

40265

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

D. G. Shelter Products Co.  
One Maritime Plaza  
Suite 2300

San Francisco, CA 94111

Attn: Robert E. Meller Aspen #M-27798

Vol. 1484 Page 14373

PERFORMANCE DEED OF TRUST

THIS DEED OF TRUST, made this 20th day of August, 1984, between DYER MOUNTAIN LUMBER, A California corporation, herein called TRUSTOR, whose address is 395 Rivella Vista, Redding, California 96001, ASPEN TITLE & ESCROW, INC., an Oregon corporation, 600 Main Street, Klamath Falls, Oregon 97601, herein called TRUSTEE, and D. G. SHELTER PRODUCTS COMPANY, a California corporation, One Maritime Plaza, Suite 2300, San Francisco, California 94111, herein called BENEFICIARY,

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that certain real property located in Klamath County, Oregon, the legal description of which is attached hereto as Exhibit "A":

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary to collect and apply such rents, issues and profits as hereinafter set forth.

For the Purpose of Securing: The performance of each and every agreement of Trustor as set forth in that certain Agreement For Purchase and Sale of Assets and Real Property, dated August 7, 1984, between Trustor and Beneficiary. Beneficiary agrees that the purpose of this Performance Deed of Trust is to assure performance of the Trustor as aforesaid and that no foreclosure and sale pursuant to the Power of Sale contained in this instrument shall be completed unless and until a court of competent jurisdiction has determined the actual monetary damages which have been suffered by Beneficiary due to any default by the Trustor in said obligations.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

- (1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any

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alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all incumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any incumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of

expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part hereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sums secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any

security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

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(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law, Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

The undersigned Trustor requests that copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor

DYER MOUNTAIN LUMBER

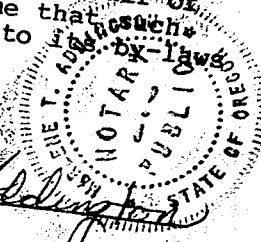
*Conrad J. Hagen*  
CONRAD J. HAGEN, President

*Kenneth E. Bird*  
KENNETH E. BIRD, Secretary

STATE OF OREGON )  
COUNTY OF KLAMATH ) ss.

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On this 20th day of August, 1984, before me, the undersigned, a Notary Public in and for said County and State, personally appeared CONRAD J. HAGEN, personally known to me or proved to me on the basis of satisfactory evidence to be the President, and KENNETH E. BIRD, personally known to me or proved to me on the basis of satisfactory evidence to be the Secretary of the corporation that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to the by-laws or a resolution of it's board of directors.

  
M. Berlene T. Addington  
NOTARY PUBLIC

My Commission Expires: March 22, 1985

After Recording, Return To:  
D. G. Shelter Products Co.  
One Maritime Plaza  
Suite 2300  
San Francisco, CA 94111  
Attn: Robert E. Mellor

DESCRIPTION

**PARCEL 1:**

**14379**

All that portion of Lots 4 and 14, Section 8, Lots 1, 11 and 12, Section 17, and the Northeast quarter of the Northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ ) and Lots 1 and 9, Section 18, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, and more particularly described as follows:

Beginning at the corner common to Sections 7, 8, 17 and 18, said Township and Range; thence South 0° 54½' West, 679.9 feet; thence South 41° 31' West 875.9 feet; thence South 24° 00' East, 43.94 feet to the true point of beginning of this description; thence North 41° 31' East, 713.22 feet; thence Northeasterly along a curve to the right, with a radius of 935.37 feet, a distance of 350.2 feet; thence North 62° 58' East, 1,427.81 feet; thence Northeasterly along a curve to the left, with a radius of 975.37 feet, a distance 583.0 feet; thence North 28° 43' East, 984.5 feet; thence South 61° 17' East, 292.6 feet; thence South 11° 29' West, 553.2 feet; thence South 25° 42' West, 375.0 feet; thence South 33° 31' East 46.0 feet; thence South 12° 18' West, 199.0 feet; thence South 6° 34½' West, 223.0 feet; thence South 20° 38½' West 357.0 feet; thence South 23½' West, 186.0 feet;; thence South 86° 21' West, 214.0 feet; thence South 69° 07' West, 287.0 feet; thence South 53° 09' West, 584.0 feet; thence South 44° 03½' West, 151.0 feet; thence South 48° 17' West, 137.0 feet; thence South 58° 37' West, 322.0 feet; thence South 72° 28½' West, 819.0 feet; thence South 63° 55' West, 185.5 feet; thence North 24° 00' West, 431.13 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land situated in the NW $\frac{1}{4}$ , Section 17, and the NE $\frac{1}{4}$ , Section 18, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at a 2-inch iron pipe on the Southeasterly right of way line of the Burlington Northern Railroad (formerly Great Northern Railroad) from which the Northeast corner of said Section 18 bears North 02° 33' 44" East 776.39 feet; thence South 27° 15' 48" East 822.93 feet to a 2 inch iron pipe on the bank of Klamath River as described in Deed Volume 337 at page 60, of the Klamath County Deed Records; thence along the lines of said Deed Volume South 72° 28' 30" West 599.50 feet to a 5/8 inch iron pin with plastic cap, South 63° 55' 00" West 93.00 feet to a 5/8 inch iron pin marking the Southeast corner of that tract of land described in Deed Volume M-69 at page 8019, of the Klamath County Deed Records; thence North 27° 15' 48" West 458.75 feet to a 5/8 inch iron pin marking the Northeast corner of said tract and being on the Southeasterly right of way line of said railroad right of way; thence along said right of way line North 41° 31' 00" East 641.90 feet to a 5/8 inch iron pin with plastic cap, on the arc of a curve to the right (central angle equals 05° 31' 26" and radius equals 934.93 feet) 90.14 feet to the point of beginning., with bearings based on Great Northern Railway Map T-58)

CONTINUED ...

description continued ...

PARCEL 2:

Lot 15, Section 8, and Lot 10, Section 17, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being an island in the Klamath River, known as Quillitch Island.

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PARCEL 3:

That portion of the right of way of the Great Northern Railway Company in Government Lots 3, 4, 13 and 14 of Section 8, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, lying Southeasterly of a line lying 25 feet South-easterly from, measured radially and at right angles, the centerline of track of said Railway Company, and lying Southwesterly of a line drawn Southeasterly and at right angles to said Railway Company main track centerline at railway survey station 80+50, and lying North-easterly of a line drawn Southeasterly and at right angles to said Railway Company main track centerline at railway survey station 90+00. Said centerline is described as follows:

Commencing at a point on the South line of Section 8, said township and Range, lying 1,359.5 feet Easterly from the Southwest corner of said section, said point being at railway survey station 106+42; thence Northeasterly and tangent along the centerline of said track at an angle of 27° 05' to said South line of Section 8 a distance of 86.8 feet; thence Northeasterly along a 6° 00' curve to the left 570.8 feet; thence Northeasterly and tangent 984.4 feet to railway survey station 90+00; thence continuing Northeasterly and tangent 815.7 feet to railway survey station 81+84.3 and point of Headblock of a No. 9 Turnout to the right; thence along said No. 9 Turnout 78.5 feet to Heel of Frog; thence Northeasterly and tangent 150 feet to end of this centerline description.

STATE OF OREGON, )

County of Klamath )

Filed for record at request of

on this 20 day of August A.D. 19 84  
at 3:58 o'clock P M, and duly  
recorded in Vol. M84 of Mortgages  
page 14373

EVELYN BIEHN, County Clerk

By [Signature] Deputy

Fee 32.00