amended, modified or terminated except by a non-electronic or faxed writing bearing the duly authorized handwritten signatures of Lenders.
- (d) **Indemnity.** Grantor hereby agrees to protect, defend, indemnify and hold Lenders and their agents harmless from and against all liability, loss, claims, damage, fee, cost or expense (including reasonable attorney fees) that Lenders might incur by reason of any failure of any representation or warranty made by Grantor in these Covenants or any default, failure to observe, or breach of the provisions of these Covenants or by reason or in defense of any and all claims and demands whatsoever that may be asserted against Lenders arising out of or in connection with the Property or these Covenants.
- (e) **Attorney Fees.** Grantor agrees to pay all reasonable attorney fees (including any allocated costs of in-house counsel), statutory court costs, and other expenses incurred by Lenders in enforcing any right or remedy Lenders may have under these Covenants, whether or not suit is filed, or in pursuing any right or remedy Lenders may have under federal bankruptcy law, state insolvency statutes or other similar statutes. Such fees, costs, and expenses shall include without limitation those incurred in any trial, appeal or review or any proceeding under federal bankruptcy or state receivership laws.

DATED as first above written.

**"Grantor"**

COLLINS PRODUCTS LLC, an Oregon limited liability company

By: Marilyn R. Hendrick  
Name: MARILYN R. HENDRICK  
Title: VP of Finance & CFO

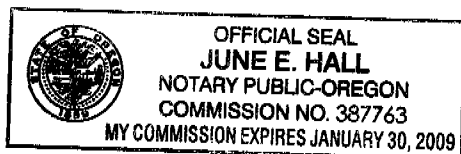
STATE OF OREGON )

) SS

COUNTY OF MULTNOMAH )

The foregoing instrument is acknowledged before me this August 27, 2008, by Marilyn Hendrick the VP of Finance and CFO of COLLINS PRODUCTS LLC, an Oregon limited liability company, on its behalf.

Before me:



June E. Hall  
Notary Public in and for the State of Oregon,  
residing at Gresham, OR  
Name (printed or typed): June E. Hall  
My Commission Expires: 1/30/09

## EXHIBIT A

### LEGAL DESCRIPTION OF LAND

#### PARCEL 1:

Those parts of Section 13 and Section 24, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the low water line on the North bank of the Klamath River on the West line of said Section 24, and running thence North along said West line 2,485 feet; thence Northeasterly on a straight line to the Northwest corner of Government Lot 1 of said Section 13; thence continuing Northeasterly along an extension of the same straight line through the NE 1/4 of SE 1/4 of said Section 13 to the East line of said Section 13; thence South along said East line to said low water line; thence Southwesterly along said low water line to the place of beginning.

EXCEPTING THEREFROM the Following:

A portion of the NE 1/4 of SE 1/4 of Section 13, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at the Southeast corner of Lot 67 of Block 40, PLAT OF WEST KLAMATH (but in part thereof which has been vacated), as recorded in the office of the County Clerk of said County (which point is South 30 degrees 16'45" West 998.34 feet from the Northeast corner of said NE 1/4 of SE 1/4); thence South 24 degrees 29' East, along the Easterly line of said Lot 67 extended Southeasterly, 59.99 feet to the Southerly line of said Lot 73; thence South 25 degrees 01' 13" West 11.63 feet; thence South 62 degrees 46'36" West 300.97 feet; thence North 14 degrees 53'47" West 22.25; thence South 65 degrees 31' West 30.40 feet; thence North 16 degrees 24' West 60.6 feet; thence North 65 degrees 31' East 60.6 feet, more or less, to the Northwest corner of said Lot 73; thence North 65 degrees 31' East, along the North line of said Lot 73, 267.04 feet, more or less, to the point of beginning.

#### PARCEL 2:

The SW 1/4 NW 1/4, N 1/2 SW 1/4 and Government Lots 2, 3, 4, 5, 6, 7 and 8, Section 18, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

#### PARCEL 3:

The SW 1/4 NE 1/4 of Section 18, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING that portion lying East of the East line contained in Boundary Line Agreement, dated December 11, 1979 and recorded June 11, 1980 in Volume M80, page 10716, Microfilm Records of Klamath County, Oregon.

ALSO EXCEPTING therefrom that portion as contained in Deed to the State of Oregon by and through its Department of Transportation Highway Division, recorded April 10, 1992 in Volume M92, page 7557, Microfilm Records of Klamath County, Oregon.

PARCEL 3:

The SE1/4 NW1/4, Section 18, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM the following described parcel:

Beginning at a point on the East line of said SE 1/4 NW 1/4 from which the Northeast corner of said SE 1/4 NW 1/4 bears North 00 degrees 37' 00" East 100.00 feet; thence along said east line South 00 degrees 37'00" West 100.00 feet; thence North 89 degrees 23'00" West 100.00 feet; thence North 00 degrees 37'00" East 100.00 feet; thence South 89 degrees 23'00" East 100.00 feet to the point of beginning.

PARCEL 4:

The NW 1/4 NW 1/4, Section 18, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 5:

A strip of land 100 feet in width parallel to and adjacent to the said low water mark on the left bank of said Klamath River being a portion of the NW 1/4 S W 1/4 and Government Lot 13 of Section 17, Government Lots 10 and 11 of Section 18 and Government Lots 7 and 8 in Section 19, all in Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

SAVING AND EXCEPTING therefrom that portion as contained in Deed to the State of Oregon by and through its Department of Transportation Highway Division, recorded April 23, 1992 in Volume M92, page 8702, Microfilm Records of Klamath County, Oregon.