

DRESCHER & ARNOLD
 Allen G. Drescher, P.C.
 Attorney at Law OSB 72073
 P.O. Box 760
 Ashland, Oregon 97520
 Telephone: (503) 482-4935

U.S. BANKRUPTCY COURT
 DISTRICT OF OREGON
 FILED

AUG 30 1991

Of Attorneys for DIP

TERENCE H. DUNN, CLERK
 BY ~~TERENCE H. DUNN~~

K-43543

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

IN RE

O&E CORPORATION,

Plaintiff,

vs.

FRANKLIN E. ERICKSON; BARBARA J.
 ALEXANDER; ERNEST EHNISZ and
 NAOMI EHNISZ,

Defendants.

NO. 689-63534-R11-

JUDGMENT AND DECREE

Adversary No. 91-6209H

This matter having come before the court upon the application of the plaintiff and the default of the defendants having been entered,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This is a core proceeding.
2. The mortgages described in Exhibit A attached hereto are discharged and void and the real property described in Exhibit A is free of any lien or encumbrance by said mortgages.

Robert E. Ladichiffe
 Bankruptcy Judge

SUBMITTED BY:

Allen G. Drescher
 Allen G. Drescher, P.C.
 Of Attorneys for Plaintiff

Corrected copy is true and correct
 copy of original in my office.

Dated 8-30-91

K. B. S.
 U.S. Bankruptcy Court
 District of Oregon

SEP 9 PM 1:23

DRESCHER & ARNOLD

ATTORNEYS AT LAW

300 E. MAIN PO. BOX 760 ASHLAND, OREGON 97520
 TELEPHONE (503) 482-4935 FAX (503) 482-4941

THIS INDENTURE, made this 25th day of February, 1970, between

17906

O & E CORPORATION, an Oregon corporation, hereinafter called "Mortgagor", and
FIRST NATIONAL BANK OF OREGON and UNITED CALIFORNIA BANK, hereinafter collectively
called "Mortgagee";

W I T N E S S E T H:

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 Mortga-
gee, all the following described property situate in Klamath County, Oregon, to wit:

PARCEL 1:

All that portion of Tracts 32, 33A and 36 Enterprise Tracts, situated
in the NW 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette
Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at an iron pipe on the South line of said Tract 32, said point being
North $89^{\circ} 30' 45''$ West, a distance of 281.8 feet from the southeast corner of
said Tract 32 (this same reference is described as being West a distance of
281.7 feet by previous records), said beginning point also being on the north-
westerly line of Austin Street as deeded to Klamath County by Deed Volume 229
page 300, Klamath County Deed Records; thence North $34^{\circ} 07' 30''$ East at right
angles to South Sixth Street and along the northwesterly line of Austin Street
a distance of 183.08 feet to an iron pin on a point on a line that is parallel
to and 180 feet distant at right angles from the east line of said Tract 32;
thence North $0^{\circ} 20' 45''$ East along said parallel line and along the westerly
line of Austin Street a distance of 722.70 feet to an iron pin that is South
 $0^{\circ} 20' 45''$ West a distance of 400.02 feet from the iron pin marking the southerly
line of Shasta Way; thence North $89^{\circ} 39' 15''$ West a distance of 629.67 feet to
an iron pin on the southeasterly line of Avalon Street; thence South $30^{\circ} 37' 00''$
West along the southeasterly line of Avalon Street a distance of 667.53 feet to
an iron pin on the most northerly corner of a tract described as Parcel 3 in
Deed Volume 256 page 96, Klamath County Deed Records; thence South $59^{\circ} 23' 00''$
East along the northeasterly line of said tract a distance of 149.94 feet to
an iron pin; thence South $30^{\circ} 37' 00''$ West along the Southeasterly line of said
tract a distance of 39.20 feet to an iron pin on the northeasterly line of
Pershing Way; thence South $55^{\circ} 52' 30''$ East along the northeasterly line of
Pershing Way a distance of 485.15 feet to an iron pipe on the southerly pro-
jection of the line between Tracts 32 and 36, Enterprise Tracts; thence North
 $0^{\circ} 14' 30''$ West along said projected line a distance of 98.97 feet to an iron
pipe on the Southwest corner of said Tract 32; thence South $89^{\circ} 30' 45''$ East
along the southerly line of said Tract 32 a distance of 362.50 feet to the
point of beginning.

