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Vol. 184 Page 5095

MTC-13521-K  
MORTGAGE

DATE: March 30, 1984

PARTIES: EASTPORT EQUITIES CORPORATION, an  
Oregon corporation  
1205 SW 18th Avenue  
Portland, Oregon 97205

MORTGAGOR

and

SOUTH VALLEY STATE BANK, an  
Oregon Banking corporation  
P. O. Box 5210  
Klamath Falls, Oregon 97601

MORTGAGEE

The parties agree as follows:

## A G R E E M E N T S:

## SECTION 1. CONVEYANCE

For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the following described real property, situated in the County of Klamath, State of Oregon, to-wit:

All of Block 2; Lots 2, 3, 4 and 5 Block 3; Lots 3, 4 and 5 Block 4; Lots 1, 2, 3, 4, 5, 6, 7 and 8 Block 5; Lots 1, 2, 3, 4 and 5 Block 6; all in Tract No. 1163, CAMPUS VIEW in the County of Klamath, State of Oregon.

AND ALSO that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  in Section 20, Township 38 South, Range 9 E.W.M. in the county of Klamath, State of Oregon, lying North and West of Tract 1163, Campus View.

together with the appurtenances now or hereafter belonging to the property, and all the rents, issues and profits arising or to arise therefrom. All property subject to this Mortgage is hereinafter referred to as the mortgaged premises. Until default, Mortgagor may remain in possession of the mortgaged premises, and may manage and collect all rents and revenues from the mortgaged premises.

## SECTION 2. PURPOSE

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained and contained in any loan agreement, security agreement or other agreement between Mortgagor and Mortgagee, and to secure payment of a loan or loans in the sum of One Hundred Thousand and No/100ths Dollars (\$100,000.00), evidenced by the following described promissory note from Mortgagor to Mortgagee:

<u>DATE OF NOTE</u>	<u>AMOUNT</u>	<u>MATURITY DATE</u>
March 30, 1984	\$100,000.00	March 15, 1991

together with interest payable on the unpaid balances thereof at the rate specified in the note or at such other rate prescribed from time to time by Mortgagee in accordance with law and

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agreement with Mortgagor, any and all renewals or extensions thereof. All covenants and provisions of this Mortgage shall bind the successors and assigns of Mortgagor and shall inure to the benefit of the successors and assigns of Mortgagee, together with any future advances made by Mortgagee to the Mortgagor.

### SECTION 3. WARRANTY OF TITLE

At the time of execution and delivery of this Mortgage, Mortgagor is the owner of the mortgaged premises in fee simple, Mortgagor has the right and authority to mortgage the mortgaged premises as provided in this Mortgage, and the mortgaged premises are free and clear of liens and encumbrances except reservations, restrictions, easements and rights of way of record and those apparent upon the land and that certain mortgage wherein Campus Development Company is Mortgagee, dated August 1, 1979, recorded August 22, 1979 in Book M-79, page 20039. Mortgagor will defend Mortgagee's rights against any liens and encumbrances other than those listed in this Mortgage.

### SECTION 4. PAYMENT AND PERFORMANCE

Mortgagor will pay, when due, the indebtedness secured by this Mortgage in accordance with the terms thereof. Mortgagor will strictly perform all obligations of this Mortgage and of any loan agreement or security agreement executed in connection with the indebtedness secured by this Mortgage. Mortgagor will promptly comply with all existing or future laws, orders and regulations of all state, federal, municipal and local governments or any similar bodies affecting the mortgaged premises or their use.

### SECTION 5. CHARGES AGAINST MORTGAGED PREMISES

**5.1 Taxes and Utilities.** Mortgagor will pay when due all taxes, assessments, water and other charges for utility services that may be levied, assessed or charged upon or against the mortgaged premises, or any part thereof. Upon request, Mortgagor shall deliver to Mortgagee evidence of payment of the taxes, assessments or other charges.

**5.2 Liens and Encumbrances.** Mortgagor will pay and satisfy any construction liens or other encumbrances that might by operation of law or otherwise become a lien upon the mortgaged premises as they become due and payable. Mortgagor may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Mortgagee's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Mortgagor shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien, or deposit with Mortgagee cash or a sufficient corporate surety bond or other security satisfactory to Mortgagee in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

**5.3 Insurance and Other Charges.** Mortgagor will pay when due all premiums upon insurance policies on the mortgaged property, all licenses or fees legally owing by it, and all rentals or other charges for the use of any leased ground or premises upon which any of the mortgaged premises may be located.

**5.4 Failure to Pay.** In case of default in payment of any charges Mortgagor is required to pay pursuant to this Mortgage, Mortgagee, its successors and assigns, may at its option pay any insurance premiums, or reinsure the mortgaged premises and pay all premiums therefore; and pay licenses, fees

rentals, charges, taxes and/or assessments due or claimed to be due under any legislative power or authority or under any valid contract; and any amounts so paid by Mortgagee shall become part of the principal debt; and amounts so paid by Mortgagee shall bear interest at the rate of 18% from the date of payment.

