

AFTER RECORDING MAIL TO:

Weyerhaeuser Columbia Timberlands LLC
Land Use
P.O. Box 667
Longview, WA 98632

BELOW GROUND RIGHT OF WAY EASEMENT AGREEMENT

This Below Ground Right of Way Easement Agreement (this "**Agreement**"), is made and entered into as of the 10th day of January, 2016, by and between WEYERHAEUSER COLUMBIA TIMBERLANDS LLC, a Delaware limited liability company, ("**Weyerhaeuser**"), and OREGON RSA #2, INC., an Oregon corporation ("**Grantee**"). Weyerhaeuser and Grantee are sometimes referred to herein individually as a "**Party**", and collectively as, the "**Parties**".

RECITALS

Weyerhaeuser owns certain real property located in Skamania County, State of Washington, and described in the attached Exhibit A (the "**Weyerhaeuser Property**").

Grantee desires to obtain from Weyerhaeuser, and Weyerhaeuser desires to grant Grantee, a perpetual, non-exclusive easement and right of way for an underground utility corridor to convey electricity, telephone and fiber optics over, across and under Weyerhaeuser's lands in Section 15, Township 4 North, Range 7 East Willamette Meridian, in Skamania County, in the State of Washington.

AGREEMENT

NOW, THEREFORE, in consideration of Five Thousand and NO/100 DOLLARS (\$5,000.00), and the mutual covenants of the Parties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Grant of Easement.** Subject to the terms hereof, Weyerhaeuser, for and in consideration of the faithful observance of, and strict compliance with, the terms and conditions set forth in this Agreement, hereby grants to Grantee a perpetual, appurtenant, non-exclusive right of way easement Ten (10) feet in width, and being Five (5) feet on each side of the centerline for the construction, installation and maintenance of an underground utility corridor for electricity, telephone and fiber optics (the "**Easement**"), over, across, and

under Weyerhaeuser's lands as described and located approximately as shown on Exhibit A (the "**Easement Area**").

2. **Purpose.** The easement granted hereunder is conveyed by Weyerhaeuser to Grantee for the purpose of installing, laying, constructing, maintaining, inspecting, repairing, removing, replacing, using, testing, and operating underground electrical, telephone and fiber optic cable facilities and appurtenances, including without limitation, conduit, conductors, and vaults (the "**Utility Line**").

3. **Permittees.** Weyerhaeuser, its subsidiaries, and affiliates and all others, and its employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the "**Weyerhaeuser Permittees**". Grantee's employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the "**Grantee Permittees**".

4. **Ingress and Egress.** Grantee and Grantee Permittees shall at all times have ingress to and egress from Utility Line over and across Weyerhaeuser's land for the purposes of exercising all of the rights herein granted.

5. **Reservation of Rights.** Weyerhaeuser reserves for itself and the Weyerhaeuser Permittees, the right at all times for any purpose, to use, cross, recross, maintain, patrol and repair the Easement Area in any manner that will not unreasonably interfere with the rights of Grantee.

6. **Non-Exclusive Easement; Third Parties.**

- a. Weyerhaeuser may grant to third parties, including without limitation the Weyerhaeuser Permittees, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such party shall be subject to the terms and conditions of this Agreement and shall not unreasonably interfere with the rights granted Grantee hereunder.
- b. Other than the Grantee Permittees, Grantee shall not have the right to grant the use any portion of the Easement Area or other rights granted hereunder to any other person, partnership, cooperative, association or corporation for any purpose, but, to the contrary, the exercise of any rights granted to Grantee hereunder by a party other than Grantee shall require a separate grant of rights by Weyerhaeuser.

7. **Operating Standards.**

- a. **Installation and Maintenance of Utility Line.** Grantee shall give Weyerhaeuser notice 24 hours prior to commencing construction, re-construction, maintenance,

repair, replacement or removal of any Utility Line within Weyerhaeuser's road right of way and shall follow all directions from Weyerhaeuser regarding safety while said work is ongoing.

