



77220

Vol. ^m79 Page 27369

MORTGAGE

THIS INDENTURE, made this 20th day of November, 1979, between STUKEL ROCK & PAVING, INC., an Oregon corporation, hereinafter called "Mortgagor," and FIRST NATIONAL BANK OF OREGON, a national banking association, hereinafter called "Mortgagee";

WITNESSETH:

For value received by the Mortgagor from the Mortgagee, the Mortgagor has bargained and sold and does hereby grant, bargain, sell and convey unto the Mortgagee, all the following described property situate in Klamath County, Oregon, to wit:

First Parcel:

The East one-half of the Northwest one-fourth of the Northeast one-fourth of Section 32, Township 39 South, Range 10 East of the Willamette Meridian (E1/2 NW1/4 NE1/4 Section 32, Twp. 39S., R 10, E.W.M.) Klamath County, Oregon, containing 20.05 acres, more or less;

Second Parcel:

Beginning at the Northwest corner of the NE 1/4 NE1/4 of Section 32 Township 39 South, Range 10 E.W.M.; thence South along the West line of said NE 1/4 NE 1/4 a distance of 14 chains; thence East parallel to the North line of said section a distance of 9 chains; thence North parallel to said West line a distance of 14 chains; thence West along the North line of said section a distance of 9 chains to the point of beginning, 12.19 acres,

together with the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in anywise appertaining; also all such apparatus, equipment and fixtures now or hereafter situate on said premises, as are ever furnished by landlords in letting unfurnished buildings similar to the one situated on the real property hereinabove described, including, but not exclusively, all fixtures and personal property used or intended for use for plumbing, lighting, heating, cooking, cooling, ventilating or irrigating, linoleum and other floor coverings attached to floors, and shelving, counters, and other store, office and trade fixtures; also the rents, issues and profits arising from or in connection with the said real and personal property or any part thereof.

TO HAVE AND TO HOLD the same unto the Mortgagee, its successors and assigns, forever.

79 NOV 23 PM 2 31
E2 NOV 67

And the Mortgagor does hereby covenant to and with the Mortgagee, that it is lawfully seized in fee simple of the said real property, that it is the absolute owner of the said personal property, that the said real and personal property is free from encumbrances of every kind and nature, and that it will warrant and forever defend the same against the lawful claims and demands of all persons whomsoever.

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained, to be by the Mortgagor kept and performed, and to secure the payment of the sum of \$1,585,423. and interest thereon in accordance with the tenor of a certain note executed by Mortgagor dated November 20, 1979, payable to the order of Mortgagee. The amount of said note is comprised of the sum of the outstanding balances of four notes: the first dated July 10, 1978, in the principal amount of \$1,034,102 and secured by a mortgage dated July 10, 1978, recorded July 13, 1978 in volume M78, Page 15050 of the records of Klamath County, Oregon; the second note dated October 2, 1978 in the principal amount of \$125,000, the third note dated April 12, 1979 in the principal amount of \$82,024, and the fourth note dated August 3, 1979 in the principal amount of \$125,565, together with additional funds advanced. The second, third and fourth notes are not presently secured by any mortgage or real property.

The Mortgagor does hereby covenant and agree to and with the Mortgagee, its successors and assigns:

1. That it will pay, when due, the indebtedness hereby secured, with interest, as prescribed by said notes, and all taxes, liens, and utility charges upon said premises or for services furnished thereto.
2. That it will not commit or permit strip or waste of the said premises or any part thereof; that it will keep the real and personal property hereinabove described in good order and repair and in tenantable condition; that it will promptly comply with any and all municipal and governmental rules and regulations with reference thereto; that if any of the said property be damaged or destroyed by any cause, it will immediately reconstruct or repair the same so that, when completed, it shall be worth not less than the value thereof at the time of such loss or damage; provided, that if such loss or damage shall be caused by a hazard against which insurance is carried, the obligation of the Mortgagor to repair or reconstruct shall not arise unless the Mortgagee shall consent to the application of insurance proceeds to the expense of such reconstruction or repair.
3. That it will, at its own cost and expense, keep the building or buildings now or hereafter upon said premises, together with all personal property covered by the lien hereof,

insured against loss by fire and against loss by such other hazards as the Mortgagee may from time to time require, in one or more insurance companies satisfactory to or designated by the Mortgagee in an aggregate amount not less than the amount of the indebtedness hereby secured (unless the full insurable value of such building or buildings is less than the amount hereby secured, in which event the Mortgagor shall insure to the amount of the full insurable value); that all policies of insurance upon said premises, including policies in excess of the amount hereinabove mentioned and policies against other hazards than those required, shall contain such provisions as the Mortgagee shall require and shall provide, in such form as the Mortgagee may prescribe, that loss shall be payable to the Mortgagee; that all such policies and receipts showing full payment of premiums therefor shall be delivered to and retained by the Mortgagee during the existence of this mortgage; that at least 5 days prior to the expiration of any policy or policies it will deliver to the Mortgagee satisfactory renewals thereof together with premium receipts in full; that if any policy or policies shall impose any condition upon the liability of the insurer or shall contain any "average clause" or other provisions by which the insurer may be liable for less than the full amount of the loss sustained it will, as often as the Mortgagee may require, provide the Mortgagee with all such evidence as it may request concerning the performance of such condition or the existence of any facts or the value of the property insured and, if it shall appear to the Mortgagee that the insurance is prejudiced by the acts or omissions of the Mortgagor or that the coverage is inadequate, the Mortgagor will do such acts and things and obtain such further insurance as the Mortgagee may require; that the Mortgagee may, at its option, require the proceeds of any insurance policies upon the said premises to be applied to the payment of the indebtedness hereby secured or to be used for the repair or reconstruction of the property damaged or destroyed.

