

67-215  
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VOL 170 PAGE 1490

M O R T G A G E

THIS MORTGAGE, made this 11th day of February, 1970, by FLOYD OSBORN, WILLIAM G. BARROS, HERMAN SLAVSKY, BEN SILVER, SAM SILVER, RICHARD MURPHY, ALLAN SCHULMAN, THEODORE GREENFIELD, SIMON BROWN, HARRY WHITMAN and ROBERT C. BURNSTEIN, Copartners doing business under the firm, name and style of "BLACK HILLS ACRES", herein called "MORTGAGOR" to NORMAN MILLER ANDERSON and LAVINA A. ANDERSON, Husband and Wife, herein called "MORTGAGEE".

W I T N E S S E T H:

That said Mortgagor in consideration of Mortgagee selling certain real property for a total purchase price of Three Hundred Ninety-Three Thousand Dollars (\$393,000.00) and with a Ninety Thousand Dollars (\$90,000.00) down-payment being received by Mortgagee, does hereby grant, bargain and sell and convey unto Mortgagee, his heirs, executors, administrators and assigns not as tenants in common but with the right of survivorship, that certain real property situated in Klamath County, State of Oregon and described as follows, to wit:

All in Township 35 South, Range 12 East of the Willamette Meridian:

Section 1: Government Lots 1, 2, 3, 4 and 5, EXCEPTING therefrom that portion conveyed to A. C. YADEN and IRENE V. YADEN, husband wife, dated May 3, 1960 in Deed Volume 321 at page 402. SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ .

Section 2: Government Lots 1 and 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ .

Section 11: All of Section 11.

Section 12: All of Section 12.

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Section 13: W $\frac{1}{2}$  of Section 13.

Section 14: NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and which may hereafter thereto belong or appertain, and the rents, issues and profits therefrom, and any and all fixtures upon said premises at the time of the execution of this Mortgage or at any time during the term of this Mortgage.

TO HAVE AND TO HOLD the said premises with the appurtenances unto the said Mortgagee, not as Tenants In Common, but with rights of survivorship as herein set forth and to their assigns and heirs of the survivor forever. In this Mortgage and Note, the term "survivor" includes survivors.

This Mortgage is intended to secure the payment of a promissory note, of which the following is a substantial copy:

"PROMISSORY NOTE  
\$303,000.00      Oakland, California February 11, 1970

Each of the undersigned promises to pay to the order of NORMAN MILLER ANDERSON and LAVINA A. ANDERSON, husband and wife, at Klamath Falls, Oregon, Three Hundred Three Thousand Dollars (\$303,000.00) with interest at the rate of Six Per Cent (6%) per annum from Feb. 25, 1970 until paid, paid in the following manner, to wit:

Commencing on the 25th day of February 1970, that sum of money equal to Six Per Cent (6%) on the unpaid principal balance and thereafter every Six (6) months interest only being that sum of money equal to Six Per Cent (6%) of the unpaid principal balance. Said instalment payments of interest shall continue every Six (6) months in the amount as computed in the manner as aforementioned for a period of Five (5) years and that commencing on the 25 day of February 1975, that sum of money in the amount of \$3,363.30 Dollars and a like payment on the 25th day of each and every month thereafter for a total of One Hundred and Twenty (120) calendar months at which said time the whole of the sum of principal and interest shall have been paid in full.

Upon the payment of each instalment commencing on the 25 day of February 1975, and con-



1 continuing monthly thereafter, credit first  
2 shall be given to interest at the rate of  
3 Six Per Cent (6%) per annum on the unpaid  
4 principal balance and then to principal.

5 If any of the said instalments as called  
6 for in this note are not paid, the whole  
7 sum of both principal and interest to be-  
8 come immediately due and collectible at the  
9 option of the holder of this note. If this  
10 note is placed in the hands of an Attorney  
11 for collection, each of the undersigned  
12 promises and agrees to pay holders reason-  
13 able collection costs, including reasonable  
14 attorneys fees, even though no suit or action  
15 is filed herein. However, if such suit or  
16 action is filed, the amount of such reason-  
17 able attorneys fees shall be fixed by the  
18 court or courts in which the suit or action,  
19 including any appeal thereon, is tried,  
20 heard or decided.