- b. **Location and Depth of Utility Line/Markers.** The Utility Line shall be located five (5) feet from the westerly and northerly edge of the road right of way along a length of fifteen hundred (1500) feet from the county road and buried at a minimum depth of thirty-six (36) inches, measured from the top of the Utility Line to the ground surface of the ditch line. The Utility Line shall go around existing structures (for example, culverts), keeping a minimum two-foot (2') clearance between the Utility Line and the structure. The location of the Utility Line shall be marked by intervisible markers no more than 500 feet apart. Where the Utility Line crosses the road, Grantee shall place markers on both sides of the road to show the location of the crossing.
- c. **Trees, Brush or other Vegetation.** Grantee shall have the right to remove trees, brush and undergrowth from said right of way as is necessary for the enjoyment of the rights and privileges herein granted, provided, that in the exercise of this right, Grantee shall not permit any trees, tops, limbs, brush, undergrowth or other similar debris, hereinafter called "debris," to fall or be placed in any stream, nor shall Grantee permit accumulations of debris which might at some later date result in blocking or lowering the quality of the water in a stream; and provided further, that said right of way shall at all times be maintained in a sightly condition. Grantee will not damage, remove or trim trees without prior consent of Weyerhaeuser. Grantee shall not place any debris of any kind on Weyerhaeuser's property adjacent to the Easement Area; nor shall Grantee place any hazardous material or substance of any kind on Weyerhaeuser's property or in any body of water adjacent to or in the vicinity of the Easement Area. Grantee shall clean up or otherwise dispose of all slashing created by Grantee on Weyerhaeuser's lands as soon as may be practicable and in such manner and at such times as are provided by law and acceptable to Weyerhaeuser.
- d. **Culverts.** Where installed under an existing culvert, a minimum crossing depth of twelve (12) inches will be kept under all plastic or concrete tile culverts and twenty-four (24) inches under all corrugated metal culverts. Said crossing depths must be maintained when replacing or repairing said Utility Line. Grantee shall immediately repair or replace all culverts damaged during the replacement or repair of said Utility Line.
- e. **Repair of Damage.** Immediately upon completion of the installation, maintenance, repair, replacement or removal of said Utility Line, Grantee shall, at its sole expense, compact and patch said road, and shall repair any damage to said road, road surface, drainage or other road facilities caused by the Grantee's activities, and shall leave said road in a condition equal to, or better than, those existing at the time such installation, maintenance, repair, replacement or removal commenced. At the end of the first three (3) months following

completion of said construction, re-construction, repair, maintenance, or removal of the Utility Line, Grantee shall inspect the Easement Area and shall immediately remedy any settling which may have occurred thereupon to the satisfaction of Weyerhaeuser. Grantee shall promptly repair all damage to fences and other operational property on Weyerhaeuser's land resulting from Grantee's activities hereunder. Prior to commencing any such activities that would necessitate temporary road closures, Grantee shall contact Weyerhaeuser to schedule such activities and road closures so as to minimize any adverse impact on Weyerhaeuser's operations.

8. **Assumption of Risk.** The Weyerhaeuser Property is used for logging, forestry and industrial operations and maintained only to standards required for such use. Weyerhaeuser makes no representations as to the present or future condition of the Weyerhaeuser Property or the nature or condition of, or traffic on, any roads or trails, and, except to the extent of the negligence of Weyerhaeuser or Weyerhaeuser Permittees, Grantee assumes all risks of personal injury or property damage to Grantee and the Grantee Permittees, and to the employees, representatives, invitees or contractors of any of them, in connection with the exercise of rights hereunder.

9. **Grantee's Responsibilities.** Grantee shall:

- a. Take all reasonable precaution to prevent unauthorized persons from using Weyerhaeuser roads;
- b. Keep all existing gates, and any that may be installed on Weyerhaeuser roads in the future, closed and locked; provided, however, that the Parties may, from time to time leave gates (if any) on Weyerhaeuser roads open for reasonable extended periods during regular business hours in order to facilitate active timber harvest and other commercial operations of the Parties;
- c. Not drive with excessive speed upon Weyerhaeuser roads;
- d. Immediately report to Weyerhaeuser any dangerous or defective condition with respect to any portion of Weyerhaeuser roads or the Easement Area;
- e. Ensure that the Grantee Permittees and their employees, invitees, licensees, and contractors comply with all applicable local, state and federal laws, rules and regulations (collectively, "**Applicable Laws**") with respect to the use of the Easement Area, as well as all rules and responsibilities set forth herein;
- f. Comply, and ensure that the Grantee Permittees comply, with all reasonable road rules, regulations and restrictions that Weyerhaeuser may, from time to time, promulgate in its sole and absolute discretion, including (without limitation) restrictions on weight, speed and use during adverse weather or fire conditions reasonably necessary to protect the Easement Area and adjacent timber; and
- g. Change the location and installation of the Utility Line at its own expense, as requested by Weyerhaeuser, if at any future time the Utility Line interferes with

Weyerhaeuser's use of its land. Such change shall take place within Sixty (60) days of request.

