

CRATER/SELP

82335

DEED OF TRUST

THIS DEED OF TRUST is made this 13th day of November, 1987, between the Grantor, Crater Lake Lumber Co., an Oregon corporation, whose address is HC Box 307, Chiloquin, Oregon 97624, (herein "Borrower"); the Trustee, Klamath County Title Company, P.O. Box 151, Klamath Falls, Oregon 97601, and the Department of Energy, State of Oregon, 625 Marion St. NE, Salem, Oregon 97310 (herein "Beneficiary" or "Department").

Borrower, in consideration of the sum of Three Million Seven Hundred Fifty Thousand and No/100 Dollars (\$3,750,000), paid to Borrower, and for other good and valuable consideration, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Klamath, State of Oregon:

Lots 3 and 4 and all that portion of the E 1/2 SW 1/4 and S 1/2 SE 1/4 NW 1/4 lying Westerly of the right of way of the S.P. Railroad in Section 31, Township 30 South, Range 8 East, Willamette Meridian, Klamath County, Oregon.

which has the address of Lenz Siding, Chemult, Oregon (herein "Property Address"): together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject, however, to the rights and authorities given herein to the Department to collect and apply such rents), royalties, mineral, oil and gas rights and ~~profits~~ ^{water, water rights, and water stock}, all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property are herein referred to as the "Property";

PROVIDED, nonetheless, that if Borrower shall pay to the Department when due the sum of Three Million Seven Hundred Fifty Thousand and No/100 Dollars (\$3,750,000), together with interest thereon, in accordance with the terms of Borrower's Note (herein "Note"), of equal date hereto, payable to the order of the Department, and providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on January 1, 1999 and shall pay all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust, or otherwise payable by Borrower to the Department in accordance with this Deed of Trust, and shall also keep and perform all covenants, agreements and warranties herein contained and contained in the Loan Agreement of equal date hereto between Borrower and Department (herein "Loan Agreement") on the part of the Borrower to be kept and performed, then this Deed of Trust shall be null and void and the rights hereby granted shall cease and terminate; otherwise this Deed of Trust shall be and remain in full force and effect.

Borrower warrants and covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is free from all liens, security interests and encumbrances, except those enumerated in the title insurance policy approved by and issued for the benefit of the Department in connection with this transaction, and that the Borrower will warrant and defend the title to the property against all claims, whether now existing or hereafter arising. The foregoing warranties shall survive foreclosure of this Deed of Trust and shall run with the land.

Borrower further covenants and agrees as follows:

1. Performance by Borrower. Borrower will promptly pay when due the principal of and interest on the Note, and all other fees or charges due under the Note or this Deed of Trust, at the stated maturity date or dates, or earlier in the event of acceleration. The Borrower will promptly and faithfully observe all of its obligations and will permit or suffer no event of default to occur under this Deed of Trust or the Loan Agreement or the Note secured hereby, or under any other agreement now in effect or hereafter made between the Borrower and Department with respect to the transaction evidenced by the Note, Loan Agreement, and Deed of Trust. The Note is hereby incorporated by reference in and becomes a part of this Deed of Trust.

2. Borrower to Provide Insurance. At its own expense, Borrower will keep the improvements now existing or hereafter erected on the Property insured as agreed to in the Loan Agreement.

3. Borrower to Pay Taxes and Assessments. The Borrower will pay, before a fine or penalty might attach for nonpayment thereof, all taxes and assessments and all other charges and encumbrances whatsoever levied upon or assessed, placed or made against the Property.

4. Borrower to Maintain Property. As agreed in the Loan Agreement, Borrower will keep the buildings and other improvements now or hereafter erected on the Property in good repair and condition, ordinary depreciation excepted.

5. Use of Property. The Property is not currently used for agriculture, timber or grazing purposes.

6. Compliance with Laws. The improvements made and to be made upon the Property, together with all plans and specifications, do and shall comply with all municipal ordinances and with any interim or final comprehensive land use plan in effect.

7. Sale or Lease of Property. The Borrower expressly agrees that borrower will not sell, exchange, lease or otherwise encumber the Property except in compliance with applicable provisions of the Loan Agreement.

8. Liens on Property. The Borrower will not, without the Department's prior written consent, grant or create any lien or consensual security interest on the Property except as permitted by applicable provisions of the Loan Agreement.

