

16051

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MORTGAGE OF LEASEHOLD INTEREST

THIS MORTGAGE, made this 17th day of June, 1976 between STEVE MARKS CATTLE CO., INC., a Corporation, duly organized and existing under the laws of the State of California, hereinafter called the Mortgagor, and CROCKER NATIONAL BANK, hereinafter called the Mortgagee,

WITNESSETH, that said Mortgagor, for valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto said Mortgagee, its successors and assigns, the Mortgagor's interest in that certain Lease between Andrew Popson and Dorothy Popson, as Lessors, and Mortgagor, as Lessee, dated November 15, 1973, covering that certain real property situated in Klamath County, State of Oregon, bounded and described as follows:

IN TOWNSHIP 33 SOUTH, RANGE 7½ EAST OF THE WILLAMETTE MERIDIAN:

SE¼SW¼, Lots 5, 6, 7, Sec. 6
SW¼, Sec. 18

IN TOWNSHIP 33 SOUTH, RANGE 6 EAST OF THE WILLAMETTE MERIDIAN:

NE¼SW¼, E½SE¼SW¼, SW¼SE¼, Sec. 1
E½E½NE¼E½NE¼SE¼, SE¼SE¼, E½NE¼, E½E½NW¼, SW¼SE¼NW¼,
SE¼NW¼SW¼, E½SW¼SW¼, E½SW¼, SE¼W½NE¼, Sec. 12
NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, SE¼SW¼, SE¼, Sec. 13
All of Sec. 24, EXCEPT E½E½E½

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, its successors and assigns forever.

This Mortgage is intended to secure the payment of the obligations herein after defined:

OBLIGATIONS SECURED

- by the Mortgagor
- Any and all indebtedness now or hereafter owing to Mortgagee, with interest thereon, and all extensions and renewals of the due date of any or all of the same, whether or not evidenced by a promissory note and whether or not representing obligations by reason of loans or advances initially by Mortgagee, or acquired by Mortgagee by assignment or otherwise, and whether or not arising by reason of guarantees of the debt of others to

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1 Mortgagee or by reason of direct obligations to Mortgagee, as to any or
2 all of the following entitites, jointly and severally, to-wit: Steve
Marks or Steve Marks Cattle Co., Inc.

- 3 2. All agreements, covenants and obligations of Mortgagor as contained in
4 this Mortgage.
- 5 3. The payment and reimbursement to Mortgagee of any and all costs, expenses
6 and attorneys' fees incurred in any action or proceeding, including any
7 proceeding in any bankruptcy action, affecting the security granted, with
8 interest on such sums.
- 9 4. The payment and reimbursement to Mortgagee of any costs, expenses and pay-
10 ments made to or for the account of the holder of any prior encumbrance
11 on the property covered by this Mortgage, including without limitation
12 any payments on real property taxes, assessments, or irrigation assess-
13 ments, costs or expenses of irrigation water and electric power therefor
14 for use on the realty covered hereby.
- 15 5. Interest on any or all of said debt to Mortgagee at the rate expressed in
16 any notes or notes evidencing the same, and if none, at the rate of 2%
17 per annum over Mortgagee's prime rate in effect while said amounts remain
18 unpaid. Provided however, the rate shall not exceed the maximum interest
19 rate allowed by law in the State of California.

20 And said Mortgagor covenants to and with the Mortgagee, its successors
21 and assigns, that it is the lawful tenant of said premises and that the Lease is
22 current in all respects, and will warrant and forever defend the same against all
23 persons; that it will pay said obligations, principal and interest, according to
24 the terms thereof; that while any part of said obligations remain unpaid, Mort-
25 gagee, in addition to all other covenants, agreements and promises herein con-
26 tained, does hereby promise and agree as follows, to-wit:

27 (a) To pay any and all ground rents, faithfully at or before the same
28 become due, and to do and perform and carry out each and every covenant and agree-
29 ment of the Lessee faithfully at or before the same become due or delinquent, and
30 not to permit any default in connection with any of the same, all as set forth in
31 the certain leaseholds described herein, in which Mortgagor is the Lessee.

32 (b) That Mortgagor will at all times fully perform and comply with all
agreements, covenants, terms and conditions imposed upon the Lessee under the
ground lease identified in this Mortgage, and if Mortgagor fails to do so Mort-
gagee may (but shall not be obligated to) take any action Mortgagee deems neces-
sary or desirable to prevent or to cure any default by Mortgagor in the perform-
ance of or compliance with any of the Lessee's covenants or obligations under
said ground lease. Upon receipt by Mortgagee from the Lessor under such ground
lease of any written notice of default by the Lessee thereunder, Mortgagee may
rely thereon and take any action as aforesaid to cure such default even though
the existence of such default or the nature thereof be questioned or denied by
Mortgagor or by any party on behalf of Mortgagor. Mortgagor hereby expressly
grants to Mortgagee, and agrees that Mortgagee shall have, the absolute and
immediate right to enter in and upon the mortgaged premises or any part thereof
to such extent and as often as Mortgagee, in its sole discretion, deems necessary
or desirable in order to prevent or to cure any such default by Mortgagor. Mort-
gagee may pay and expend such sums of money as Mortgagee in its sole discretion
deems necessary for any such purpose, and Mortgagor hereby agrees to pay to Mort-
gagee immediately and without demand, all such sums so paid and expended by Mort-
gagee, together with interest thereon from the date of each such payment at the
then effective rate of loans from Mortgagee to Mortgagor. All sums so paid and

1 expended by Mortgagee, and the interest thereon, shall be added to and be secured
2 by the lien of this Mortgage.