10. **Indemnity.** Grantee shall defend, indemnify, and hold harmless Weyerhaeuser, the Weyerhaeuser Permittees, and their respective subsidiaries, and affiliates, and all of their directors, officers, employees, and agents for, from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses from a third party including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Grantee or the Grantee Permittees under this Agreement or otherwise arising in connection with activities on or around the Easement Area or other land of Weyerhaeuser or its subsidiaries, or affiliates, except claims caused by Weyerhaeuser's negligence or the negligence of its subsidiaries and affiliates, or any of their respective directors, officers, employees, and agents. This includes, without limitation, any claims for: injury to or death of persons; damage to property; timber trespass; nuisance; mechanics' and materialmen's liens; and claims arising from Grantee's or the Grantee Permittees' activities hereunder. Grantee shall take all commercially reasonable steps needed to keep the Weyerhaeuser Property free of liens arising from Grantee's activities, and promptly obtain or bond the release of any such liens that may be filed.

Weyerhaeuser shall defend, indemnify, and hold harmless Grantee, Grantee Permittees, and their respective subsidiaries, and affiliates, and all of their directors, officers, employees, and agents for, from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses from a third party including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Weyerhaeuser or Weyerhaeuser Permittees under this Agreement or otherwise arising in connection with activities on or around the Easement Area or other land of Weyerhaeuser or its subsidiaries, or affiliates, except claims caused by Grantee's negligence, or the negligence of its subsidiaries and affiliates, or any of their respective directors, officers, employees, and agents. This includes, without limitation, any claims for: injury to or death of persons; damage to property; timber trespass; nuisance; mechanics' and materialmen's liens; and claims arising from Weyerhaeuser's or Weyerhaeuser's Permittees' activities hereunder.

11. **Release of Claims/Liability.** Grantee expressly releases Weyerhaeuser from any and all claims for damage to the Utility Line pursuant to the rights granted herein arising from any operation of Weyerhaeuser on its said lands; provided, that in the conduct of any such operation, Weyerhaeuser shall use reasonable care to avoid causing such damage, it being expressly understood that this provision does not release Weyerhaeuser from any claim for damages caused by its negligence. Weyerhaeuser does not assume any liability for damages

or injuries caused by or resulting from acts or omissions by other than Weyerhaeuser employees, agents, contractors or affiliates.

12. **Assumption of Liability.** In the exercise of the rights granted hereunder to Grantee, Grantee shall use reasonable care to avoid damage to timber on Weyerhaeuser's property adjacent to the Easement Area. Grantee shall be liable for any timber damage arising from Grantee's failure to comply with this requirement.

13. **Timber.** Weyerhaeuser reserves all timber now on or hereafter growing within the Easement Area. Grantee shall not sever or damage any timber on or around the Easement Area or the Weyerhaeuser Property, without the prior written consent of Weyerhaeuser.

14. **Insurance.** Before commencing any activities under this Agreement, Grantee shall, at its own cost and expense, secure a policy or policies of insurance, and, during the term of this Agreement, maintain such insurance, in a form, and with companies with at least an A.M. Best Rating of Aminus VII or better (or in the absence of an A.M. Best Rating, insurance companies acceptable to Weyerhaeuser), insuring against liability growing out of the Grantee's activities, or the activities of its employees, subcontractors, or other persons acting for or on behalf of Grantee, including the following:

- a. Comprehensive general liability insurance (with no exclusions) with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for bodily injury and property damage, including coverage for: operations and completed operations; independent contractors; blanket contractual liability (including liability assumed under the indemnification paragraph of this Agreement); explosion; collapse; and underground damage if blasting or excavation is to be done; and automobile liability insurance covering owned, hired and non-owned vehicles (including the "pollution from autos endorsement"). The policies shall by endorsement name Weyerhaeuser, its subsidiaries, and affiliates, as additional insureds with respect to the performance of this Agreement. The coverages shall be primary with respect to the indemnity obligations of Grantee under this Easement, exclusive of any coverage carried by Weyerhaeuser, and shall be exhausted first notwithstanding that Weyerhaeuser may have other valid and collectible insurance covering the same risk. Nothing herein contained shall limit the Grantee's liability to Weyerhaeuser as to the scope or the amount of the insurance coverage. .
- b. State or private industrial accident insurance covering Grantee and its employees which shall fully comply with State and Federal Employment and Workers' Compensation laws.
- c. Employer's liability insurance covering Grantee and all of its employees having limits of One Million Dollars (\$1,000,000).
- d. Coverages in this Section 14 may be reviewed by Weyerhaeuser and revised in

Weyerhaeuser's reasonable discretion from time to time, as dictated by economic or legal considerations, or to conform to the applicable prevailing insurance requirements, and Weyerhaeuser reserves the right to make reasonable changes to the amounts and types of insurance limits and policies required under this Agreement.

