

63269

MTC 7529
MORTGAGE

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THIS MORTGAGE, Made the 27th day of February, 1979, by:

Moore Dry Kiln Company of Oregon,
an Oregon corporation

Mortgagor, unto Barnett Bank of Jacksonville, National Association,
as agent for itself and for The Oregon Bank and Planters National
Bank & Trust Company, Mortgagee,

WITNESSETH: That the said Mortgagor, in consideration of the
sum of FOUR MILLION AND NO/100 DOLLARS (\$4,000,000.00), in the
form of loans made and credit made available to Industrial America
Corporation, as more particularly described herein, and for the
purpose of securing the repayment of the said sum with interest,
and the performance of the covenants hereinafter contained, does
hereby grant, convey, mortgage and warrant unto the said Mortgagee
the lands, premises and property situated in the County of Klamath
and State of Oregon described as follows, to-wit:

Lots 10 and 11 in Block 18 and Lots 10, 11, 12, 13, 14,
15 and 16 in Block 19 of Second Railroad Addition to the
City of Klamath Falls, according to the official plat there-
of on file in the office of the County Clerk of Klamath
County, Oregon,

TO HAVE AND TO HOLD the granted premises and property,
together with the tenements, hereditaments, rights, privileges
and appurtenances, now or hereafter belonging to or used in
connection with the above described premises including all
buildings and improvements thereon (or that may hereafter be
erected thereon), together with the reversions and remainders,

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rents, issues and profits thereof, together with the following property which is and shall be deemed to be fixtures and a part of the real property: all plumbing, heating, cooking, cooling, ventilating, watering, irrigating apparatus, window shades, venetian blinds, screens and storm windows and doors, shutters and awnings, floor coverings, machinery or any other fixtures and replacements thereof now or hereafter during the term of this mortgage belonging to or used in connection with the above described premises all of which are a part of the security for the indebtedness herein mentioned.

This Mortgage shall constitute a Security Agreement with respect to all existing and after acquired machinery, equipment, fixtures and trade fixtures, tools, spare parts, accessions, accessories and fittings used, acquired or hereafter acquired in connection with any of the foregoing, replacements of or substitutions for all or any portion of the foregoing, and proceeds of all of the foregoing.

And the Mortgagor hereby covenants with the said Mortgagee as follows:

FIRST: That this mortgage is given to secure the above sum, said sum to be paid in accordance with the terms of certain notes dated February 27, 1979, executed by Industrial America Corporation, described as follows:

A. Three (3) term notes, each in the amount of \$1,000,000.00, payable to each of the above named Banks, maturing on March 1, 1984.

B. Three (3) credit line notes, one in the amount of \$334,000.00, payable to Barnett Bank of Jacksonville, N.A., and two in the amounts of \$333,000.00, one of which is payable to The Oregon Bank and the other of which is payable to Planters National Bank & Trust Company, maturing on March 1, 1982.

SECOND: The security of this mortgage shall also extend to and cover any extension or renewal of the above notes and any additional loan, loans or advances made by the mortgagee or any of the above-named Banks to Industrial America Corporation, and any guaranty by the Mortgagor of any of the foregoing indebtedness.

THIRD: The Mortgagor warrants that it holds merchantable title to the above-described premises and property in fee simple free of all encumbrances other than those enumerated in the title insurance policy, if any, issued for the benefit of the Mortgagee in connection with this transaction and/or accepted by the Mortgagee. Subject to such exceptions, the Mortgagor warrants and will forever defend the title against the claims of all persons. In the event any action or proceeding is commenced which questions Mortgagor's title or the interest or priority of the Mortgagee under this mortgage, Mortgagor shall defend the action or proceeding at its expense.

FOURTH: This instrument shall constitute a security agreement with respect to any personal property or fixtures or both included within the description of the property.

At the request of the Mortgagee, Mortgagor shall join with the Mortgagee in executing one or more financing statements pursuant to the Uniform Commercial Code in a form satisfactory to the Mortgagee and will pay for filing the same in the proper public office or offices as well as the cost of such lien searches made by filing officers or searching agencies as may be deemed desirable by the Mortgagee.

FIFTH: During the entire life of this mortgage the building and improvements erected and to be erected upon said premises, and the personal property mortgaged herein if any, shall be kept insured by the Mortgagor against loss or damage by fire and such other hazards in such amounts, for such periods and under such form and type of policy as shall be satisfactory to the Mortgagee. All the insurance written on the mortgaged premises and property shall be made payable, in the event of loss, to the Mortgagee and the Mortgagee shall be entitled to the possession of all such insurance policies during the life of this mortgage. The cash value of all such insurance policies is hereby assigned to the Mortgagee as additional security to the loan and in the event of foreclosure of this mortgage or other transfer of title to the mortgaged property in extinguishment of the debt secured hereby, all right, title and interest of the Mortgagor in and to any such insurance policies then in force shall pass to the Mortgagee. The Mortgagor will pay the premiums for said insurance as the same shall become due. The Mortgagee shall not be responsible for any failure to place or maintain such insurance, or for loss or damage growing out of a defect or non-payment of loss under any such policy of insurance. If the premises or property covered hereby or any part thereof, shall be damaged by fire or other hazards against which insurance is held, the amounts paid by any insurance company pursuant to the contract of insurance, shall be paid to the Mortgagee and the amounts so received may be applied by the

Mortgagee, at its option, either upon any sum or sums secured by the mortgage, whether or not same are due, or released by the Mortgagee, at its option, for the repairing, replacing and rebuilding of the premises and property; said repairing, replacing and rebuilding to be done and made subject to the approval of the Mortgagee and in a manner satisfactory to the Mortgagee.

