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MTC-9834 Vol. M81 Page 1465

JUNIOR

MORTGAGE

THIS INDENTURE, made this 29th day of January, 19 81 between  
**EMPIRE BUILDING SUPPLY, INC.**

herein called "Mortgagor", and **WESTERN BANK**, an Oregon banking corporation, herein called "Mortgagee",

**WITNESSETH:**

For value received by the Mortgagor from the Mortgagee, the Mortgagor does hereby grant, bargain, mortgage and convey unto the Mortgagee all the following described property situated in Klamath County, Oregon, to-wit:

See attached Exhibit "A"

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together with the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in anywise appertaining, including but not limited to roads and easements used in connection with the premises; also, all fixtures, buildings and parts of buildings situated upon said property, including but not limited to electric wiring and fixtures; furnace and heating system, water heaters, fuel storage receptacles; plumbing, ventilating, water and irrigating systems; screens, doors; window shades and blinds, shutters; cabinets, built-ins, linoleums and floor coverings, built-in stoves, ovens, garbage disposals, air conditions, refrigerators, freezers, dishwashers; and all other fixtures now or hereafter installed in, or on the premises; and any shrubbery, flora or timber now growing or hereafter planted or growing thereon; and any and all replacements of any one or more of the foregoing items, in whole or in part, all of which are hereby declared to be appurtenant to the land; and all the rents, issues and profits arising from the mortgaged property.

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

The Mortgagor does hereby covenant to and with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the said real property, that it is the absolute owner of all items of property described hereinabove, that the said 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. except first mortgage to Western Bank.

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 \$ 100,000.00 and interest thereon in accordance with the tenor of a certain promissory note executed by EMPIRE BUILDING SUPPLY, INC.

dated January 29, 19 81, payable to the order of the Mortgagee in installments of not less than \$ 100,000.00 each plus interest on the day of each quarter xx November 1, 19 81 when the balance then remaining unpaid shall be paid.

This Mortgage is also given as security for the payment of any and all other indebtednesses, obligations or liabilities of the Mortgagor to the Mortgagee now existing or hereafter arising, matured or to mature, absolute or contingent and wherever payable, including but not limited to such as may arise from endorsements, guarantees, acceptances, bills of exchange, promissory notes, or other paper discounted by the Mortgagee or held by the Mortgagee, or taken as security for any loans or advances of any kind, sort or description whatsoever.

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

1. That Mortgagor will pay, when due, the indebtedness hereby secured, with interest as prescribed by said note, and will pay, when due, all other sums secured hereby, and all taxes, liens and utility charges upon said premises, or for services furnished thereto. In addition thereto, it will pay, at the time of payment of each installment of principal and interest, such amount as Mortgagee shall estimate to be sufficient to produce, at least one month prior to the time when payment thereof shall become due, the amount of (a) taxes, assessments and other governmental rates and charges against said premises (herein all called "taxes") and (b) premiums upon insurance against loss or damage to said premises (said amounts being referred to hereinafter as "loan trust funds"). If the sums so paid shall be less than sufficient for said purposes, Mortgagee will also pay, upon demand, such additional sum as Mortgagee shall deem necessary therefor. If Mortgagee desires a "package" plan of insurance which includes coverage in addition to that required under this mortgage, Mortgagee may, at its option, establish and administer a reserve for that purpose. If the package plan reserve is not sufficient to pay the renewal premium on a package plan policy, then Mortgagee may use such reserve to pay premiums on a policy covering only risks required to be insured against under this mortgage and allow the package plan policy to lapse. Mortgagee shall, upon the written direction of Mortgagee, and may, without such direction, apply sums paid by Mortgagee and held by Mortgagee to the purposes aforesaid; but the receipt of such sums shall not, in the absence of such direction, impose any duty upon Mortgagee to disburse the same or relieve Mortgagee from its covenants to pay said obligations or to keep the premises insured. Mortgagee may, from time to time, establish reasonable service charges for the collection and disbursement of premiums on package-type insurance policies. Mortgagee shall not, whether or not service charges are imposed, be subject to any liability for failure to transmit any premiums to any insurer or by reason of any loss growing out of any defect in any insurance policy. At Mortgagee's option, Mortgagee may apply all loan trust funds directly to the payment of the principal balance then unpaid on the indebtednesses secured hereby; if Mortgagee elects so to do, Mortgagee is authorized to pay taxes, insurance premiums on the mortgaged property and all other charges which would otherwise be payable from the loan trust funds, when the same become due and payable, and Mortgagee may then add the amount of any such payment to the principal balance then unpaid on the indebtednesses secured hereby, each such payment to bear interest as provided in the promissory note mentioned hereinabove.
2. That Mortgagor will not commit or permit strip or waste of the said premises, or any part thereof; that Mortgagor will keep the real and personal property hereinabove described in good order and repair and in tenantable condition; that Mortgagor will promptly comply with any and all municipal and governmental rules and regulations with reference thereto; that Mortgagor will not cut or permit the cutting or removal of any timber without the written consent of Mortgagee, that if any of the said property be damaged or destroyed by any cause, that, when completed, it shall be worth not less than 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 covered by insurance payable to Mortgagee, the obligation of the Mortgagor to repair or reconstruct shall not arise unless the Mortgagee shall consent to the application of the 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 provision 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 Mortgagee 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 the 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 repair, or do any other of the things required, and any expenses so incurred and any sums so paid shall bear interest at 8% per annum, or at the rate of interest set forth in the note mentioned above, whichever is greater, 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 shall not unreasonably withhold its consent. As a condition of its consent to any transfer, Mortgagee may, in its discretion, impose a service charge not exceeding one percent of the original amount of the indebtedness hereby secured and may increase the interest rate on the indebtedness hereby secured by not more than one percent per annum.
7. That, if any default be made in the payment of the principal or interest of the indebtednesses 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 costs and disbursements in such suit or action, 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 and shall bear interest from the date paid or incurred by Mortgagee or from the date of judgment, whichever occurs first, at the rate set forth in the promissory note mentioned above; 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 him prior to such default.