PARCEL 2:

A parcel of land situated in the NW 1/4 of Section 3, Township 39
South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more
particularly described as follows:

Beginning at the northwest corner of said Section 3, said point being marked
by a cased iron pin; thence South $0^{\circ} 00' 30''$ East along the westerly line of
said Section 3 a distance of 826.80 feet to its intersection with a line paral-
lel with and 75.0 feet distant at right angles northeasterly from the center
line of the Klamath Falls-Lakeview Highway, also known as South Sixth Street,
as the same is now located and constructed; thence South $55^{\circ} 52' 30''$ East,
along said parallel line a distance of 1682.84 feet to an iron pin on the
northwesterly line of Austin Street; thence North $34^{\circ} 07' 30''$ East along said
line a distance of 235.00 feet to an iron pin on the northeasterly line of
Pershing Way, said point being the True Point of Beginning of this descrip-
tion; thence North $34^{\circ} 07' 30''$ East along the Northwesterly line of Austin

Exhibit A-1

Street a distance of 282.50 feet to an iron pipe on the southerly line of Tract 32, Enterprise Tracts, said point being North $89^{\circ} 30' 45''$ West a distance of 281.8 feet from the southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said point being on the northwesterly line of that tract deeded to Klamath County by Deed Volume 229 page 300, Klamath County Deed Records; thence North $89^{\circ} 30' 45''$ West along the southerly line of said Tract 32 a distance of 362.50 feet to an iron pipe on the southwest corner of said Tract 32; thence South $0^{\circ} 14' 30''$ East along the southerly projection of the line between Tracts 32 and 36, Enterprise Tracts, a distance of 98.97 feet to an iron pipe on the northeasterly line of Pershing Way; thence South $55^{\circ} 52' 30''$ East along said line a distance of 245.93 feet to the True Point of Beginning of this description.

PARCEL 3: Beginning at the iron pipe marking the southeast corner of Enterprise Tract 32 in Section 3 Township 59 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, and running thence West along the South line of Tract 32 a distance of 209.57 feet, more or less, to an iron pipe marking the Easterly line of Austin Street; thence North $34^{\circ} 07'$ East along the Easterly line of Austin Street Northeasterly at right angles to the center line of South Sixth Street a distance of 161.08 feet, more or less, to an iron rod which lies on a line which is parallel to and 120 feet Westerly at right angles from the East line of Tract 32; thence North $0^{\circ} 20' 45''$ East along said parallel line and the East line of Austin Street 391.3 feet, to the true point of beginning, said point of beginning being 823.0 feet South of the North line of Section 3, thence North $0^{\circ} 20' 45''$ East, along said parallel line and the East line of Austin Street 500.00 feet, more or less, to a point which marks the Southwest corner of parcel of land conveyed by Swan Lake Moulding Company to William L. Wales, Jr., thence leaving the Easterly boundary of Austin Street (North $89^{\circ} 50' 30''$ East parallel to and 323 feet distant at right angles from the North line of Section 3 a distance of 120.0 feet to an iron rod marking the Southeast corner of said Wales parcel, on the East line of Tract 32; thence South $0^{\circ} 20' 45''$ West along the East line of Tract 32, 500.0 feet to a point, said point being 823.0 feet South of the North line of Section 3; thence South $89^{\circ} 50' 30''$ West on a line parallel to the North line of Section 3, a distance of 120.0 feet to the point of beginning;

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 those 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.

