

77174

03-07-94P01:53 RCVD

Vol 194 Page 2035

ASSIGNMENT AND MORTGAGE

DATED: September 22, 1992.

PARTIES: K-FALLS DISTRIBUTING, a Co-Partnership, consisting of Eugene D Rosterolla, Jerry D Rosterolla and Yolanda Rosterolla
P.O. Box 1058, Klamath Falls, OR

South Valley State Bank
Klamath Falls, OR

Assignor-Mortgagor

Assignee-Mortgagee

R E C I T A L S:

A. The Assignor-Mortgagor is the owner of various types of interests in real property, a complete description of which is set forth as follows: LOTS 13, 14, AND 15 IN BLOCK 4 OF FIRST ADDITION TO ALTAMONT ACRES, according to the official plat thereof on file in the office of the County clerk of Klamath County, Oregon, TOGETHER WITH VACATED MARYLAND AVENUE (formerly Tappan Avenue) which adjoins LOTS 13, 14, AND 15 ON THE SOUTH LINE.

B. Rosterolla Distributors, Inc., wishes to borrow funds from Assignee-Mortgagee and the Assignor-Mortgagor desires to use its interests in the above-mentioned real property as security for said loan.

C. In consideration of the loan of money hereinafter described, the Assignor-Mortgagor assigns and mortgages and the parties agrees as follows:

AGREEMENTS

SECTION 1. ASSIGNMENT:

1.1 For value received, Assignor-Mortgagor hereby assigns mortgage(s), and conveys to Assignee-Mortgagee all of its right, title and interest in and to the Property, and in, to, and under the Contract. The Property and the assigned Contract are the "Security" referred to in this Assignment.

1.2 The Assignor warrants that the following amount(s) are now due to the Vendor, James V. Parker and Gladys E. Parker: One hundred twenty-three thousand three hundred forty-four and no/100 (\$123,344.00).

1. ASSIGNMENT AND MORTGAGE

SECTION 2. CONVEYANCE:

For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the real property described in Recitals "A", 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 will remain in possession of the Mortgaged Premises, and may manage and collect all revenues from the Mortgaged Premises.

SECTION 2. PURPOSE:

This conveyance is intended as a mortgage to secure the performance of the covenants and agreements herein contained and contained in any loan agreement, security agreement or other agreement between Rosterolla Distributing, Inc. (Borrower) and Mortgagee, and to secure the payment of a loan or loans in the sum of TWO HUNDRED TWENTY THOUSAND TWO HUNDRED SEVENTY-SEVEN (\$220,277.00) DOLLARS, as evidenced by a promissory note or notes held by the Mortgagee, together with interest payable on the unpaid balances thereof at the rates specified in the notes or at such other rates prescribed from time to time by Mortgagee in accordance with law and agreement with Borrower, and any or 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. This Mortgage shall also include any and all future advances made by Mortgagee to Borrower.

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, or has an interest in the Mortgaged Premises. Mortgagor has the right and authority to mortgage the Mortgaged Premises. Mortgagor will defend Mortgagee's rights against any liens and encumbrances other than those listed in this Mortgage.

SECTION 4. PAYMENT AND PERFORMANCE:

Borrower will pay, when due, the indebtedness secured by this Mortgage in accordance with the terms thereof. Borrower 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 its use.

2.

ASSIGNMENT AND MORTGAGE

SECTION 5. DEFAULT:

5.1 Events of Default: The occurrence of any one or more of the following events shall constitute a default hereunder:

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

(b) Mortgagor's and/or Borrower'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 Borrower and Mortgagee;

(d) Borrower's insolvency or inability to pay his/her/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.

(e) Sale or other transfer of the Mortgaged Premises, or any part thereof, without the prior written consent of Mortgagee.

5.2 Remedies on Default. If any default occurs, Mortgagee may, at his/her/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 Borrower 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 his/her/its right to exercise his/her/its option as to any past or subsequent violation of any covenants or stipulations.

In addition to all other remedies provided herein, or by law, the Mortgagee, under the assignment provisions of this Agreement, may notify the payees under the obligations assigned to commence making payment to the Mortgagee.

SECTION 6. ATTORNEY FEES AND OTHER COSTS:

In the event suit or action is begun to foreclose this Mortgage, Borrower will pay, in addition to the costs and disbursements allowed by law, such sums as the court may adjudge reasonable as

3. ASSIGNMENT AND MORTGAGE

attorney fees in such suit or action, or any appeal therefrom. Borrower will also pay such sums 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. Borrower 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 as 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 7. MISCELLANEOUS:

7.1 Terminology: The word "Mortgagor" and the language of this instrument shall, where there is more than one Mortgage, 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.

7.1a Terminology: The word "Borrower" and the language of this instrument shall, where there is more than one Mortgage, be construed as plural and be binding jointly and severally upon all Borrowers and the word "Mortgagee" shall apply to any holder of this mortgage.

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

7.3 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 post paid 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.

7.4 Substitution of Collateral: Subject to the laws of the State of Oregon, the collateral in the real property and real property interest set forth in Recital "A" may be amended and substituted by an addendum to this Agreement, properly executed and recorded pursuant to law, from time to time, as the parties agree.

7.5 Applicable law: This Mortgage shall be governed by the laws of the State of Oregon and any questions arising hereunder shall be construed or determined according to such laws.

4. ASSIGNMENT AND MORTGAGE

IN WITNESS WHEREOF the parties have set their hands and seals the day and year first hereinabove written.

ASSIGNOR-MORTGAGOR

K-FALLS DISTRIBUTING, a Co-Partnership

Eugene D Rosterolla
Eugene D Rosterolla

Jerry D Rosterolla
Jerry D Rosterolla

Yolanda Rosterolla
Yolanda Rosterolla

ACKNOWLEDGMENT BY BORROWER

ROSTEROLLA DISTRIBUTING, INC.

Eugene D Rosterolla
Eugene D Rosterolla, President

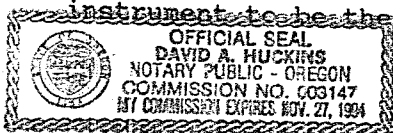
STATE OF OREGON)

County of Klamath)

ss.

2/18/94
Date

Personally appeared the above named Eugene D. Rosterolla, Jerry D. Rosterolla, and Yolanda Rosterolla and acknowledged the foregoing instrument to be their voluntary act. Before me:



[Signature]
Notary Public

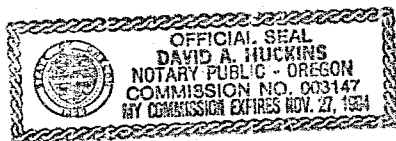
STATE OF OREGON)

County of Klamath)

ss.

2/18/94

This instrument was acknowledged before me by Eugene D Rosterolla as President of Rosterolla Distributing, Inc..



[Signature]
Notary Public

ASSIGNEE-MORTGAGEE

SOUTH VALLEY STATE BANK

[Signature], Loan Officer

5. ASSIGNMENT AND MORTGAGE

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of S. Valley State Bank the 7th day of March A.D., 19 94 at 1:53 o'clock P. M., and duly recorded in Vol. M94 of Mortgages on Page 7035

FEE \$30.00

Evelyn Biehn - County Clerk

By [Signature]