

72770

MORTGAGE

Vol. 79 Page 20039

THIS MORTGAGE, made this 1st day of August, 1979 by EASTPORT EQUITIES CORPORATION, an Oregon corporation, as Mortgagor, and CAMPUS DEVELOPMENT COMPANY, an Oregon general partnership, as Mortgagee:

R E C I T A L S:

A. CAMPUS DEVELOPMENT COMPANY was the owner of a parcel of real property situate in Klamath County, Oregon, being a portion of SUNNYSIDE ADDITION TO THE CITY OF KLAMATH FALLS, and a portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 20, Township 38 South, Range 9 EWM, as is more particularly described in "EXHIBIT A", attached hereto and by this reference made a part hereof.

B. EASTPORT EQUITIES CORPORATION has acquired the subject property for purposes of making a commercial planned unit development of the same, and has undertaken engineering studies, obtained zone changes, filed plats and commenced construction upon the subject property.

C. The purchase price of the property by EASTPORT EQUITIES CORPORATION is upon an installment sale in which the whole sales price of \$1,700,000.00, of which \$200,000.00 has heretofore been paid, and the balance of \$1,500,000.00 is to be secured by this mortgage under the terms and conditions hereinafter set forth.

W I T N E S S E T H:

In consideration of the sum of One Million Five Hundred Thousand and No/100ths (\$1,500,000.00) DOLLARS, the Mortgagor hereby grants, bargains, sells and conveys unto the Mortgagee, those certain premises described in "Exhibit A" attached hereto, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, under the following terms and conditions:

THE OBLIGATION: The Mortgagor shall pay to the Mortgagee the sum of \$1,500,000.00, together with interest at 12% per annum from August 1, 1979, until paid. The Mortgagor shall make payments of not less than \$100,000.00 annually, with the first payment to be due on December 31, 1980 and a like payment on December 31 of each year, with the entire balance to be paid on or before August 1, 1989. The first \$500,000.00 paid by Mortgagor shall be applied to the principal and the interest thereon deferred. Any prepayments by Mortgagor shall excuse the following annual payment requirements to the extent of such prepayment.

FURTHER PAYMENT: Mortgagor shall also pay all taxes, assessments and other charges of every nature, which may be levied or assessed upon the property when due and payable, according to law, and before the same become delinquent, and will promptly pay and satisfy any mechanics liens or other liens or assessments that might, by operation of law, become a lien upon the mortgaged premises superior to the lien of this mortgage, and will deliver all receipts therefore to the Mortgagee.

RESTRICTIONS OF PREPAYMENTS: (1) The Mortgagee need not accept payments in excess of \$300,000.00 upon the obligation in the year 1979. (2) The Mortgagor understands and agrees that he has examined the restriction on prepayment in the Mortgage from CAMPUS DEVELOPMENT COMPANY to IRMA JEAN MILES and FRED F. BELLERO and FRED F. BELLERO, Trustee for Clara Rickel, and agree not to request a release of lots in the portion that is covered by the Miles/Bellero Mortgage that would exceed \$70,000.00 principal in any calendar year through 1982.

1. MORTGAGE

1 SUBDIVISION: It is understood and agreed by the Mort-
 2 gagees herein that the Mortgagor has undertaken a subdivision
 3 upon the property and intend to plat said subdivision under the
 4 name of CAMPUS VIEW SUBDIVIION and FIRST ADDITION TO CAMPUS
 5 VIEW, or other similar name. The Mortgagees hereby expressly
 6 consent to the platting of said subdivision and agree that upon
 7 the platting of said subdivision, that Mortgagees waive all claims
 8 to public ways and hereby substitute the lots and blocks and pro-
 9 perty listed in "Exhibit B" as the property secured by this
 10 mortgage, rather than the property listed in "Exhibit A", with-
 11 out further act on the part of the parties hereto.

12 LOT RELEASES: Mortgagees have executed and agree to deliver
 13 to Transamerica Title Insurance Co. at 600 Main Street, Klamath
 14 Falls, Oregon, as Escrow Agent, partial releases on the lots and
 15 blocks described in "Exhibit B" to be delivered to Mortgagor upon
 16 the following terms and conditions:

17 (A) As long as there is an unpaid balance under the
 18 mortgage, and if Mortgagor desires to sell a parcel to a third
 19 person, or releases a parcel of property for its own use, Mort-
 20 gagor agrees to pay the entire proceeds of said sale to Mort-
 21 gagees, less the normal cost of sale, including but not limited
 22 to, real estate commission, title insurance, escrow fees, and
 23 attorney fees, and the cost of the lot release expense on any lot
 24 sold under the Miles/Bellero Mortgage.