**5.5 Reserve for Insurance and Taxes.** In the event Mortgagor fails to pay when due any taxes or insurance premiums, Mortgagor agrees to pay Mortgagee, in addition to the past due taxes or insurance premiums, with and in addition to the monthly payments of principal and interest on any indebtedness, one-twelfth (1/12th) of the annual taxes and insurance premiums as reasonably estimated by Mortgagee.

The reserve payments shall be held by Mortgagee in a separate account, to pay the taxes and insurance premiums when they become due and payable, and Mortgagee shall not be obliged to pay Mortgagor interest or other earnings which may be derived from Mortgagee's use of the funds in the reserve account.

If at any time, Mortgagee determines that the funds in the reserve account will not be sufficient to pay taxes or insurance premiums when due, Mortgagor agrees to pay Mortgagee, on demand, an additional monthly payment equal to a pro rata portion of the deficiency corresponding to the number of months from the date Mortgagee's determination of the deficiency to the date upon which the charges become due and payable. Mortgagor hereby authorizes Mortgagee to pay the taxes and insurance premiums in the amounts shown by the statements thereof furnished by the collector of the taxes or insurance carriers or their representatives.

## SECTION 6. CONDITION OF MORTGAGED PREMISES

**6.1 Repairs and Maintenance.** Mortgagor will keep all improvements erected on the mortgaged premises in good order and repair.

**6.2 First-Class Condition.** Mortgagor will maintain the mortgaged premises in first-class condition.

**6.3 Waste.** Mortgagor will not permit waste of the mortgaged premises or do or suffer anything to be done to depreciate or impair the value of the mortgaged premises during the life of this Mortgage.

**6.4 Changes and Alterations.** Mortgagor will not make any changes in or alterations to the improvements on the mortgaged premises which will materially decrease the value of the same. Before making any changes in or alterations to the improvements, Mortgagor shall give notice to Mortgagee of the nature and extent of the changes or alterations and shall provide evidence of Mortgagor's ability to finance the changes or alterations.

**6.5 Removal of Improvements Prohibited.** Mortgagor will not remove or permit to be removed any improvements from the mortgaged premises, without the prior written consent of Mortgagee.

**6.6 Right of Inspection.** Mortgagee shall have the right to enter upon the mortgaged premises at all reasonable times to determine Mortgagor's compliance with this Mortgage.

## SECTION 7. LOT RELEASE

The Mortgagee agrees to release from this Mortgage any

lot upon the payment by the Mortgagor to the Mortgagee not less than 20% of the net proceeds of any sale or by the assignment of not less than 20% of the ensuing security devise in the event of a time sale of any lot. However, in no event shall the Mortgagee be required to release any lot if the remaining value of the inventory of lots on hand pursuant to the Market Value Appraisal and Feasibility Study of Planned Unit Development known as Campus View dated March 14, 1983 by Deane Sacher & Company are less than five (5) times the loan balance.

#### SECTION 8. ASSIGNMENT OF ISSUES AND PROFITS

Mortgagor hereby assigns and transfers to Mortgagee the issues and profits, together with full power and authority to demand, sue for and collect the same in the name of Mortgagor, or in its own name, and to take possession of and manage the mortgaged premises or to cause a receiver to be appointed for such purpose and apply the income therefrom, after the costs of collection and management, to the reduction of the indebtedness secured hereby. However, the right to collection and management shall not apply as long as this Mortgage is in good standing.

#### SECTION 10. DEFAULT

10.1 Events of Default. The occurrence of any one or more of the following events shall constitute a default hereunder (a Default):

(a) Mortgagor's default in the timely payment of any indebtedness to Mortgagee when due;

(b) Mortgagor's failure to perform or observe all the provisions of this Mortgage;

(c) The happening of an event of default under any other agreement or security instrument between Mortgagor and Mortgagee;

(d) Mortgagor's insolvency or inability to pay its debts as they mature or Mortgagor's assignment for the benefit of creditors or filing of a voluntary petition in bankruptcy, or a voluntary petition seeking reorganization, or effecting a plan or other arrangement with creditors, or filing an answer consenting to or taking any other action indicating acquiescence in any involuntary petition pursuant to, or purporting to be pursuant to, any bankruptcy, reorganization or insolvency laws of any jurisdiction, or adjudication of Mortgagor as bankrupt or insolvent by any court of competent jurisdiction or appointment of a receiver for any substantial portion of Mortgagor's property.

10.2 Remedies on Default. If any Default occurs, Mortgagee may, at its option, declare the entire unpaid balance of principal and accrued interest secured by this Mortgage immediately due and payable, together with any prepayment penalties imposed by any agreement or security agreement between Mortgagor and Mortgagee, and foreclosure proceedings may be immediately commenced. The failure of Mortgagee to exercise any option given hereunder shall not be taken or deemed a waiver of its right to exercise its option as to any past or subsequent violation of any covenants or stipulations.

#### SECTION 11. ATTORNEY FEES AND OTHER COSTS

In the event suit or action is begun to foreclose this Mortgage, Mortgagor will pay, in addition to the costs and disbursements allowed by law, such sum as the Court may adjudge

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reasonable attorney fees in such suit or action, or any appeal therefrom. Mortgagor will also pay such sum as the court may adjudge reasonable for the necessary examination and search of the public records respecting the title to the mortgaged premises. The plaintiff in such suit or action may take judgment therein for such sums. Mortgagor will pay to Mortgagee all sums, including costs, expenses and reasonable agent and attorney fees, which Mortgagee may expend or become obligated for in any proceedings, legal or otherwise, involving the title to the mortgaged premises, or to establish, protect or sustain the lien of this Mortgage, or its priority, or in defending against liens, claims, rights, estates, easements or restrictions, or for evidences of title to the mortgaged premises. Interest shall be paid to Mortgagee on all such sums at the rate then payable on the indebtedness secured hereby. This Mortgage shall stand as security for payment of these sums and interest in like manner and effect as for payment of the indebtedness secured.

#### SECTION 12. CONDEMNATION

If the mortgaged premises, or any part thereof, are condemned under any power of eminent domain or acquired for public use, the damages, proceeds, and the consideration for such acquisition, to the extent of the full amount of the indebtedness secured by this Mortgage, including any expenses and attorney fees incurred by Mortgagee on account of such condemnation, are hereby assigned by Mortgagor to Mortgagee and shall be paid forthwith to Mortgagee to be applied by it to the payment of such expenses and attorney fees and any balance on account of the last maturing portion of the indebtedness secured hereby.

#### SECTION 13. MISCELLANEOUS

13.1 Terminology. 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.

13.2 Nonwaiver. No condition of this Mortgage shall be deemed waived unless expressly waived in writing by Mortgagee.

13.3 Notices. Whenever any notice, demand or request is required by the terms of this Mortgage or by any law now in existence or hereafter enacted, the notice, demand or request shall be sufficient if enclosed in a postpaid envelope addressed to Mortgagor at the last address actually furnished to Mortgagee, or at the mortgaged premises, and deposited in any post office, station or letter box.

13.4 Transfer. Mortgagor shall have the right to transfer the mortgaged premises at any time, with or without Mortgagee's consent.

13.5 Time of Essence. Time is of the essence of this Mortgage.

13.6 Applicable Law. This Mortgage shall be governed

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by the law of the State of Oregon, and any question arising hereunder shall be construed or determined according to such law.

EASTPORT EQUITIES CORPORATION, an Oregon corporation

BY: Kerry S. Gilbert president

STATE OF OREGON )  
 ) ss.  
County of Multnomah)

Personally appeared Kerry S. Gilbert, who being first duly sworn, stated that he is the President, of Eastport Equities Corporation, an Oregon corporation, and that the said instrument was signed on behalf of said corporation on authority of its Board of Directors; and they acknowledged said instrument to be its voluntary act. Before me:

Julie Lindstedt  
Notary Public for Oregon  
My Commission expires: 1/5/86

#### SUBORDINATION

The undersigned Campus Development Company, an Oregon General Partnership, as Mortgagee under that certain Mortgage dated August 1, 1979, recorded August 22, 1979, in Book M-79, page 20039, wherein Eastport Equities Corporation, an Oregon corporation is Mortgagor, hereby subordinates its interest in said Mortgage to the interest of South Valley State Bank, an Oregon Banking Corporation, in the foregoing Mortgage with Eastport Equities Corporation, an Oregon Corporation.

CAMPUS DEVELOPMENT COMPANY, an Oregon General Partnership

BY: Alden B. Glidden

Alden B. Glidden

BY: William A. Bartlett

William A. Bartlett

BY: George R. Nicholson

George R. Nicholson

BY: Kenneth L. Tuttle

Kenneth L. Tuttle

STATE OF OREGON )  
 ) ss.  
County of Klamath )

Personally appeared the above-named Alden B. Glidden, Partner; William A. Bartlett, Partner; and Kenneth L. Tuttle, Partner; who, being sworn, acknowledged the above instrument to be their voluntary act. Before me:

Kristi L. Ridd  
Notary Public for Oregon  
My Commission expires: 11/16/87

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 March A.D., 1984 at 3:53 o'clock P. M. and duly recorded in Vol. M84, of Mortgages on page 5095.

Fee: \$ 24.00

EVELYN BIEHN, COUNTY CLERK

by: Sam Smith, Deputy