

WHEN RECORDED MAIL TO:

James G. Leathers, Jr.  
Chickering & Gregory  
One Eleven Sutter Street  
San Francisco, CA 94104

Vol. *MW* 26 Page 20265

MORTGAGE OF LEASEHOLD INTEREST

23110

THIS MORTGAGE, made this *11th* day of November, 1976 between STEVE MARKS and ANNE S. MARKS, his wife, herein after called the Mortgagor, and FREDERICK J. STRAIN and JOHN KALFSBEEK, 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 and Option to Purchase between William V. Hill and Lillian M. Hill, husband and wife, as lessors, and Mortgagor, as Lessee, dated February 28, 1974, covering that certain property situated in Klamath County, State of Oregon, bounded and described as follows:

TOWNSHIP 36 SOUTH, RANGE 14 EAST OF THE WILLAMETTE MERIDIAN.

- Section 10: All  
Section 15: All, EXCEPT portion conveyed to Klamath County, Oregon, by deed recorded in Volume 228 at Page 189.  
Section 21: E/2 NW/4; E/2  
Section 22: All  
Section 23: All, EXCEPT the following described portion thereof: Beginning at a point 100 feet West of the Southeast corner of SE/4 SE/4 of said Section 23; thence North 200 feet; thence West 200 feet; thence South 200 feet; thence East 200 feet to the place of beginning; and ALSO EXCEPTING portion conveyed to Klamath County, Oregon, by deed recorded in Volume 288 at Page 189.  
Section 28: Beginning at the Northeast corner of said Section 28; thence West on the North line of said Section 28, 160 rods to the Northwest corner of the NE/4 of Section 28; thence South on the West line of said NE/4 of Section 28, 120 feet; thence in a Northeasterly direction in a straight line to a point on the East line of said Section 28, 86 feet South of the place of beginning; thence North on the East line of said Section 28 to the place of beginning.

TOWNSHIP 36 SOUTH, RANGE 14 EAST OF THE WILLAMETTE MERIDIAN.

- Section 20: E/2 NE/4; that portion of SE/4 SE/4 lying Northeasterly of Sprague River.  
Section 21: W/2 NW/4; SW/4  
Section 28: That portion of the NW/4 NW/4 lying Northerly of Sprague River and Northeasterly of the BX Canal.  
Section 29: That portion of the NE/4 NE/4 lying Northeasterly of Sprague River.

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 hereinafter defined:

1. A promissory note dated November 2, 1976, made by Steve Marks and Anne S. Marks in favor of Frederick Strain in the amount of \$228,871.57, and

2. A promissory note dated November 2, 1976 made by Steve Marks and Anne S. Marks in favor of John Kalfsbeek in the amount of \$298,128.43.

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

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

(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 Mortgagee may (but shall not be obligated to) take any action Mortgagee deems necessary or desirable to prevent or to cure any default by Mortgagor in the performance 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. Mortgagee 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 Mortgagee immediately and without demand, all such sums so paid and expended by Mortgagee 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 expended by Mortgagee, and the interest thereon, shall be added to and be secured by the lien of this Mortgage.

(c) That Mortgagor will not surrender the ground leasehold estate and interest described in this Mortgage, not terminate or cancel any of said ground lease, and will not, without the express written consent of Mortgagee modify, change, supplement, alter or amend said ground lease either orally or in writing, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants herein and in said ground lease contained, Mortgagor hereby assigns to Mortgagee all of the Mortgagor's rights, privileges and prerogatives as Lessee under said lease to terminate, cancel, modify, change, supplement, alter or amend said ground lease, and any such termination, cancellation, modification, change, supplement, alteration or amendment of any of said ground lease without the prior written consent thereto by Mortgagee shall be void and of no force and effect. As further security to Mortgagee, Mortgagor hereby deposits with Mortgagee the Lessee's original of said ground lease and all amendments thereto, to be retained by Mortgagee until all indebtedness secured hereby is fully paid. So long as there is no breach of or default under any of the covenants or agreements herein contained to be performed by Mortgagor, or in the performance by Mortgagor of any of the terms, covenants and conditions in said ground lease contained, Mortgagee shall have no right to terminate, cancel, modify, change, supplement, alter or amend said ground lease.

(d) That no release or forbearance of any of Mortgagor's obligations under said ground lease, pursuant to said ground lease or otherwise, shall release Mortgagor from any of Mortgagor's obligations under this Mortgage, including any obligations with respect to payment of rent as provided for in said ground lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in all of the said ground lease, to be kept, performed and complied with by the Lessee therein.

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

The foregoing covenants apply to the leasehold interests encumbered herein.

Now, therefore, if said Mortgagor shall keep and perform the covenants herein contained and shall pay said obligations according to their terms, this conveyance shall be void, but otherwise shall remain in full force as a mortgage to secure the performance of all of said covenants and the payment of said obligations, it being agreed that upon a failure to perform any covenant herein, or if proceeding of any kind be taken to foreclose any lien on said premises or any part thereof, the Mortgagee shall have the option to declare the whole amount unpaid on said obligations or on this Mortgage at once due and payable, and this Mortgage may be foreclosed at any time thereafter. And if the Mortgagor shall fail to pay any taxes or charges or any lien, encumbrance or insurance premium as above provided for, the Mortgagee may at its option do so, and any payment so made shall be added to and become a part of the debt secured by this Mortgage, and shall bear interest at the same rate as said obligations without waiver, however, of any right arising to the Mortgagee for breach of covenant. And this Mortgage may be foreclosed for principal, interest and all sums paid by the Mortgagee at any time while the Mortgagor neglects to repay any sums so paid by the Mortgagee. In the event of any suit or claim being instituted to foreclose this Mortgage, the Mortgagor agrees to pay all reasonable costs incurred by the Mortgagee for title reports and title search, all statutory costs and disbursements and such further sum as the trial court may adjudge reasonable as plaintiff's attorney's fees in such suit or action and if an appeal is taken from any judgment or decree entered therein Mortgagor further promises to pay such sum as the appellate court shall adjudge reasonable as plaintiff's attorney's fees on such appeal, all such sums to be secured by the lien of this Mortgage and included in the decree of foreclosure.

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, said Mortgagor has hereunto set his hand the day and year first above written.

Steve Marks  
Steve Marks

Anne S. Marks  
Anne S. Marks

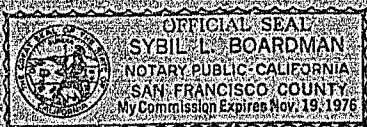
20269

STATE OF CALIFORNIA  
 CITY & COUNTY OF SAN FRANCISCO ss.

On this 11th day of November In the year one thousand nine  
 hundred and seventy-six before me, Sybil L. Boardman  
 a Notary Public, State of California, duly commissioned and sworn, personally  
 appeared Steve Marks and Anne S. Marks

known to me to be the person S whose name S are subscribed to the within  
 instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my  
 official seal in the City and County of San Francisco  
 in this certificate first above written.



Sybil L. Boardman  
 Notary Public, State of California

My commission expires 11/19/76

Cowdery's Form No. 32-Acknowledgement-General (C. C. Sec. 1190a)

Printed 12/72

STATE OF OREGON, COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 20th day of  
DECEMBER A.D. 19 76 at 10:55 o'clock A M., and duly recorded in Vol. M 76,  
 of MORTGAGES on Page 20265

FEE \$ 15.00

WM. D. MILNE, County Clerk

By David L. Nash Deputy