25 (B) As long as there is an unpaid balance under this
 26 mortgage and if Mortgagor desires to sell a parcel to a third
 27 person, or release a parcel of property for its own use, Mort-
 28 gagor agrees that the amount paid on this mortgage shall not be
 29 less than (i) \$1.25 per square foot for residential lots; (ii)
 30 \$2.50 per square foot for medical/professional office lots, and
 31 (iii) \$2.75 per square foot for neighborhood commercial lots.

32 DEVELOPMENT AND SUBORDINATION: It is understood by the
 33 parties hereto that Mortgagor intends to subdivide the subject
 34 property and in that respect will incur costs for engineering,
 35 construction of utilities and roads and costs of platting. Mort-
 36 gagees agree to subordinate their interest in the property to
 37 a lien upon the property of a mortgage obtained by the Mortgagor
 38 to pay for the development above mentioned in a sum not to exceed
 39 \$700,000.00. Mortgagees herein shall have no personal liability
 40 upon said mortgage to finance said improvements. In the event
 41 Mortgagor obtains such a mortgage, the proceeds of the sales
 42 described in the paragraph entitled "Lot Releases" shall be
 43 applied first to the developmental mortgage.

44 PURCHASE MONEY MORTGAGE: It is expressly understood
 45 by the parties hereto that this is a purchase money mortgage.

46 PRIOR ENCUMBRANCES: Mortgagees acknowledge that the
 47 subject property is free of all encumbrances, except:

48 (i) Mortgage, including the terms and provisions there-
 49 of, between Campus Development Company, as Mortgagor, and Irma
 50 Jean Miles, Fred F. Bellero and Fred F. Bellero, as Trustee
 51 of Clara Rickel, as Mortgagees, which has been assumed by
 52 Mortgagor as the down payment hereon.

53 (ii) Mortgage, including the terms and provisions
 54 thereof, between Campus Development Company, as Mortgagor, and
 55 George DeWoody Massey, John D. Bell, Everett E. Howard, Gerald
 56 J. Nicholson and Earle M. Lavernois, which obligation shall be
 57 paid by Mortgagees herein.

58 / / /

59 2. MORTGAGE

1 DEFAULT: Mortgagor shall not be deemed in default for
 • failure to perform any covenant or condition of this Agreement
 • until notice of said default has been given by Mortgagee to
 • Mortgagor and Mortgagor shall have failed to remedy said de-
 5 fault within ten (10) days after the giving of notice if the
 • default is the failure to pay the monthly installments and
 • within thirty (30) days after the giving of notice in the
 • event of any default hereunder other than the failure to pay
 • the monthly installments. Notice for this purpose shall be
 10 deemed to have been given by the deposit in the mails of a
 • certified or registered letter containing said notice and
 • addressed to Mortgagor. In the event the default is of such
 • nature that it cannot be completely remedied within a thirty-
 • day period, Mortgagor shall not be considered to be in default,
 15 if Mortgagor begins correcting the claimed default within the
 • thirty-day period and thereafter proceeds with reasonable
 • diligence and in good faith to effect the remedy as soon as
 • possible.

20 ATTORNEY'S FEES: In case litigation is instituted arising
 • directly or indirectly out of this Agreement, the losing party
 • shall pay to the prevailing party its reasonable attorney's fees.
 • If an appeal is taken from any judgment or decree of the trial
 25 court, the losing party shall pay the prevailing party in the
 • appeal its reasonable attorney's fees in such appeal.

30 TAXES: Mortgagor shall pay, when due, all taxes which
 • are hereafter levied against the property and all public, muni-
 • cipal and statutory liens which may be hereafter lawfully imposed
 • upon the property. Upon request, Mortgagor shall furnish Mortgagee
 • with evidence of payment of all property taxes as and when due
 • and payable.

35 MECHANIC'S LIENS: Mortgagor shall keep the property free
 • from mechanic's and all other liens and save the Mortgagee
 • harmless therefrom and reimburse Mortgagee for all costs and
 • attorney's fees incurred by Mortgagee for all costs and attor-
 • ney's fees incurred by Mortgagee in defending against any such
 40 liens.

• The Mortgagor warrants that the proceeds of the loan re-
 • presented by the above described note and this mortgage are
 • for business or commercial purposes other than agricultural pur-
 45 poses.

50 NOW, THEREFORE, if said Mortgagor shall keep and perform
 • the covenants herein contained and shall pay said note according
 • to its terms, this conveyance shall be void, but otherwise shall
 • remain in full force as a mortgage to secure the performance of
 • all of said covenants and the payments of said note, it being
 • agreed that a failure to perform any covenant herein, or if a
 • proceeding of any kind be taken to foreclose any lien on said
 • premises, or any part thereof, the Mortgagee shall have the op-
 • tion to declare the whole amount unpaid on said note or on this
 • mortgage at once due and payable, and this mortgage may be fore-
 • closed at any time thereafter. And if the Mortgagor shall fail
 • to pay any taxes or charges or any lien, encumbrance or insurance
 • premium as above provided for, the Mortgagee may, at their option,
 • do so, and any payment so made shall be added to and become a part
 • of the debt secured by this mortgage, and shall bear interest at
 • the same rate as said note without waiver, however, of any right
 • arising to the Mortgagee for breach of covenant. And this mort-
 • gage may be foreclosed for principal, interest and all sums paid
 • by the Mortgagee at any time while the Mortgagor neglects to
 • repay any sums so paid by the Mortgagee. In the event of any
 • suit or action being instituted to foreclose this mortgage, the
 • Mortgagor agrees to pay all reasonable costs incurred by the
 • Mortgagee for title reports and title search, all statutory

20042

costs and disbursements and such further sum as the trial court may adjudge reasonable as plaintiff's attorney's fees in such suit or action, and if an appeal is taken from any judgment or decree entered therein, Mortgagor further promises to pay such sum as the appellate court shall adjudge reasonable as plaintiff's attorney's fees on such appeal, all sums to be secured by the lien of this mortgage and included in the decree of foreclosure.

Each and all of the covenants and agreements herein contained shall apply to and bind the heirs, executors, administrators and assigns of said Mortgagor and of said Mortgagees respectively.

In case suit or action is commenced to foreclose this mortgage, the Court, may upon motion of the Mortgagee, appoint a receiver to collect the rents and profits arising out of said premises during the pendency of such foreclosure, and apply the same, after first deducting all of said receiver's proper charges and expenses, to the payment of the amount due under this mortgage.

In construing this mortgage, it is understood that the Mortgagor or Mortgagee may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, said Mortgagor has hereunto set his hand and seal the day and year first above written.

EASTPORT EQUITIES CORPORATION, an
Oregon corporation

By: Kerry S. Gilbert Mark R. Wistort
President

By: Mark R. Wistort Secretary
Secretary

STATE OF OREGON

County of Multnomah

ss. August 17, 1979.

Personally appeared KERRY S. GILBERT, who, being sworn, stated that he is President, and MARK R. WISTORT, who, being sworn, stated that he is Secretary, of EASTPORT EQUITIES CORPORATION, and that said instrument was signed in behalf of the corporation by authority of its Board of Directors; and he acknowledged said instrument to be its voluntary act and deed. Before me:

Thomas A. Packard
Notary Public for Oregon
My Commission expires: May 15, 1982

William P. Brandsness
Attorney at Law
411 Pine Street
Klamath Falls, Ore.
Phone 882-6616

4. MORTGAGE

PROPERTY DESCRIPTION "EXHIBIT A"

20043

Lots 1, 2, 3, 4, 5, and 6 in Block 5, SUNNYSIDE ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon, according to the official plat thereof on file in the records of Klamath County, Oregon

All of Block 7, SUNNYSIDE ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon, according to the official plat thereof on file in the records of Klamath County, Oregon, SAVING AND EXCEPTING therefrom a portion of Lots 4, 5, 6, 7, 8, and 9, more particularly described as follows:

Beginning at the Southeast corner of Block 7, SUNNYSIDE ADDITION thence North $0^{\circ}15'$ East along the Easterly line of Block 7 a distance of 160 feet; thence Southwesterly on the arc of a $5^{\circ}18'$ curve to the right a distance of 38 feet; thence continuing Southwesterly on the arc of a $2^{\circ}42'$ curve to the left, a distance of 232 feet, more or less, to the Westerly line of said Block 7; thence South $0^{\circ}15'$ West along the Westerly line of said Block 7, a distance of 8 feet to the Southwest corner of said Block 7; thence South $89^{\circ}34'$ East along the South line of said Block 7, a distance of 225 feet to the point of beginning. A parcel of land lying in Block 6, SUNNYSIDE ADDITION to the City of Klamath Falls, said parcel being all of Lots 1, 6, 7, 8, 9 and 10 of said Block 6.

ALSO that portion of Lots 2, 3, 4, and 5 of said Block 6, lying Northeasterly of a line which begins at the Southwest corner of said Lot 1 and extends Southeasterly in a straight line to the Southwest corner of said Lot 6.

ALSO the alley adjoining the foregoing described land as vacated under Ordinance #41.21.

Lots 1, 2, 3, Block 3 and that portion of the vacated "F" Street adjacent thereto, all in SUNNYSIDE ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon, according to the official plat thereof on file in the Records of Klamath County, Oregon, less any portion of said lots lying within the right of way of Campus Drive less any reservation, easements or restrictions appearing of record thereto.

PORTION of Lots 4, 5, 6, Block 3, and the vacated "F" Street adjacent thereto lying North and East of Campus Drive, all in Sunnyside Addition to the City of Klamath Falls, Klamath County, Oregon

All that portion of the $SE\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 20, Township 38 South, Range 9 East of the Willamette Meridian in the County of Klamath, State of Oregon, lying Westerly of the Westerly line of the 100 foot strip conveyed to the City of Klamath Falls, Oregon, for road purposes by deed recorded June 16, 1961 in Volume 330 page 334, Deed Records of Klamath County, Oregon



JEFFERSON STATE ENGINEERING INC.

5900 WASHBURN WAY • KLAMATH FALLS, OREGON 97601 • 503/883-2201

20044

**"EXHIBIT B"
DESCRIPTION**

A tract of land situated in the West $\frac{1}{2}$ of Section 20 in Township 38 South Range 9 East of the Willamette Base and Meridan. More particularly described as follows:

Lots 1 and 2 of Block 1; and Lots 1,2,3,4,5 and 6 of Block 2; and Lots 2,3,4 and 5 of Block 3; and Lots 1,2,3,4 and 5 of Block 4; and Lots 1,2,3,4,5,6,7,8,9,10,11 and 12 of Block 5; and Lots 1,2,3,4,5,6,7,8,9 and 10 of Block 6 as per the plat of CAMPUS VIEW, a subdivision addition to the City of Klamath Falls in Klamath County Oregon. Said CAMPUS VIEW subdivision also being known as Tract No. 1163 according to the records of the Klamath County Planning Commission.

And also including the following described parcel:

A tract of land situated in the SE $\frac{1}{4}$ at the NW $\frac{1}{4}$ of Section 20, in T38S, R9E, W.M. more particularly described as follows:

Beginning at a 1 $\frac{1}{4}$ inch axle which is the N.W. corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 20; thence S89°09'56"E 371.47 feet to a 6 by 6 inch concrete monument with metal cap which is the S.W. corner of the Oregon Institute of Technology Campus as the same appears on Record Survey number 708 in the office of the County Surveyor of Klamath County, Oregon; thence S89°10'29"E on the south line of said Oregon Institute of Technology Campus boundary 347.94 feet to a 5/8 inch iron pin; thence S02°42'18"W 373.88 feet to a 5/8 inch iron pin; thence northwesterly 217.28 feet along the arc of a curve to the right through a central angle of 07°59'24" and a radius of 1,558.11 feet from a tangent bearing of N68°59'23"W to a 5/8 inch iron pin; thence S29°00'01"W 60.00 feet to a 5/8 inch iron pin; thence southeasterly 30.81 feet along the arc of a curve to the right through a central angle of 88°15'03" and a radius of 20.00 feet, tangent to a bearing

20045

of S60°59'59"E, the chord of which bears S16°52'28"E 27.85 feet, to a 5/8 inch iron pin; thence southerly 53.85 feet on the arc of a curve to the left, through a central angle of 24°37'25" and a radius of 125.29 feet, the chord of which bears S14°56'21"W 53.43 feet to a 5/8 inch iron pin; thence S02°37'39"W 40.00 feet to a 5/8 inch iron pin; thence N87°22'21"W 200.00 feet to a 5/8 inch iron pin; thence S02°37'39"W 58.03 feet to a 5/8 inch iron pin; thence N89°13'34"W 272.76 feet to a 5/8 inch iron pin and the north-south centerline of the NW $\frac{1}{4}$ of said Section 20; thence N00°46'26"E on the north-south centerline of Section 20, 508.00 feet to the NW corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 20 and the point of beginning, containing 7.11 acres, more or less.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of William P. Brandness

this 22nd day of August A. D. 1979 at 4:00 clock P.M., and

fully recorded in Vol. 1179, of Mortgages on Page 20099

Wm D. MILNE, County Clerk

By Berntha H. H. H.

Fee \$24.50

William P. Brandness
411 Pine