21 This note or any portion thereof at any time  
22 may be prepaid in whole or in part without  
23 penalty, charge or additional interest of  
24 whatsoever nature and that upon the payment  
25 of any principal, whether prepaid or at the  
26 time of any instalment payment calling for  
27 principal, the principal shall apply to the  
28 release of acreage from the encumbrance of  
29 the Purchase Money Mortgage as is more par-  
30 ticularly described and set forth on the face  
31 of the Purchase Money Mortgage which has been  
32 executed on an even date herewith as security  
for this note."

That he will pay said note, principal and interest,  
according to the terms thereof; that while any part of said  
note remains unpaid he will pay all taxes, assessments and  
other charges of every nature which may be levied or assessed  
against said property, or this mortgage or the note above  
described, when due and payable and before the same may become  
delinquent; that he will promptly pay and satisfy any and  
all liens or encumbrances that are or may become liens on the  
premises or any part thereof superior to the lien of this  
mortgage; at the request of the Mortgagee, the Mortgagor shall  
join with the Mortgagee in executing one or more financing  
statements pursuant to the Uniform Commercial Code, in form  
satisfactory to the Mortgagee, and will pay for filing the  
same in the proper public office or offices, as well as the

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1 cost of all lien searches made by filing officers or searching  
2 agencies as may be deemed desirable by the Mortgagee.

3 Now, therefore, if said Mortgagor shall keep and  
4 perform the covenants herein contained and shall pay said note  
5 according to its terms, this conveyance shall be void, but  
6 otherwise shall remain in full force as a mortgage to secure  
7 the performance of all of said covenants and the payment of  
8 said note; it being agreed that a failure to perform any  
9 covenant herein, or if a proceeding of any kind be taken to  
10 foreclose any lien on said premises or any part thereof, the  
11 Mortgagee shall have the option to declare the whole amount  
12 unpaid on said note or on this Mortgage at once due and pay-  
13 able, and this Mortgage may be foreclosed at any time there-  
14 after, and if the Mortgagor shall fail to pay any taxes or  
15 charges or any lien or encumbrance, the Mortgagee may at his  
16 option do so, and any payment so made shall be added to and  
17 become a part of the debt secured by this Mortgage, and shall  
18 bear interest at the same rate as said note without waiver,  
19 however, of any right arising to the mortgagee for breach of  
20 covenant. And this Mortgage may be foreclosed for principal,  
21 interest and all sums paid by the Mortgagee at any time while  
22 the Mortgagor neglects to repay any sums so paid by the  
23 Mortgagee. In the event of any suit or action being instituted  
24 to foreclose this Mortgage, the Mortgagor agrees to pay all  
25 reasonable costs incurred by the Mortgagee for title reports  
26 and title search, all statutory costs and disbursements and  
27 such further sum as the trial court may adjudge reasonable as  
28 Plaintiff's Attorney's fees in such suit or action, and if an  
29 appeal is taken from any judgment or decree entered therein,  
30 Mortgagor further promises to pay such sum as the appellate  
31 court shall adjudge reasonable as Plaintiff's attorney's fees  
32 on such appeal, all sums to be secured by the lien of this  
Mortgage and included in the decree of foreclosure.

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1 Each and all of the covenants and agreements herein  
2 contained shall apply to and bind the heirs, executors, admin-  
3 istrators and assigns of said mortgagor and of said mortgagee  
4 respectively.

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

12 In construing this Mortgage, it is understood that  
13 the Mortgagor or Mortgagee may be more than one person; that  
14 if the context so requires, the singular pronoun shall be  
15 taken to mean and include the plural, the masculine, the  
16 feminine and the neuter, and that generally all gramatical  
17 changes shall be made, assumed and implied to make the provi-  
18 sions hereof apply equally to corporations and to individuals.

19 This is a Purchase Money Mortgage and is being  
20 executed in accordance with the laws of the State of Oregon  
21 as security for the unpaid balance of the purchase price for  
22 the purchase of the property described herein by the Mortgagor  
23 from the Mortgagee and as a Purchase Money Mortgage, the  
24 Mortgagee shall not be entitled to a deficiency judgment  
25 or deficiency claim on account of the Mortgage or Note or  
26 obligation secured by the same in the event of any decree or  
27 sale foreclosing the aforementioned Purchase Money Mortgage.

