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K-44909

TRUST DEED

VOL 193 Page 33616



THIS TRUST DEED, made this 16th day of December, 1993, between
 DIVIDE RESOURCES, INC., 62592 Boweman Rd., Joseph OR 97846

as Grantor, FIRST AMERICAN TITLE INSURANCE COMPANY OF OREGON
WEYERHAEUSER COMPANY FOUNDATION, BOX C, Tacoma WA 98477, as Trustee, and

as Beneficiary,

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Klamath County, Oregon, described as:

See attached list for property descriptions.

16021 DEED

*200 S. W. Market St., Suite 250, Portland OR 97201

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of THREE MILLION EIGHT HUNDRED FORTY FIVE THOUSAND EIGHT HUNDRED (\$3,845,800.00) with interest thereon according to the terms of a promissory note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable March 31, 1994.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of said note becomes due and payable. In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the grantor without first having obtained the written consent or approval of the beneficiary, then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable.

The above described real property is not currently used for agricultural, timber or grazing purposes.

To protect the security of this trust deed, grantor agrees:

1. To protect, preserve and maintain said property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of said property.

2. To cause any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.

3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property; if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the beneficiary.

4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the said premises against loss or damage by fire and such other risks as the beneficiary may from time to time require, in companies acceptable to the beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the beneficiary as soon as insured; if the grantor shall fail for any reason to procure any such insurance and to deliver said policy of insurance at least fifteen days prior to the expiration of the policy, the beneficiary may procure the same at grantor's expense. 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 grantor. Such application or release shall not constitute a breach of this trust deed.

5. To keep said premises free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property before any part of such taxes, assessments and other charges become due or delinquent and promptly deliver receipts therefor to beneficiary; should the grantor fail to make payments of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereditaments, described, as well as the grantor, shall be bound to the same extent that the grantor is bound to the obligations herein described; and all such payments shall be immediately due and payable with notice, and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed.

6. To pay all costs, fees and expenses of this trust, including the cost of title search as well as the other costs and expense of the trustee in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.

7. To appear in and defend any action or proceeding purporting to affect the security rights of beneficiary or trustee; and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph 7 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney's fees on such appeal.

It is mutually agreed that:

8. In the event that any portion or all of said property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation in such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon beneficiary's request.

9. At any time and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, for cancellation) without affecting the liability of any person for the payment of the indebtedness, trustee may

(a) consent to the making of any map or plat of said property; (b) join in granting any easement or other right or restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien of the mortgage thereon; (d) reconvey, without warranty, all or any part of the property to the grantee, in any reconveyance (a) to be described as the person or persons to whom the property is reconveyed, and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof; (e) trustee's fees for any of the services mentioned in this paragraph shall be conclusively fixed at \$3,845,800.00.

10. Upon any default by grantor hereunder, 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 premises 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.

11. The entering upon and taking possession of said property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

12. Upon default by grantor in payment of any indebtedness secured hereby or in his performance of any agreement hereunder, the beneficiary may declare all sums secured hereby immediately due and payable. In such an event the beneficiary at his election may proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale. In the latter event the beneficiary or the trustee shall execute and cause to be recorded his written notice of default and his election hereby whereupon the trustee shall at the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.735, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time the cure is made. If the default consists of being cured may be cured by tendering the performance required under the default, the person offering or cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with trustee's and attorney's fees not exceeding the amounts provided by law.

14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which said sale may be postponed as provided by law. The trustee may sell said property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law, conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee, attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the grantor or to his successor in interest entitled to such surplus.

16. Beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment and without reconveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

17. 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 grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real property of this state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 696.505 to 696.585.

IN KLAMATH COUNTY, OREGON:

TOWNSHIP 38 SOUTH, RANGE 5 EAST, W.M.

Section 2: Fr. $N\frac{1}{2}NE\frac{1}{4}$, $SW\frac{1}{2}NE\frac{1}{4}$, Fr. $N\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$
Section 4: $S\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$
Section 10: $N\frac{1}{2}$, $E\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}$
Section 12: $NE\frac{1}{4}$
Section 16: All
Section 22: All
Section 26: Fr. $NE\frac{1}{4}$

TOWNSHIP 25 SOUTH, RANGE 7 EAST, W.M.

Section 1: All

TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M.

Section 3: $SW\frac{1}{2}$
Section 4: Fr. $NE\frac{1}{4}$, Fr. $E\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}$
Section 10: $NW\frac{1}{2}$
Section 11: $NW\frac{1}{2}$

TOWNSHIP 33 SOUTH, RANGE 14 EAST, W.M.

Section 19: $NE\frac{1}{4}SW\frac{1}{4}$, Fr. $S\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$; LESS AND EXCEPT the railroad right of way commonly known as the Weyerhaeuser Company Woods Line railroad

TOWNSHIP 40 SOUTH, RANGE 15 EAST, W.M.

Section 25: $SE\frac{1}{4}NE\frac{1}{4}$

RESERVATION: To the extent not heretofore conveyed, excepted or reserved, the Grantor hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its successors and assigns, forever, all geothermal steam and heat and all metals, ores and minerals of any nature whatsoever in or upon said land including, but not limited to, coal, lignite, peat, oil and gas, including coal seam gas, together with the right to enter upon said land for the purpose of exploring the same for such geothermal resources, metals, ores and minerals, and drilling, opening, developing and working mines and wells thereon and taking out and removing therefrom, including by surface mining methods, all such geothermal resources, metals, ores and minerals, and to occupy and make use of so much of the surface of said land as may be reasonably necessary for said purposes; provided, that Grantee and Grantee's heirs, representatives, successors and assigns, shall be paid just and reasonable compensation for any injury or damage to the surface of said land, to the crops or to the improvements thereon caused by the exercise of any rights herein reserved; provided, further, that the exercise of such rights by Grantor shall not be postponed or delayed pending reasonable efforts to agree upon or have determined such just and reasonable compensation.