Mortgagor shall promptly notify Mortgagee of any loss or damage which may occur to the mortgaged property. Mortgagee is hereby authorized, at Mortgagee's option, to make proof of loss if the same is not promptly made by the Mortgagors. Mortgagee may compromise with any insurance company and make a final settlement which shall be binding upon Mortgagors.

SIXTH: The Mortgagor will pay before delinquency, and before any penalties, interest or other charges accrue or are added thereto, any and all taxes, assessments, liens, charges for the use of water on said premises, and any other charges or assessments which may become liens thereon prior to the lien of this mortgage, and will keep said property free and clear of any and all liens for labor or material, or any lien whatsoever that may become prior to this mortgage. If any future law is passed taxing or assessing this mortgage or the Mortgagee on account of its ownership of this mortgage, then the Mortgagee may, upon the passing of such law, declare the entire debt hereby secured due and payable.

The assessor or tax collector of the county in which the mortgaged property is located is authorized to deliver to the Mortgagee a written statement of the property taxes assessed or owing at any time.

SEVENTH: Together with and in addition to the monthly payments of principal and interest payable under the terms of the note or notes secured hereby, if said monthly payments are made by Mortgagor, the Mortgagor may agree to pay to the Mortgagee, until the said note or notes are fully paid, the following:

A sum equal to the premiums that will next become payable on policies of fire and other hazard insurance covering the mortgaged property, plus taxes and assessments next due on the mortgaged property (all as estimated by the Mortgagee, and of which the Mortgagor is notified) less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such premiums, taxes and assessments will become delinquent, such sums to be held by Mortgagee to pay such premiums, taxes and assessments. In the event that Mortgagor agrees to pay to the Mortgagee such sums, payment shall be secured by this mortgage and Mortgagors failure to make such payments shall be an event of default hereunder.

EIGHTH: The Mortgagor will use said mortgaged premises only for lawful purposes and will not commit nor suffer strip or waste upon said premises and will not do or suffer to be done any act or thing which may in any way impair the security of this mortgage. The said premises and any and all improvements thereon shall at all times be kept in a sound state of preservation and in good repair; the character and usage of said property shall not be changed, and alterations in the said premises or additions thereto shall not be made without the written consent of the Mortgagee.

In the event of an actual or threatened destruction or removal of the improvements or property on said premises, or the breach of any other covenant in this paragraph "EIGHTH," the Mortgagee may, at its option, declare the entire debt hereby secured due and payable. All judgments, decrees and awards for injury to the mortgaged property and all awards pursuant to proceedings for condemnation thereof are hereby assigned in their entirety to the Mortgagee, who may apply the same to the indebtedness hereby secured in such manner as it may elect.

NINTH: This mortgage and the note or notes hereby secured may be extended or modified by the Mortgagee at any time for the payor hereunder without notice to any other person, firm or corporation and without releasing the Mortgagor or any subsequent guarantor or payor from any liability hereunder or under said note or notes and without impairing, altering or affecting the lien of this mortgage in any way. Each of the covenants and agreements herein shall be binding upon, all successors in interest of the Mortgagor and shall inure to the benefit of any successor in interest of the Mortgagee. And it is agreed that if any note or notes secured hereby be assigned and transferred by the Mortgagee to any one or more parties without the assignment of this mortgage, then the Mortgagee shall hold this mortgage in trust for the benefit of such assignee or assignees, and may sue and recover upon such note or notes, and foreclose such mortgage in its own name for the benefit of such assignee or assignees to the same extent as though such notes had not been assigned.

TENTH: All rents, issues, income and profits derived from the mortgaged premises and property are hereby assigned to the Mortgagee as additional security. In the event of default of the Mortgagor in any respect under this mortgage, the Mortgagee shall have the right to collect and retain the rents, issues, income and profits derived from the mortgaged premises and property, and said rents, issues, income and profits shall be applied by the Mortgagee, at its option, in payment of operating costs and expenses in connection with the operation and management of the mortgaged premises, in payment of customary costs and charges for collection and management, or upon any indebtedness due or which may become due upon said note or notes, or upon or under this mortgage. The

Mortgagee shall have the right at its option to enter into and upon the mortgaged premises and take possession thereof in the event of default and to collect said rents, issues, income and profits therefrom and require any tenants or occupants of said premises to make payments to the Mortgagee of rental or of other charges arising out of the use and occupancy of said premises.