On or before mutual execution of this Agreement, Grantee shall deliver to Weyerhaeuser certificates from Grantee's insurance carrier evidencing the coverages described herein along with copies of the applicable endorsements (upon request). The policies required under this Section 14 shall not be terminated, without Grantee providing at least thirty (30) days prior written notice to Weyerhaeuser.

15. **Assignment.** This Agreement shall be freely assignable by Weyerhaeuser in its sole and absolute discretion. Grantee shall not assign or transfer (including by merger, operation of law, or otherwise), any of its rights under this Agreement without the prior written consent of Weyerhaeuser, which consent shall not be unreasonably withheld, conditioned, or delayed.

Already covered under indemnity

16. **Title.** Weyerhaeuser does not warrant the title to the land traversed by the Easement Area and shall have no liability of any kind or nature to Grantee in the event of failure of said title.

17. **Land Uses and Practices.** Grantee recognizes that Weyerhaeuser's lands in the area are managed for commercial forestry including logging, slash burning, other fire control, silvicultural site preparation, forest roads, aerial and ground application of forest chemicals, and other silvicultural practices which often create noise, dust, visual impacts and other alterations of the forest environment. In conducting such operations Weyerhaeuser will comply with all laws and regulations applying in commercial forest areas. No additional restrictions shall be imposed on Weyerhaeuser's forest management operations because of proximity to any uses of Grantee's lands dependent on or facilitated by the rights of Grantee under this Agreement.

18. **Environmental Matters.** Grantee shall not cause nor permit any filling activity to occur in or on the Easement Area, except by prior written approval of Weyerhaeuser. Grantee shall not deposit refuse, garbage, or other waste matter, or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the Weyerhaeuser Property or the Easement Area except in accordance with all applicable laws. Grantee shall immediately notify Weyerhaeuser if Grantee becomes aware of any release or threatened release of hazardous substance on the Easement Area or adjoining property. If a release of hazardous substance occurs in, on, around, under, above or from the Weyerhaeuser Property or the Easement Area arising solely out of any action of the Grantee or the grantee Permittees, Grantee shall, at its sole expense, promptly take all actions necessary or advisable

to clean up, contain, and remove the hazardous substance in accordance with applicable laws.

19. **Improvements.** Grantee shall not make any improvements to Weyerhaeuser roads or the Utility Line without the prior written consent of Weyerhaeuser, which consent shall not be unreasonably withheld, conditioned or delayed. Furthermore, unless the Parties agree in writing to share the cost of improvements to Weyerhaeuser roads or the Utility Line, improvements to Weyerhaeuser roads shall be made at the sole cost and expense of the improver and improvements to the Utility Line shall be made at the sole cost and expense of the Grantee.

20. **Fire Suppression and Control.** Grantee shall comply with all laws and regulations pertaining to fire protection and suppression, and take every possible precaution to prevent fires from igniting on the Weyerhaeuser Property or spreading onto other Weyerhaeuser lands. In case of fire, Grantee shall immediately notify Weyerhaeuser and appropriate government agencies, and shall make every reasonable effort to suppress or contain the fire. Grantee shall reimburse Weyerhaeuser for all damages (including loss or damage of timber, and fire suppression costs) resulting from fires caused by Grantee's activities arising out of Grantee's negligence.

21. **Successors and Assigns.** The rights and obligations herein shall inure to the benefit of and be binding upon the respective heirs, devisees, successors and assigns of the Parties.

22. **Prior Rights.** This grant and all rights hereunder are subject to all liens, easements, servitudes, rights of way, oil, gas, and mineral leases, and all other grants or reservations either of record or on the ground affecting the Weyerhaeuser Property. By this grant, Weyerhaeuser grants no greater rights than it is permitted to grant in view of such encumbrances.

23. **Subordination.** Any mortgage or deed of trust affecting any portion of the Easement Area shall at all times be subject and subordinate to the terms and conditions of this Agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all the terms and conditions of this Agreement.

24. **Termination.** If for a period of Five (5) years Grantee shall cease to use, or reserve for prospective future use, the Easement Area or any portion thereof, for the purposes herein granted, this Agreement shall terminate. Weyerhaeuser may also terminate this Agreement for breach by Grantee of any terms or obligations contained in this Agreement or, in its discretion, suspend all rights of Grantee under this Agreement until the breach has been cured. In the event of a termination, Grantee hereby authorizes Weyerhaeuser to record a statement in recordable form evidencing such termination..