28 RELEASE AGREEMENT FOR ACREAGE

29 In consideration of the purchase price agreed to  
30 be paid by Mortgagor and the undertakings and agreements made  
31 by Mortgagor, Mortgagor and Mortgagee by agreement in writing  
32 which survived the execution of the Warranty Deed and this



1 Mortgage agreed to various times and methods of release of  
2 acreage encumbered by this Mortgage and that the following  
3 covenants and agreements as appear upon the face of this  
4 Mortgage is the agreement for release of acreage encumbered  
5 by this Mortgage as was provided for in said agreement.

6 When there has been any payment on the Promis-  
7 sory Note by way of payment of an instalment  
8 on a due date of any instalment, or any pre-  
9 payment prior to the due date of any instal-  
10 ment so long as the payment or prepayment, as  
11 the case may be, is of principal equal to at  
12 least One Thousand Dollars (\$1,000.00), then  
13 the release of acreage shall take place in  
14 the following manner:

15 The Mortgagor shall be entitled to  
16 have released from the encumbrance of the  
17 Mortgage in Five (5) acre parcels, any five  
18 (5) acre parcel that is described in the  
19 plot plan and attached to this Mortgage  
20 so long as the parcel designated and de-  
21 manded to be released is contiguous to  
22 a parcel that has theretofore been releas-  
23 ed from the encumbrance of the mortgage  
24 upon the original execution of the same.

25 In the plot plan attached to this mort-  
26 gage is a delineation and designation of  
27 various lot numbers, all consisting of five  
28 (5) acres, more or less. All of the said  
29 lots described in the plot plan in this said  
30 Exhibit to this Mortgage are subject to the  
31 encumbrance of this Mortgage except that por-  
32 tion of the plot plan that is covered by cross-

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1       thatching. The cross-thatching marks  
2       indicate the property that was immediately  
3       released from the encumbrance of the  
4       Mortgage upon the execution, delivery and  
5       recording of the Warranty Deed and Mort-  
6       gage as a result of the payment to the  
7       Mortgagee of Ninety Thousand Dollars  
8       (\$90,000.00) in cash.

9       When the Mortgagor has paid or deposited at  
10      least One Thousand Dollars (\$1,000.00) for  
11      a five (5) acre tract or parcel, notice shall  
12      be given as to what parcel as is more parti-  
13      cularly described in the plot plan as an ex-  
14      hibit to this Mortgage shall be released for  
15      the money being paid therefor under the terms  
16      of this release so long as the parcel being  
17      required to be released at that time is  
18      contiguous to a parcel that has therefore  
19      been released and/or is owned by the Mortgagor  
20      and not subject to the Mortgage at the time  
21      of said demanded release.

22      For the purposes of determining contiguity and  
23      what is contiguous, this means that the parcel to be released  
24      must border on one side at least to property previously releas-  
25      ed or owned unencumbered by this Mortgage.

26      If at the time of the demand for the release of  
27      the Mortgage, sufficient monies have been paid or prepaid  
28      that would permit more than one five (5) acre parcel to be  
29      released, namely, more than One Thousand Dollars (\$1,000.00)  
30      of principal has been paid at the time or deposited, and  
31      thus more than one Five (5) acre parcel is required to be  
32      released upon the payment or prepayment of principal, then the

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1 parcels required to be released shall be released as demanded  
 2 by the Mortgagor so long as at least one of the parcels being  
 3 released at that time is contiguous, as defined herein, to  
 4 property previously released or property unencumbered by the  
 5 Mortgage at that time and further, so long as the other parcels  
 6 being demanded to be released at said time are contiguous to  
 7 each other. For example, by reference to the plot plan attach-  
 8 ed to this Mortgage - if sufficient monies as required under  
 9 the terms of the agreement were paid or deposited and a demand  
 10 was made by the Mortgagor to release Parcel 457, 458 and 231,  
 11 all of these parcels shall be released since Parcel 457 is  
 12 contiguous to property unencumbered and 458 is contiguous to  
 13 457 and 231 is contiguous to 458.

14 Nothing contained in this release clause shall  
 15 permit fractional releases so that each release must be no  
 16 less than a total of Five (5) full acres or covering no less  
 17 than a delineated parcel on the plot plan attached to this  
 18 Mortgage.

19 When the first release is demanded by the Mortgagor  
 20 under the terms hereof, the Mortgagor shall be entitled to  
 21 designate any parcel set forth in the plot plan which is  
 22 attached to this Mortgage. Thereafter, any release must  
 23 satisfy the contiguity requirements as hereinbefore set forth.