9. Protection of Security; Department's Option to Pay. As agreed in the Loan Agreement, in the event of Borrower's failure to pay any sums provided for in this Deed of Trust, the Department, at its option, may pay the same.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby irrevocably assigned and shall be paid to the Department in accordance with the terms of the Loan Agreement.

11. Reamortization. At the request of the Borrower and subject to the written approval of the Department, amounts remaining due under the Note may be reamortized within the original term of the Note on terms acceptable to the Department if: (i) a partial prepayment results from an award in condemnation, and (ii) there is a resulting loss of income from the Property.

12. Non-Liability of State. The State and its officers, agents and employees shall not be liable to Borrower or to any other party whomsoever for any death, injury, damage or loss that may result to any person or property by or from any cause whatsoever in, on or about the Property and Borrower shall, and does hereby agree to, indemnify, defend, save and hold the State, officers, agents and employees harmless from, and defend each of them against, any and all claims, liens and judgments for death of, injury to, or loss by any person or damage to property whatsoever occurring in, on or about the Property or due to the construction, existence, or operation of buildings or equipment thereon.

The findings by the director concerning the Project and any inspections or analyses of the Project by Department are for purposes of determining eligibility for loan funds only and do not constitute an endorsement of the feasibility of the Project or its components or an assurance of any kind for any other purpose.

13. Borrower Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by the Department to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. The Department shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest.

14. Inspection. The Department, or its agents or assignees, may at all reasonable times upon reasonable notice to Borrower enter upon the Property for the purpose of inspection.

15. Security Interest. This Deed of Trust shall constitute a security agreement in accordance with the terms of the Loan Agreement.
16. Personal Property on Foreclosure. Any personal property remaining upon the Property after the Property has been possessed or occupied by the Department or its agent following foreclosure of this Deed of Trust, or under any deed in lieu of foreclosure, shall be conclusively presumed to have been abandoned by the Borrower, and the Borrower covenants that Borrower will upon written request of the Department execute a bill of sale transferring title to such personal property to the Department.
17. Other Debt. This Deed of Trust shall also secure, and the amounts secured under this Deed of Trust shall also include, all other advances heretofore or at any time hereafter made to the Borrower by the Department and all other indebtedness of every type and description now or hereafter owed under the Deed of Trust by the Borrower, unless, in the case of any such advance or indebtedness, the Department has otherwise agreed in writing. The Department shall not be obligated to make any such advance or to permit or suffer the creation of any such indebtedness.
18. Successors and Assigns Bound; Number; Joint and Several Liability; Captions. The covenants and agreements contained herein shall bind, and the rights conferred hereby shall inure to the benefit of the respective heirs, legal representatives, successors and assigns of the Department and the Borrower. Whenever used, the singular number shall include the plural, and the plural the singular; and the use of any gender shall apply to all genders. All covenants and agreements of the Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.
19. Governing Law; Severability. This Deed of Trust shall be governed by the laws of the State of Oregon. In the event that any provisions or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect any other provision and to this end, the provisions of this Deed of Trust are severable.
20. Notice. Except for any notice required under applicable law to be given in another manner, any notice to Borrower or Department shall be given by mailing such notice in the manner and to the address agreed upon in the Loan Agreement.
21. Transfer of the Property. Any conveyance or transfer of the Property shall be controlled by applicable provisions of the Loan Agreement.
22. Events of Default. The following shall be events of default hereunder:
- (a) Failure by the Borrower to pay the Note in accordance with its terms; or

(b) Failure by the Borrower to observe or perform any covenant, condition or agreement in this Deed of Trust on its part to be observed or performed, including any covenant, condition or agreement in the Loan Agreement incorporated herein and made a part of this Deed of Trust, or the breach of any warranty by the Borrower herein, for a period of 30 days after written notice thereof has been given by the Department to Borrower specifying such failure or breach and requesting that it be remedied, unless the Department shall agree in writing to an extension of such time.

The happening of any event of default above mentioned, and the continuance thereof beyond the times herein limited, shall constitute a breach of this Deed of Trust.