ELEVENTH: If all or any part of the mortgaged premises and property is condemned, the Mortgagee may, at its election, require that all or any portion of the net proceeds of the award be applied on the indebtedness secured hereby. The "net proceeds of the award" means the award after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Mortgagor and the Mortgagee in connection with the condemnation. If any proceedings in condemnation are filed, Mortgagor shall promptly take such steps as may be necessary to defend the action and obtain the award.

TWELFTH: In the event it becomes necessary in the judgment of the Mortgagee so to do, the Mortgagee, without notice and without regard to the value of the mortgaged premises or to the adequacy of the security for the debt, shall have the right to apply to any Court having jurisdiction for the appointment of a Receiver and to have appointed a Receiver to manage and control said mortgaged premises and property. In the event the Mortgagee or any Receiver enters into possession of said premises and property, any personal property owned by the Mortgagor and remaining in or about said premises may be used without charge by the Mortgagee or Receiver in the operation of the premises, or may be removed by the Mortgagee or Receiver, and in no event shall the Mortgagee or Receiver be held liable or responsible in any manner for injuries, loss, destruction or damage to such property or any portion thereof.

THIRTEENTH: In the event suit or action is instituted to enforce any of the terms of this mortgage, the Mortgagee shall be entitled to recover from Mortgagor such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. All reasonable expenses incurred by the Mortgagee that are necessary at any time in the Mortgagee's opinion for the protection of its interest or the enforcement of its rights, including without limitation, the cost of searching records, obtaining title reports, surveyors' reports, attorneys' opinions or title insurance, whether or not any court action is involved, shall become a part of the indebtedness secured hereby, payable on demand and shall bear interest at the rate of ten percent per annum from the date of expenditure until repaid.

FOURTEENTH: Should the Mortgagor be or become in default in any of the covenants or agreements contained herein, then the Mortgagee (whether electing to declare the whole indebtedness hereby secured due and collectible or not) may perform the same and all expenditures made by the Mortgagee in so doing, or under

any of the covenants or agreements herein, shall draw the same rate of interest as is provided to be paid on the principal of this mortgage, and all such expenditures shall be repayable by the Mortgagors without demand, and together with interest and costs accruing thereon, shall be secured by this mortgage; and the rights and duties of the parties covenanted for in this paragraph shall apply equally to any and all part payments or advances made by the Mortgagee for any of the purposes herein referred to.

FIFTEENTH: Mortgagor will not, without prior written consent of Mortgagee, transfer Mortgagor's interest in said premises or any part thereof, whether or not the transferee assumes or agrees to pay the indebtedness hereby secured. Upon any application for Mortgagee's consent to such a transfer, Mortgagee may require from the transferee such information as would normally be required if the transferee were a new loan applicant. Mortgagee shall not unreasonably withhold its consent. As a condition of its consent to any transfer, Mortgagee may impose a service charge and may increase the interest on the indebtedness hereby secured.

SIXTEENTH: Should the debt hereby secured and all sums due under the terms and covenants hereof be paid when due, then this indenture shall be void, but in case default be made in the payment of the principal or interest, or any part or installment thereof, or in case the Mortgagor shall default in the fulfillment of any of the terms hereof or the performance of any of the provisions herein required by it as and when the same are required to be performed hereby, or shall permit or suffer any default in any of the terms hereof, time being the essence hereof, then the whole of the principal sum secured hereby and the interest thereon and any and all other sums due the Mortgagee under the terms hereof shall, at the option of the Mortgagee, become immediately due and payable without notice, and this mortgage may be foreclosed, but the failure to delay of the Mortgagee to exercise such option in any one or more instances shall not be a waiver or relinquishment of the right to exercise such option.

SEVENTEENTH: The mailing address(es) of the Mortgagor is Moore Dry Kiln Company of Oregon, 3610 N. Suttle Road, P.O. Box 4208, Portland, OR 97208 and the address of the Mortgagee (Secured Party) from which security information is obtainable is Barnett Bank of Jacksonville, N.A., Attn: Shepherd E. Colledge, 100 Laura Street, Jacksonville, FL 32201.

MOORE DRY KILN COMPANY OF OREGON,
an Oregon corporation

By

W. A. Meyer

Title President

Executed the day and year
first above written.

By

Michael J. Schubert

Title Secretary/Treasurer

STATE OF OREGON

County of Multnomah

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) ss.
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THIS CERTIFIES, that on this 27th day of February, A.D. 1979, before me appeared W. A. Meyer and Janice J. Schuette both to me personally known, who being duly sworn, did say that he, the said W. A. Meyer is the President, and ^{she} ~~he~~, the said W. A. Meyer is the Treasurer and Secretary of Moore Dry Kiln Company of Oregon, the within named Corporation, and that the seal affixed to said instrument is the corporate seal of said Corporation, and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and that said W. A. Meyer and Janice J. Schuette acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this the day and year first in this, my certificate, written.

Betty Weatherman
Notary Public in and for said County
and State
My Commission Expires: 10-3-80

Return to
Mountain Title Company
407 Main
City



STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 2nd day of March A.D., 1979 at 10:59 o'clock A M., and duly recorded in Vol. M79 of Mortgages on Page 4637.

FEE \$24.00

WM. D. MILNE, County Clerk
By Bernice S. Sletch Deputy