9. The word "Mortgagor", and the language of this instru-

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.

EMPIRE BUILDING SUPPLY, INC.

By

Dale O. Woods  
Dale O. Woods, President

By

Karen A. Woods  
Karen A. Woods, Secretary

(Corporate Seal)

STATE OF OREGON

County of Klamath

ss.

January 29

A. D. 19 81

Personally appeared Dale O. Woods

and Karen A. Woods

who being duly sworn, did say that they are President

and Secretary, respectively of Empire Building Supply, 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:

(Notary Seal)

Return to:

Western Bank

P. O. Box 669

Klamath Falls, OR 97601

Caroline H. Marshall  
Notary Public for Oregon.

My Commission Expires: 2-9-82

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Western Bank  
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WESTERN BANK

TO

MORTGAGE

DESCRIPTION

PARCEL ONE: Lots 5 through 13, in Block 1, RAILROAD ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

PARCEL TWO: A tract of land in the NW  $\frac{1}{4}$  of NW  $\frac{1}{4}$ , Section 33, Township 38 South, Range 9 East, described as follows: Beginning at the Northwest corner of Lot 13, Block 1, RAILROAD ADDITION to Klamath Falls, Oregon, and running thence Northwesterly along the Easterly line of Spring Street 259.22 feet to the intersection of said Easterly line of Spring Street and the Southerly line of Main Street; thence Easterly along said Southerly line of Main Street 167.47 feet to the Westerly line of right-of-way previously granted to the California Northeastern Railway Company; thence Southeasterly along said Westerly line of right-of-way 268.7 feet to where the Northerly line of Lot 13, Block 1, of said RAILROAD ADDITION, extended, intersects said Westerly line of right-of-way; thence Westerly parallel with Main Street 191.7 feet to the place of beginning.

EXCEPTING THEREFROM; beginning at the most southwesterly corner of the 0.617 acre parcel of land described secondly in that certain deed dated January 11, 1908, from William A. Wright et ux and Hot Springs Investment Company to California Northeastern Railway Company, recorded March 11, 1908, in Volume 23 of Deeds at page 618, records of Klamath County, Oregon, being also a point in the northerly line of the 53.751 acre parcel of land described in deed dated February 11, 1908, and recorded March 11, 1908, in Volume 23 of Deeds, at page 616, records of Klamath County, Oregon, thence South 89° 21' West, along said northerly line, 55.84 feet to a point that is 50.00 feet southwesterly, measured at right angles, from the southwesterly line of said 0.617 acre parcel; thence North 62° 55' East, at right angles to said southwesterly line, 50.00 feet to last said line; thence South 27° 05' East, along last said line, 24.86 feet to the point of beginning.

PARCEL THREE: That certain parcel of land situate in the north half of the northeast quarter of Section 33, Township 38 South, Range 9 East, Willamette Base and Meridian, City of Klamath Falls, County of Klamath, State of Oregon, described as follows:

Commencing at the most southwesterly corner of the 0.617 acre parcel of land described secondly in that certain deed dated January 11, 1908, from William A. Wright et ux and Hot Springs Investment Company to California Northeastern Railway Company, recorded March 11, 1908, in Volume 23 of Deeds, at page 618, records of Klamath County, Oregon, being also a point in the northerly line of the 53.751 acre parcel of land described in deed dated February 11, 1908 and recorded March 11, 1908, in Volume 23 of Deeds, at page 616, records of Klamath County, Oregon, thence South 89° 21' West, along said northerly line, 55.84 feet to a point that is 50.00 feet southeasterly, measured at right angles, from the southeasterly line of said 0.617 acre parcel and the true point of beginning of the parcel of land to be described; thence South 89° 21' West, continuing along said northerly line 55.84 feet to the northwesterly corner of said 53.751 acre parcel; thence South 27° 05' East, along the southwesterly line of said 53.751 acre parcel, 24.86 feet; thence North 62° 55' East, 50.00 feet to the True point of beginning.

*Dale Woods Karen A. Woods*

State of OREGON: COUNTY OF KLAMATH: ss.

I hereby certify that the within instrument was received and filed for record on the

30th day of January A.D., 1981 at 2:18 o'clock P. M., and duly recorded in

Vol M-81 of Mortgages on page 1465.

Fee \$17.50

EVELYN BIEHN

COUNTY CLERK

By *Jacqueline J. Mettler* Deputy