SUBJECT TO:

- (1) Rights reserved in federal patents or state deeds, including, but not limited to water rights, and mineral or fossil rights reservations.
- (2) Ancestral rights, if any, of descendants of aboriginal inhabitants to occupy, use and possess any portion of the premises, as reserved by treaties, understandings, practice, statutes, or judicial decisions; for food gathering, shelter, religious ceremonies, social and economic gatherings, battlefields and burial sites.
- (3) To any easement or right of way for any public roads or utilities heretofore existing on said lands.

- (4) Taxes not yet due and payable.
- (5) Document: Permit
Date: June 10, 1984
Grantee: Winema National Forest
Purpose: Spring development/water collection
Affects: Sec. 2-388-5E
- (6) Document: Easement
Date: April 4, 1969
Grantee: United States of America
Recording #: Vol. M69, Page 4763
Purpose: Road
Affects: Sec. 2-388-5E
Sec. 4-388-5E
Sec. 12-388-5E
- (7) Document: Easement (Public Highway)
Date: September 16, 1969
Grantee: Klamath County, Oregon
Recording #: Vol. M70, Page 2498
Purpose: Easement for public road/highway
Affects: Sec. 2-388-5E
Sec. 4-388-5E
Sec. 12-388-5E
- (8) Reserved rights of Weyerhaeuser Company to visit forestry research plots as disclosed in:
Document: Warranty Deed
Date: December 1993
Grantee: Weyerhaeuser Company Foundation
Affects: Sec. 10-388-5E
- (9) Document: Amendment No. 5 to Right of Way and Road Use Agreement M-690
Date: May 6, 1970
Grantee: United States of America
Recording #: Auditor's No. 70-05318
Purpose: Road construction and use
Affects: Sec. 10-388-5E
Sec. 16-388-5E
Sec. 26-388-5E
- (10) Document: Easement
Date: June 2, 1975
Grantee: Doris Von der Hellen et al
Recording #: Vol. M75, Page 7076
Purpose: Road easement
Affects: Sec. 10-388-5E
Sec. 22-388-5E

- (11) Reserved road easement rights of Weyerhaeuser Company as disclosed in:
 Document: Warranty Deed
 Date: December 1993
 Grantee: Weyerhaeuser Company Foundation
 Affects: Sec.22-388-5E
- (12) Document: Right of Way and Road Use Agreement (RWA M-690)
 Date: June 19, 1963, as supplemented and amended
 Grantee: United States of America
 Recording #: Vol.346, Page 367
 Purpose: Road construction and use
 Affects: Sec.22-388-5E
- (13) Document: Access Road Easement
 Date: August 11, 1959
 Grantee: United States of America
 Recording #: Vol.315, Page 446
 Purpose: Access road
 Affects: Sec.22-388-5E
- (14) Reservation of one-half ($\frac{1}{2}$) minerals as disclosed in:
 Document: Deed
 Date: October 1, 1927
 Grantee: Weyerhaeuser Timber Company
 Recording #: Vol.79, Page 282
 Affects: Sec.22-388-5E
- (15) Document: Road Easement
 Date: March 24, 1977
 Grantee: United States of America
 Recording #: Vol.M77, Page 11586
 Purpose: Access road
 Affects: Sec.22-388-5E
- (16) Document: Plat Supplement No. M-690-28
 Date: June 12, 1971
 Grantee: United States of America
 Purpose: Road construction and use
 Affects: Sec.26-388-5E
- (17) Reservation of all subsurface rights, except water, as disclosed in:
 Document: Patent No. 1157625
 Date: March 1, 1956
 Grantee: Weyerhaeuser Timber Company
 Recording #: Vol.283, Page 139
 Affects: Sec.3-338-R13E

(18) Document: Grazing Lease, as supplemented by Memorandum
of Agreement, dated January 17, 1984
Date: April 26, 1982, as supplemented
Grantee: ZX Land and Cattle Company
Purpose: Grazing livestock
Expires: June 30, 2020
Affects:

Sec.3-338-13E

Sec.4-338-13E

Sec.10-338-13E

Sec.11-338-13E

(19) Mineral reservation as disclosed in:
Document: Patent No. 1157587
Date: February 29, 1956
Grantee: Weyerhaeuser Timber Company
Recording #: Vol.283, Page 141
Affects:

Sec.4-338-13E

(20) Reservation of all subsurface rights, except water, as
disclosed in:
Document: Patent No. 1157635
Date: March 2, 1956
Grantee: Weyerhaeuser Timber Company
Recording #: Vol.283, Page 143
Affects:

Sec.4-338-13E

(21) Reservation of all oil and gas, and mineral rights, as
disclosed in:
Document: Patent No. 1157590
Date: February 29, 1956
Grantee: Weyerhaeuser Timber Company
Recording #: Vol.283, Page 145
Affects:

Sec.10-338-13E

(22) Document: Easement
Date: December 28, 1959
Grantee: United States of America
Recording #: Misc. Vol.13, Page 594
Affects:

Sec.10-338-13E

(23) Document: Permit
Date: July 6, 1981, as supplemented
Grantee: U. S. Forest Service
Purpose: Fence permit
Affects:

Sec.19-338-14E

33623

(24) Document: Easement
Date: September 21, 1970
Grantee: United States of America
Recording #: Volume M71, Page 2951
Purpose: Road easement
Affects:

Sec.25-408-15E

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co the 17th day
of Dec. A.D., 19 93 at 9:02 o'clock A M., and duly recorded in Vol. M93
of Mortgages on Page 33616

FEE \$45.00

Evelyn Biehn County Clerk

By *Christine Nielsen*