This conveyance is intended as a mortgage to secure the payment of the sum of \$ 550,000.00, in accordance with the term and tenor of a promissory note dated 2-25-70 and performance by the mortgagor of its covenants set forth in that certain agreement dated February 23, 1970 by and between mortgagor

EXHIBIT A-2

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

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1. That it will pay the indebtedness hereby secured in accordance with the terms and tenor of the above described note and perform the covenants and agreements by it to be performed under the aforesaid tri-partite agreement.
2. That, if any default be made in the payment 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, foreclose this mortgage.
3. That, in the event of the institution of any suit or action to foreclose this mortgage, the Mortgagor will pay such sum as the 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.
4. 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 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 to be affixed hereto the day and year first hereinabove written.

O & E CORPORATION

V. H. Otte

Alex Jokay

STATE OF OREGON

County of Klamath

)
) ss
)

February 25

A. D. 1970

EXHIBIT A-3

Personally appeared V. H. Otte and Alex Jokay who being duly sworn did say that he, the said V. H. Otte is the President and he, the said Alex Jokay is the Secretary of O & E CORPORATION and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and the said instrument was signed and sealed 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:

This Indenture, made this 25th day of February, 1970, between

Q & E CORPORATION

after called "Mortgagor", United California Bank, an Oregon corporation, herein-
after called "Mortgagee", and FIRST NATIONAL BANK OF OREGON, a national banking association, herein-

WITNESSETH:

For value received by the Mortgagor from the Mortgagee, the Mortgagee has bargained and sold and hereby grant, bargain, sell and convey unto the Mortgagee, all the following described property situate in

PARCEL 1:

All that portion of Tracts 32, 33A and 36 Enterprise Tracts, situated in the NW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at an iron pipe on the South line of said Tract 32, said point being North 89°30'45" West, a distance of 281.8 feet from the southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said beginning point also being on the northwesterly line of Austin Street as deeded to Klamath County by Deed Volume 229 page 300, Klamath County Deed Records; thence North 34°07'30" East at right angles to South Sixth Street and along the northwesterly line of Austin Street a distance of 183.08 feet to an iron pin on a point on a line that is parallel to and 180 feet distant at right angles from the east line of said Tract 32; thence North 0°20'45" East along said parallel line and along the westerly line of Austin Street a distance of 722.70 feet to an iron pin that is South 0°20'45" West a distance of 400.02 feet from the iron pin marking the southerly line of Shasta Way; thence North 89°39'15" West a distance of 629.67 feet to an iron pin on the southeasterly line of Avalon Street; thence South 30°37'00" West along the southeasterly line of Avalon Street a distance of 667.53 feet to an iron pin on the most northerly corner of a tract described as Parcel 3 in Deed Volume 256 page 96, Klamath County Deed Records; thence South 59°23'00" East along the northeasterly line of said tract a distance of 149.94 feet to an iron pin; thence South 30°37'00" West along the southeasterly line of said tract a distance of 59.20 feet to an iron pin on the northeasterly line of Pershing Way; thence South 55°52'30" East along the northeasterly line of Pershing Way a distance of 485.15 feet to an iron pipe on the southerly projection of the line between Tracts 32 and 36, Enterprise Tracts; thence North 0°14'30" West along said projected line a distance of 98.97 feet to an iron pipe on the Southwest corner of said Tract 32; thence South 89°30'45" East along the southerly line of said Tract 32 a distance of 362.50 feet to the point of beginning.

PARCEL 2:

A parcel of land situated in the NW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the northwest corner of said Section 3, said point being marked by a cased iron pin; thence South 0°00'30" East along the westerly line of said Section 3 a distance of 826.80 feet to its intersection with a line parallel with and 75.0 feet distant at right angles northeasterly from the center line of the Klamath Falls-Lakeview Highway, also known as South Sixth Street, as the same is now located and constructed; thence South 55°52'30" East, along said parallel line a distance of 1682.84 feet to an iron pin on the northwesterly line of Austin Street; thence North 34°07'30" East along said line a distance of 235.00 feet to an iron pin on the northeasterly line of Pershing Way, said point being the True Point of Beginning of this description; thence North 34°07'30" East along the Northwesterly line of Austin Street a distance of 282.50 feet to an iron pipe on the southerly line of Tract 32, Enterprise Tracts, said point being North 89°30'45" West a distance of 281.8 feet from the southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said point being on the northwesterly line of that tract deeded to Klamath County by Deed Volume 229 page 300, Klamath County Deed Records; thence North 89°30'45" West along the southerly line of said Tract 32 a distance of 362.50 feet to an iron pipe on the southwest corner of said Tract 32; thence South 0°14'30" East along the southerly projection of the line between Tracts 32 and 36, Enterprise Tracts, a distance of 98.97 feet to an iron pipe on the northeasterly line of Pershing Way; thence South 55°52'30" East along said line a distance of 485.15 feet to the True Point of Beginning of this description.