23. Acceleration; Remedies. Upon the occurrence of any Event of Default or at any time thereafter until such Event of Default is cured to the written satisfaction of the Department, the Department may, at its option, and to the extent allowed by statute, exercise one or more of the following rights and remedies available to it:

(a) The Department may declare immediately due and payable all sums remaining unpaid under the Note or otherwise immediately due and payable, without notice of demand, together with any interest accrued to date of payment; and

(b) The Department shall have, and may exercise with respect to all personal property and fixtures which are part of the Property, all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in the State of Oregon. Notice to the Borrower of intended disposition of such notice shall be deemed reasonable, if given in the manner specified herein at least ten (10) calendar days prior to the date of intended disposition; and

(c) The Department may at its option proceed to foreclose under this Deed of Trust in equity as a mortgage or, to the extent allowed by statute, direct the Trustee to foreclose this Deed of Trust by advertisement and sale. In the latter event the Department may, and is hereby authorized and empowered to cause the Trustee to execute a written notice of such default and of its election to cause to be sold the herein described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the recording officer in the county wherein the real property defined herein is situated; and

(d) If this Deed of Trust is a "commercial trust deed" as defined by ORS 86.770, the Department may bring proceedings against the Borrower and any other person obligated by the terms of this Deed of Trust for any amount by which the unpaid balance of the obligation secured by the Trust Deed exceeds the net sale proceeds payable to the Department.

(e) The Department may discontinue any further disbursements of funds otherwise due the Borrower from the Department and may exercise such other remedies as the Loan Agreement or law or equity may provide.

No notice, other than such as is specifically provided for herein, shall be required before the Department may exercise any remedy reserved to it.

24. Additional Security. As additional security, Borrower hereby gives and confers upon the Department the right, power and authority, subject to the prior security interest of First Interstate Bank of Oregon as of the date hereto, during the continuance of this Deed of Trust, to collect the rents and issues of said Property, reserving unto Borrower the right, prior to any default by Borrower in payment of all or any part of the indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents and issues as they become due and payable. Upon any such default, the Department 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 any sums hereby secured, enter upon and take possession of said Property or any part thereof, in its own name sue for or otherwise collect such rents and issues including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to all or part of the indebtedness secured hereby, and in such order as the Department may determine. The entering upon and taking possession of said Property, the collection of such rents and issues 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.

25. Additional Instruments; Loan Agreement. Borrower and the Department agree to execute and deliver any written instruments reasonably necessary to carry out any agreement, term, condition or assurance in this Deed of Trust whenever occasion shall arise and reasonable request or such instruments shall be made.

The Loan Agreement is hereby incorporated by reference in and becomes a part of this Deed of Trust. In case of any conflict between the provisions of the Loan Agreement and the provisions of this Deed of Trust, the provisions of the Loan Agreement shall control.

26. Trustee's Obligation to Notify. Trustee is not obligated to notify any party hereto of any action or proceeding in which Borrower, the Department or Trustee shall be a party unless brought by Trustee.

27. Reconveyance. Upon payment of all sums secured by this Deed of Trust, the Department shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Borrower, shall pay all costs of reconveyance.

28. Substitute Trustee. In accordance with applicable law, the Department may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title power and duties conferred upon the Trustee herein and by applicable law.

29. Attorney's Fees. As used in this Deed of Trust and in the Note, "attorney's fees" shall include attorney's fees, if any, which shall be awarded by a trial or appellate court.

30. Notice. Request is hereby made that a copy of any Notice of Default and a copy of any Notice or Sale hereunder be mailed to the Borrower at its address set forth above.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust on the date first written above.

After recording return to:
Dept. of Energy, State of Oregon (D&O)
625 Marion St. NE
Balem, Oregon 97310

BORROWER

CRATER LAKE LUMBER COMPANY

By: Bruce L. Engel, Pres.

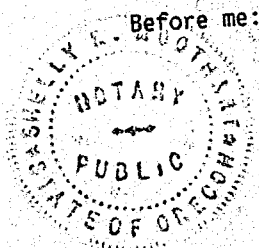
STATE OF OREGON

County of Washington

)
) ss.

November 13, 1987

Personally appeared Bruce L. Engel, who stated that he is President of Borrower and that he executed the foregoing instrument by authority of and on behalf of Borrower, and acknowledged the said instrument to be the free act and deed of said Borrower.



Shelly K. Moothart
Notary Public for Oregon
My Commission Expires: 10/25/90

REQUEST FOR RECONVEYANCE

TO TRUSTEE

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

State of Oregon,
Department of Energy

Dated: _____

By: _____

DLN:ldp
3423H(d1,f3)
11/10/87

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Company the 8th day
of December A.D., 19 87 at 2:19 o'clock P M., and duly recorded in Vol. M87,
of Mortgages on Page 22019.

FEE \$40.00

Evelyn Biehn, County Clerk

By Pam Smith