25. **Severability; Relation to Existing Law.** If any provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either Party. Upon any such determination, the Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible. Notwithstanding any other provision of this Agreement, the invalidation of any provision herein relating to the Parties' remedies shall not be interpreted to prevent an injured Party from seeking actual damages. If subsequent to the date of this Agreement valid State or Federal laws or regulations governing the relationship between Weyerhaeuser and Grantee take effect, this Agreement shall be considered to incorporate such laws or regulations so long as they shall be effective, and any provision of this Agreement in conflict therewith shall during such period be void.

26. **Waiver.** No failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any Party's right to demand strict compliance with the terms hereof; provided, however, that any Party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such Party without affecting any of the other provisions of this Agreement.

27. **Entire Agreement; Construction.** This Agreement sets forth the entire and complete agreement between the Parties with respect to the subject matter hereof. Any prior agreements, commitments, or representations, express or implied, between the Parties are superseded by this Agreement. This Agreement may be altered, amended, or repealed only by a written instrument executed by both Parties. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or governmental or jurisdictional authority by reason of such Party having been deemed to have structured, written, drafted or dictated such provisions. The Recitals to this Agreement and the Exhibits attached to this Agreement are incorporated herein by this reference. The captions and headings of this Agreement are for convenience only and shall not define, limit, or describe the applicability, scope, meaning, or intent of any provision of this Agreement. Capitalized terms which are defined in the recitals hereof shall have the meaning given.

28. **Attorneys' Fees.** In the event any arbitration, action, suit or legal proceeding is instituted by either Party to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party both reasonable attorney fees and reasonable expert witness fees as determined by the court or arbitration panel, both at trial and on appeal or review and in bankruptcy, whether or not the matter in dispute involves an issue peculiar to federal bankruptcy law. Attorney fees and expert witness fees shall be in addition to other costs and disbursements allowed by law. "**Prevailing Party**" shall be determined by the arbitrator, or

any court, as the true prevailing party (not statutorily prevailing party) after taking into consideration any settlement offers made by the Parties and the number and importance of issues to be determined.

29. **Disputes.** If disputes arise under this Agreement, the Parties will first attempt to negotiate a solution through this process: (a) the initiating party will present a written explanation of the dispute and the remedy requested; (b) within 14 business days after receiving such a statement, the other party will respond by either agreeing to the requested remedy, counter-proposing a different remedy, or explaining why the issue does not justify any remedy; and (c) if the matter is not settled within 10 days after the response is received by the initiating party, the initiating party may pursue any remedies available at law or in equity.

30. **Notices.** All notices required or permitted to be given hereunder, or given in regard to this Agreement by one Party to the other, shall be in writing and the same shall be given and be deemed to have been served, given and received (i) if delivered by hand, when delivered in person, (ii) if sent by reputable overnight courier (such as Federal Express or UPS), the next business day following the date on which the notice was sent, or (iii) if mailed, when placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the Party at the address hereinafter specified. Any Party may change its address for notices by giving five days advance written notice to the other Party hereto in the manner provided for herein. Until changed in the manner provided herein, the Parties' respective addresses are as follows:

If to Weyerhaeuser: Weyerhaeuser Columbia Timberlands LLC
Attn: Land Use
P.O. Box 667
Longview, WA 98632

With a copy to: Weyerhaeuser Company
Attn: Legal Department
220 Occidental Avenue South
Seattle, WA 98104

If to Grantee: Oregon RSA #2, Inc.
Attn: Real Estate Development
8410 West Bryn Mawr Ave., Suite 700
Chicago, IL 60631

31. **Governing Law; Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. In addition, the Parties agree that in the event of any dispute concerning this Agreement, venue for any cause of action arising out of, or having to do with, this Agreement shall be, and is, in State or Federal Court in the

county in which the Easement Area is located.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

**WEYERHAEUSER COLUMBIA
TIMBERLANDS LLC**

By: Rhonda Hunter
Rhonda Hunter

Its: President

By: Jeffrey W. Haenke
Jeffrey W. Haenke

Its: Assistant Secretary

AGREED AND ACCEPTED by Oregon RSA #2, Inc. in the presence of the undersigned Notary Public, on this the 14th day of November 2016, after due reading of the whole.

OREGON RSA #2, INC.

Printed Name: Jeffrey W. Baenke

Title: Vice President

My Appointment expires:

