

69988

Aspen Title #M-30544

MORTGAGE

DATED: December 23, 1986.

Vol. 1180 Page 24327

By: ARTHUR J. RICE and RUTH A. RICE, husband and wife, and Millar Trust, an Oregon Business Trust doing business as Pear Street Apartments ("Mortgagor"), whose address is 6522 Sorrel Court, Klamath Falls, OR 97603

To: M & M VENTURES, OREG., LTD., an Oregon Limited Partnership ("Mortgagee"), whose address is 7636 Booth Road, Klamath Falls, OR 97603

For a valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor does hereby mortgage, grant, bargain, sell, assign and convey unto Mortgagee the "Real Property" situated in Klamath County, Oregon, legally described on Exhibit A, which is attached hereon and incorporated herein by this reference, together with the tenements, hereditaments and appurtenances now or hereafter belonging thereto and the proceeds, rents, issue and profits therefrom.

This conveyance is intended as a mortgage to secure (a) performance of the covenants and agreements hereinafter made; (b) payment of the sum of \$95,329.30 and FUTURE ADVANCES, together with interest on the unpaid balance thereof, in accordance with a series of promissory notes secured by this mortgage; and (c) payment and performance of all other present or future debts, liabilities or obligations of any kind or nature, direct or indirect, of Mortgagor to Mortgagee, including, but not limited to, all advances, costs, expenses and reasonable attorney fees at trial or on appeal incurred by Mortgagee in servicing and enforcing the debts, obligations and liabilities of Mortgagor and in preserving, handling, protecting, collecting, foreclosing, disposing and otherwise realizing on any and all security therefor, including Real Property.

Mortgagor represents and warrants that (a) Mortgagor now is the owner of the real property described on Exhibit A attached hereto in fee simple and has the right and authority to mortgage all of the Real Property described on Exhibit A as provided herein, and (b) Real Property is free and clear of all liens and encumbrances, except those set forth in Aspen Title & Escrow, Inc. Order Number 30544 dated October 22, 1986.

This mortgage, and the warranties, covenants and agreements made herein, shall bind Mortgagor and Mortgagor's personal representatives, heirs, successors and assigns and inure to the benefit of Mortgagee and Mortgagee's personal representatives, heirs, successors and assigns.

Mortgagor hereby makes the following covenants and agreements:

1. Mortgagor will pay the debts and liabilities secured by this mortgage promptly when due and strictly and punctually perform all additional obligations, covenants and agreements that are contained in this mortgage, the Instrument, the guaranty and any other applicable instrument or agreement between Mortgagor and Mortgagee.

2. Mortgagor will (a) pay all taxes, assessments and other charges of every nature (including utilities) which may be levied or assessed upon or against Real Property, or any part thereof, when due and payable according to law, (b) promptly pay and satisfy as and when required all construction liens and other liens or encumbrances that are or might by operation of law or otherwise become a prior lien on Real Property, (c) promptly and fully comply with all existing and future laws, orders and regulations of all governmental bodies that affect Real Property or the use thereof, (d) defend Mortgagee's rights against any and all liens and encumbrances, and (e) hold Mortgagee harmless from all costs incurred in connection with such taxes, assessments, charges, compliance with governmental requirements, liens and encumbrances.

3. Mortgagor will (a) keep all improvements on Real Property in good order and repair, (b) not commit or suffer any waste of Real Property and (c) not do or allow any act or omission, including removal or alteration of improvements, which will materially reduce the security value of Real Property.

4. Mortgagor will keep all improvements now or hereafter on Real Property insured against loss or damage by fire with extended coverage endorsement by a responsible insurance company satisfactory to Mortgagee in an amount equal to the full replacement value of the improvements. The insurance policy shall name Mortgagor, Mortgagee and the holder of any prior mortgage or trust deed insured parties as their respective interests may appear and provide that such insurance coverage will not be canceled without at least 15 days' prior written notice having been given to Mortgagee. Mortgagor will give prompt notice to Mortgagee of any insured or uninsured casualty. In the event of any condemnation under the power of eminent domain or insured casualty, all proceeds may, at the option of Mortgagee and the holder of any prior mortgage or trust deed, be applied either to repairs, restoration or replacement of improvements or to payment of the debts secured by this mortgage and any prior mortgage or trust deed. Mortgagee is hereby appointed Mortgagor's agent to collect, apply and disburse all proceeds payable as a result of either condemnation or insured casualty.

5. Mortgagor will afford Mortgagee the right to enter upon and inspect Real Property at all reasonable times.

It is agreed that, if Mortgagor allows insurance coverage to expire or fails or refuses to pay taxes, assessments, charges, liens or encumbrances or to comply with governmental requirements, Mortgagee may, but shall not be required to, procure, pay or perform the same and the amount of such payment or cost of such procurement or performance, together with interest thereon at the rate provided for in the Instrument, shall be immediately due and payable by Mortgagor to Mortgagee and secured by the lien of this mortgage.

If Mortgagor shall pay the debts and liabilities secured by this mortgage and shall fully satisfy and comply with the covenants and agreements contained in this mortgage, the Instrument, the guaranty and any other applicable instrument or agreement, then this conveyance shall be void, but otherwise it will remain in full force and effect as a mortgage to secure the payment of the debts and liabilities of Mortgagor as and when due and the performance of the covenants and agreements contained herein, in the guaranty and in any other applicable agreement.

Time is of the essence. If (a) Real Property is destroyed or substantially damaged or the security value thereof materially reduced, (b) Mortgagor, or any other maker of the Instrument, shall fail to make any of the payments provided for in the Instrument promptly when due or Mortgagor shall fail to satisfy and discharge Mortgagor's other debts and liabilities when due to Mortgagee, including those under the guaranty, or Mortgagor shall fail to perform any covenant or agreement contained herein or in any other applicable agreement, including the guaranty, within ten days after receipt of written notice of failure to perform the same, (c) Mortgagor shall sell or transfer Real Property or any interest therein voluntarily, involuntarily or by operation of law without the prior written consent of Mortgagee, or (d) Mortgagor, or any other maker of the Instrument, becomes insolvent or unable to pay debts as they mature, makes an assignment for the benefit of creditors or petitions for or becomes the subject of any federal or state law receivership, insolvency, liquidation or reorganization proceeding or case, then Mortgagor shall be in default hereunder and Mortgagee shall have the option to declare all debts and liabilities of Mortgagor to Mortgagee immediately due and payable and this mortgage, by reason thereof, may be foreclosed at any time thereafter; provided, however, that Mortgagor shall not be deemed in default hereunder by reason of failure to pay any taxes, assessments, liens or other charges levied, assessed or imposed upon or against Real Property when due and payable so long as Mortgagor is contesting such taxes, assessments, liens or charges in good faith by appropriate means and Mortgagor provides to Mortgagee assurances satisfactory to Mortgagee (including cash deposits or bonds) that Mortgagee's interest will not be jeopardized as a result of the contest.

This mortgage, without affecting its validity as a real estate mortgage, is also executed and shall be construed as an assignment to Mortgagee of any "contract vendor" or similar interest of Mortgagor in and to Real Property. Mortgagor covenants and agrees to execute and file any instruments deemed necessary or desirable by Mortgagee to perfect, continue and renew said assignment.

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.

No covenant, agreement or condition of this mortgage shall be deemed waived unless expressly waived in writing by Mortgagee. The failure of Mortgagee, at any time, to require strict performance by Mortgagor of any covenant, agreement or condition shall not estop or otherwise affect Mortgagee's right to enforce the same nor shall any acceptance of partial payment on account, waiver or forbearance by Mortgagee, be held to be a waiver of Mortgagor's default or the covenant, agreement or condition itself or any future failure to perform the same.

The Mortgagor shall not in any way transfer the real property, or any part thereof or interest therein, without the written consent of the Mortgagee. The Mortgagee will not unreasonably withhold its consent and it is agreed that the Mortgagee will grant its consent to transfer if the Mortgagor provides information concerning (a) the personal history and background of the transferee; (b) a financial statement of the transferee; and (c) a written acknowledgement that the Mortgagor



shall remain responsible for the obligation of this Mortgage until the whole amount of both principal and interest is paid in full.

24330

Whenever any notice, demand, or request is required by the terms hereof or by any law now in existence or hereafter enacted, the notice, demand or request shall be sufficient if actually furnished to Mortgagee or mailed to Mortgagor by certified mail, return receipt requested, in a postpaid envelope addressed to the last address of Mortgagor shown in Mortgage's records.

In the event civil action is instituted to foreclose this mortgage, which results in judgment against Mortgagor, Mortgagor agrees to pay all costs and disbursements allowed by law and such sum as the trial judge or appeal court may adjudge reasonable as attorney fees in such action or appeal, together with reasonable costs incurred by Mortgagee for title reports and title search, all such sums to be secured by the lien of this mortgage and included in the decree of foreclosure. As a material inducement to Mortgagee, Mortgagor covenants and agrees that Mortgagee, either directly or through a receiver appointed by a judge of the circuit court for the county in which Real Property is located, may take possession of Real Property upon Mortgagor's default hereunder (whether or not the apparent value of Real Property exceeds the alleged debts and liabilities of Mortgagor to Mortgagee), collect the rents and profits therefrom and apply the same, after payment of costs, charges and expenses, to the payment of amounts due to Mortgagee. Any receiver appointed may serve without bond.

IN WITNESS WHEREOF, Mortgagor has executed this mortgage as of the date first above written.

Arthur J. Rice  
Arthur J. Rice

MILLAR TRUST, an Oregon

Ruth A. Rice  
Ruth A. Rice

By: Ruth A. Rice, Trustee  
Trustee

STATE OF OREGON )  
County of Klamath ) ss. December 23, 1986.

Personally appeared ARTHUR J. RICE and RUTH A. RICE, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

Wardene V. Addington  
Notary Public for Oregon  
My Commission expires: 3-22-89

STATE OF OREGON )  
County of Klamath ) ss. December 23, 1986.

Personally appeared the above-named Ruth A. Rice, Trustee of the Millar Trust, an Oregon Business Trust, and acknowledged the foregoing instrument to be his voluntary act and deed. Before me:

Wardene V. Addington  
Notary Public for Oregon  
My Commission expires: 3-22-89

24330A

EXHIBIT "A"

LEGAL DESCRIPTION:

Lots 1, 2, 3, 4 and the Easterly half of Lot 5, Block 1, MILLS GARDENS, in the County of Klamath, State of Oregon, TOGETHER WITH the half vacated portion of Pear Street adjacent to Lot 1.

*Ret: A.T.C*

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_  
of December A.D., 19 86 at 4:00 o'clock P M., and duly recorded in Vol. 31st day  
of Mortgages on Page 24327 M86,

FEE \$21.00

Evelyn Biehn,

County Clerk

By

*Wm. Smith*