24 Any of the rights herein mentioned given to the  
 25 Mortgagor for release shall likewise inure to the benefit  
 26 of any successor, assignee or transferee of the Mortgagor.

27 Any legal descriptions as may be necessary for  
 28 the orderly release under the schedule of releases as herein-  
 29 above set forth shall be supplied by the Mortgagor at the  
 30 Mortgagor's expense and that forthwith upon the tender of  
 31 the required legal description and the payment of the  
 32 release amount, the acres that are required to be released

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on the basis of Two Hundred Dollars (\$200.00) per acre shall  
forthwith be released from this Mortgage. All costs of the  
release by way of title company fees, escrow charges, mortgagee  
fees and recording fees shall be borne by the Mortgagor.

IN WITNESS WHEREOF, the undersigned have hereunto  
set their hands in seal the day and year first above written.

*Floyd L. Osborn*  
(FLOYD OSBORN)

*William G. Barros*  
(WILLIAM G. BARROS)

*Herman Slavsky*  
(HERMAN SLAVSKY)

*Ben Silver*  
(BEN SILVER)

*Sam Silver*  
(SAM SILVER)

*Richard Murphy*  
(RICHARD MURPHY)

*Allan Schulman*  
(ALLAN SCHULMAN)

*Theodore Greenfield*  
(THEODORE GREENFIELD)

*Simon Brown*  
(SIMON BROWN)

*Harry Whitman*  
(HARRY WHITMAN)

*Robert C. Burnstein*  
(ROBERT C. BURNSTEIN)

COPARTNERS DOING BUSINESS UNDER  
THE FIRM, NAME AND STYLE OF  
"BLACK HILLS ACRES". "MORTGAGOR"

*Norman Miller Anderson*  
(NORMAN MILLER ANDERSON)

*Lavina A. Anderson*  
(LAVINA A. ANDERSON) Husband and  
Wife, "MORTGAGEE"

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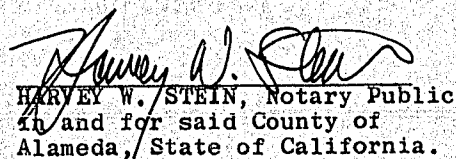
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**FOR**

FEB 25 1 03 PM 1970

FB 25 1 23 PM 1970



Before me: \_\_\_\_\_  
Notary Public for Oregon  
My commission expires 8-27-7

Before me: Wendell L. Smith  
Notary Public for Oregon  
My commission expires July 21, 1973

**ROBERT C. BURNSTEIN**  
**ATTORNEY AT LAW**  
**414-13TH STREET**  
**OAKLAND, CALIF. 94612**  
**TELEPHONE 836-4400**

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293	284	275	256	494
300	252	282	297	464
306	313	291	282	474



MAP SHOWING PORTIONS  
SECTIONS 1, 2, 11, 12, 13  
ALL IN T35S R12E W1E  
KLAMATH COUNTY, OREGON  
SCALE: 1" = 1000'  
NUMBERS DESIGNATE APPROXIMATE  
OF TYPICAL 5 ACRE PARCELS.

12.	11	10	9	8	7	6	5	4	3	2	1
13	14	15	16	17	18	19	20	21	22	23	24
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320	319	318	317	316	315	314	313	466							
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337	338	339	340	341	342	343	344	469	470	471	472				

STATE OF OREGON,  
County of Klamath

Filed for record at re  
Transamerica T  
on this 25th day of  
at 11:18 o  
recorded in Vol. M-70  
Page 1490

WM. D. M.  
By *[Signature]*  
Fee \$18.00



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152	151	150	149	148	147	146	145	144	143
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472	471	470	469	468	467	466	465	464	463

MAP SHOWING PORTIONS OF  
SECTIONS 1, 2, 11, 12, 13 & 14  
ALL IN T35S R12E WM  
KLAMATH COUNTY, OREGON  
SCALE: 1" = 1000'

NUMBERS DESIGNATE APPROXIMATE LOCATION  
OF TYPICAL 5 ACRE PARCELS.

STATE OF OREGON, }  
County of Klamath } ss.

Filed for record at request of:  
Transamerica Title Ins. Co.  
on this 25th day of February A. D., 1970  
at 11:18 o'clock A. M. and duly  
recorded in Vol. M-70 of Mortgages  
Page 1490

WM. D. MILNE, County Clerk  
By Charles R. Nordman  
Deputy.

Fee \$18.00

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