EXHIBIT A-4

PARCEL 3:

PARCEL 3:

32 in Section 3 Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, and running thence West along the South line of Tract 32 a distance of 209.57 feet, more or less, to an iron pipe marking the Easterly line of Austin Street; thence North $34^{\circ}07'$ East along the Easterly line of Austin Street Northeasterly at right angles to the center line of South Sixth Street a distance of 161.08 feet, more or less, to an iron rod which lies on a line which is parallel to and 120 feet Westerly at right angles from the East line of Tract 32; thence North $0^{\circ}20'45''$ East along said parallel line and the East line of Austin Street 391.3 feet, to the true point of beginning, said point of beginning being 823.0 feet South of the North line of Section 3, thence North $0^{\circ}20'45''$ East, along said parallel line and the East line of Austin Street 500.00 feet, more or less, to a point which marks the Southwest corner of parcel of land conveyed by Swan Lake Moulding Company to William L. Wales, Jr., thence leaving the Easterly boundary of Austin Street (North $89^{\circ}50'30''$ East parallel to and 323 feet distant at right angles from the North line of Section 3) a distance of 120.0 feet to an iron rod marking the Southeast corner of said Wales parcel, on the East line of Tract 32; thence South $0^{\circ}20'45''$ West along the East line of Tract 32, 500.0 feet to a point, said point being 823.0 feet South of the North line of Section 3; thence South $89^{\circ}50'30''$ West on a line parallel to the North line of Section 3, a distance of 120.0 feet to the point of beginning.

Exhibit A-5

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 \$25,000.00
in accordance with the tenor of a certain promissory note executed by

O & E Corporation

dated February 25, 1970, payable to the order of the Mortgagee in

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 note, and all taxes, liens and utility charges upon said premises or for services furnished thereto.

2. That it will not commit or permit or suffer any act of the said premises or any part thereof to be in a state of disrepair and 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 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 repairs, 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 and shall be secured hereby.

6. 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.

EXHIBIT A-6 27

2. That, in the event of the institution of any suit or action to foreclose this mortgage, the Mortgagor will pay such sum as the court may adjudge reasonable for its 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.

3. 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 any one else, extend the time of payment, 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 to be affixed hereto the day and year first hereinabove written.

O & E CORPORATION

By

V. H. Otte

President

By

Alex Jokay

Secretary

STATE OF OREGON

County of Klamath } ss.February 25 A. D. 1970Personally appeared V. H. Otte and Alex Jokaywho being duly sworn did say that he, the said V. H. Otte is the Presidentand he, the said Alex Jokay is the Secretaryof O. & E Corporation

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and the said instrument

was signed and sealed 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:STATE OF OREGON, } ss.
County of Klamath }

INDEXED

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Filed for record at request of:

Klamath County Title Co.on this 25th day of February A. D. 1970at 9:52 o'clock A. M. and dulyrecorded in Vol. M-70 of MortgagesPage 1477

WM. D. MILNE, County Clerk

By Charles F. Unstrom

Fee \$6.00

Deputy.

My Commission Expires January 9, 1971

Notary Public for Oregon

Return
KLAMATH COUNTY TITLE CO.

EXHIBIT A-7

28

17913

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co. the 9th day
of Sept. A.D., 19 91 at 1:23 o'clock P.M., and duly recorded in Vol. M91
of Mortgages on Page 17905

Evelyn Biehn . County Clerk

By Quentin M. Mendenhall

FEE \$48.00

Return: Ketc.