3 (c) That Mortgagor will not surrender the ground leasehold estate and inter-
4 est described in this Mortgage, not terminate or cancel any of said ground lease,
5 and will not, without the express written consent of Mortgagee modify, change,
6 supplement, alter or amend said ground lease either orally or in writing, and as
7 further security for the repayment of the indebtedness secured hereby and for the
8 performance of the covenants herein and in said ground lease contained, Mortgagor
9 hereby assigns to Mortgagee all of the Mortgagor's rights, privileges and prerog-
10 atives as Lessee under said lease to terminate, cancel, modify, change, supplement,
11 alter or amend said ground lease, and any such termination, cancellation, modifi-
12 cation, change, supplement, alteration or amendment of any of said ground lease
13 without the prior written consent thereto by Mortgagee shall be void and of no
14 force and effect. As further security to Mortgagee, Mortgagor hereby deposits
15 with Mortgagee the Lessee's original of said ground lease and all amendments there-
16 to, to be retained by Mortgagee until all indebtedness secured hereby is fully
17 paid. So long as there is no breach of or default under any of the covenants or
18 agreements herein contained to be performed by Mortgagor, or in the performance
19 by Mortgagor of any of the terms, covenants and conditions in said ground lease
20 contained, Mortgagee shall have no right to terminate, cancel, modify, change,
21 supplement, alter or amend said ground lease.

22 (d) That no release or forbearance of any of Mortgagor's obligations under
23 said ground lease, pursuant to said ground lease or otherwise, shall release Mort-
24 gator from any of Mortgagor's obligations under this Mortgage, including any obli-
25 gations with respect to payment of rent as provided for in said ground lease and
26 the performance of all of the terms, provisions, covenants, conditions and agree-
27 ments contained in all of the said ground lease, to be kept, performed and com-
28 plied with by the Lessee therein.

29 (e) That unless Mortgagee shall otherwise expressly consent in writing,
30 the fee title to the property demised by said ground lease and the leasehold
31 estate shall not merge but shall always remain separate and distinct, notwith-
32 standing the union of said estate either in the Lessor or in the Lessee, or in
33 a third party by purchase or otherwise.

34 The foregoing covenants apply to the leasehold interests encumbered herein.

35 Now, therefore, if said Mortgagor shall keep and perform the covenants here-
36 in contained and shall pay said obligations according to their terms, this convey-
37 ance shall be void, but otherwise shall remain in full force as a mortgage to se-
38 cure the performance of all of said covenants and the payment of said obligations;
39 it being agreed that upon a failure to perform any covenant herein, or if proceed-
40 ing of any kind be taken to foreclose any lien on said premises or any part there-
41 of, the Mortgagee shall have the option to declare the whole amount unpaid on said
42 obligations or on this Mortgage at once due and payable, and this Mortgage may
43 be foreclosed at any time thereafter. And if the Mortgagor shall fail to pay any
44 taxes or charges or any lien, encumbrance or insurance premium as above provided
45 for, the Mortgagee may at its option do so, and any payment so made shall be
46 added to and become a part of the debt secured by this Mortgage, and shall bear
47 interest at the same rate as said obligations without waiver, however, of any
48 right arising to the Mortgagee for breach of covenant. And this Mortgage may be
49 foreclosed for principal, interest and all sums paid by the Mortgagee at any time
50 while the Mortgagor neglects to repay any sums so paid by the Mortgagee. In the
51 event of any suit or claim being instituted to foreclose this Mortgage, the Mort-
52 gator agrees to pay all reasonable costs incurred by the Mortgagee for title re-
53 ports and title search, all statutory costs and disbursements and such further
54 sum as the trial court may adjudge reasonable as plaintiff's attorney's fees in
55 such suit or action and if an appeal is taken from any judgment or decree entered
56 therein Mortgagor further promises to pay such sum as the appellate court shall
57 adjudge reasonable as plaintiff's attorney's fees on such appeal, all such sums
58 to be secured by the lien of this Mortgage and included in the decree of fore-
59 closure.

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Each and all of the covenants and agreements herein contained shall apply to and bind the successors and assigns of said Mortgagor and of said Mortgagee 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 to the payment of the amount due under this Mortgage, first deducting all proper charges and expenses attending the execution of said trust.

IN WITNESS WHEREOF, STEVE MARKS CATTLE CO., INC., pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by its President and Secretary, and its corporate seal to be hereunto affixed this 25th day of May, 1976.

STEVE MARKS CATTLE CO., INC.

By Steve Marks, its President
By Anne S. Marks, its Secretary

(CORP. SEAL)

STATE OF CALIFORNIA)

County of YOLO) SS

On this 25th day of MAY, 1976, personally appeared STEVE MARKS, who, being duly sworn, each for himself and not one for the other, did say that the former is the president and that the latter is the secretary of Steve Marks Cattle Co., Inc., a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me,

OFFICIAL SEAL
ALBERT S. JOHNSTON
NOTARY PUBLIC - CALIFORNIA
Principal Office in YOLO County
My Commission Expires May 5, 1978

Notary Public for California

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of GANONG & SISEMORE ATTYS 12; 57

this 8th day of JULY A. D. 1976 at 12 o'clock P.M. and
duly recorded in Vol. M 76, of MORTGAGES on Page 10349

FEE \$ 12.00

W. D. MILNE, County Clerk

By Hazel D. Milne

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GANONG & SISEMORE
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