4. That it will execute or procure such further assurance of its title to the said property as may be requested by Mortgagee.

5. That in case the Mortgagor shall fail, neglect, or refuse to do or perform any of the acts or things herein required to be done or performed the Mortgagee may, at its option, but without any obligation on its part so to do and without waiver of such default, procure any insurance, pay any taxes or liens or utility charges, make any repairs, or do any other of the things required, and any expenses so incurred and any sums so paid shall bear interest at the rate prescribed in the note secured hereby and shall be secured hereby.

6. That it will not, without the prior written consent of Mortgagee, transfer its 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 may, in its discretion, impose a service charge not exceeding one percent of the original amount of the indebtedness hereby secured and Mortgagee reserves the right to renegotiate the interest rate on the indebtedness hereby secured.

7. That, if any default be made in the payment of the principal or interest of the indebtedness hereby secured or in the performance of any of the covenants or agreements of this mortgage, the Mortgagee may, at its option, without notice, declare the entire sum secured by this mortgage due and payable and foreclose this mortgage.

8. That, in the event of the institution of any suit or action to foreclose this mortgage, the Mortgagor will pay such sum as the trial court and any appellate court may adjudge reasonable as attorney's fees in connection therewith and such further sums as the Mortgagee shall have paid or incurred for extensions of abstracts or title searches or examination fees in connection therewith, whether or not final judgment or decree therein be entered and all such sums are secured hereby; that in any such suit, the court may, upon application of the plaintiff and without regard to the condition of the property or the adequacy of the security for this indebtedness hereby secured and without notice to the Mortgagor or any one else, appoint a receiver to take possession and care of all said mortgaged property and collect and receive any or all of the rents, issues, and profits which had theretofore arisen or accrued or which may arise or accrue during the pendency of such suit; that any amount so received shall be applied toward the payment of the debt secured hereby, after first paying therefrom the charges and expenses of such receivership; but until a breach or default by the Mortgagor in one or more of its covenants or agreements herein contained, it may remain in possession of the mortgaged property and retain all rents actually paid to and received by it prior to such default.

9. The word "Mortgagor," and the language of this instrument shall, where there is more than one mortgagor, be construed as plural and be binding jointly and severally upon all mortgagors and the word "Mortgagee" shall apply to any holder of this mortgage. Masculine pronouns include feminine and neuter. All of the covenants of the Mortgagor shall be binding upon its successors and assigns and inure to the benefit of the successors and assigns of the Mortgagee. In the event of any transfer of the property herein described or any part thereof or any interest therein, whether voluntary or involuntary or by operation of law, the Mortgagee may, without notice to the Mortgagor or anyone else, once or often, extend the time of payment or grant renewals of indebtedness hereby secured for any term, execute releases or partial releases from the lien of this mortgage or in any other

respect modify the terms hereof without thereby affecting the personal primary liability of the Mortgagor for the payment of the indebtedness hereby secured. No condition of this mortgage shall be deemed waived unless the same be expressly waived in writing by the Mortgagee. Whenever any notice, demand, or request is required by the terms hereof or by any law now in existence or hereafter enacted, such notice, demand, or request shall be sufficient if personally served on one or more of the persons who shall at the time hold record title to the property herein described or if enclosed in a postpaid envelope addressed to one or more of such persons or to the Mortgagor at the last address actually furnished to the Mortgagee or at the mortgaged premises and deposited in any post office, station or letter box.

IN WITNESS WHEREOF, the Mortgagor, pursuant to resolution of its Board of Directors duly and regularly adopted has caused these presents to be executed on its behalf by its duly authorized officers and its corporate seal, if any, to be affixed hereto the day and year first hereinabove written.

STUKEL ROCK & PAVING, INC.

(Corporate Seal)

By

Barbara L. Wardell Secy

STATE OF OREGON)

County of Klamath)

ss

— November 20, 1979

Personally appeared Donald R. Claunch and Barbara L. Wardell, who being duly sworn, did say that they are President and Secretary respectively of Stukel Rock & Paving, Inc., and that the seal affixed to the foregoing instrument, if any, is the corporate seal of said corporation and that said instrument was signed in behalf of said corporation by authority of its board of directors and they acknowledged said instrument to be its voluntary act and deed.

Before me:

Daniel E. Knopf
Notary Public for Oregon

My Commission expires: 11-19-82

(NOTARIAL SEAL)

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 23rd day of November A.D., 19 79 at 2:34 o'clock P M., and duly recorded in Vol. M79 of Mortgages on Page 27369.

FEE \$17.50

Return to: Frontier Title

WM. D. MILNE, County Clerk

By Bernetha Whetech Deputy