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Vol. M86 Page 17046
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K-38322

LEASE OF BUSINESS PREMISES

THIS AGREEMENT of lease made and executed by the parties this 17 day of September, 1986, between FIRST AMERICAN MANAGEMENT CO. hereinafter referred to as Lessor, and DAVID MICHAEL ELLIS, a single man, and KATHLEEN K. LONG, a single woman, hereinafter referred to as Lessee,

W I T N E S S E T H:

Lessor leases to Lessee the property located in Klamath County, Oregon, legally described as is set forth on "Exhibit 1" attached hereto and incorporated by reference herein.

I

POSSESSION: Lessee's right to possession and obligations under the lease shall commence on September 17, 1986, or such later date as the premises is available for possession by the Lessee if possession is not given on the opening day of the term.

II

TERM: The term of this lease shall commence September 17, 1986 and continue through October 17, 1991. In addition, this lease may be extended in strict compliance with the terms (if any) of paragraph hereinafter.

III

RENT: Lessee shall pay Lessor as rent the sums provided herein for the initial term of this lease; which said sum shall be subject to the renewal and escalation clauses (if any) set forth as paragraphs XXVI and XXVII hereinafter. Rents shall

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be payable in the following manner:

- a) Lessee shall pay the sum of \$2,000.00 per month as a base rent on the 1st day of each month for the five year term.
- b) Lessee's base lease payment is based on 5% of all gross sales of \$480,000.00 per year.
- c) In addition to base lease of payment of \$2,000.00 per month, Lessee will pay an additional sum of 2.5% of all revenue over an above \$40,000.00 monthly. ~~On each October the CPI will be computed and the books balanced. Should Lessee owe Lessor, they will have 30 days to pay. If Lessor owes Lessee, they will have 30 days to pay.~~
- d) Security deposit of \$1500.00 in cash for repair, maintenance and cleaning. All furniture, fixtures, personal property on premises now and in the future will remain as additional collateral for base lease payment of \$24,000.00 per year. Lessor will file a Financing Statement with state of Oregon to secure same.

ALL of said sums shall be due and payable on the 1st day of each month.

ADDRESS OF PAYMENT: Payments of rent shall be made to Lessor or his authorized agent at the address as follows:

FIRST AMERICAN MANAGEMENT CO.
P.O. BOX 1045
EAGLE POINT, ORE 97524

In the event rent is not paid within five (5) days after due date, Lessee agrees to pay a late charge of \$15.00 plus interest at 15% per annum on the delinquent amount. Lessee further agrees to pay costs on each dishonored bank check.

V

UTILITIES: Lessee shall be responsible for the payment of all utilities and services plus all personal property taxes.

VI

PERMITTED USE: The premises shall be used for the purposes permitted by this lease and for no other purpose without the prior written consent of Lessor, which consent shall not be withheld unreasonably. However, if a use is prohibited by law or governmental regulation, this lease shall be considered to be in breach, and may be terminated at the option of Lessor.

The specific purpose for which the premises may be used is as a restaurant.

VII

RESTRICTION ON USE: In connection with use of premises, Lessee shall:

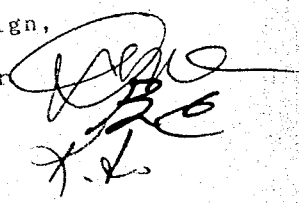
a) Conform to all applicable laws and regulations of any public authority effecting the premises and the use and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use, but Lessee shall not be required to make any structural changes to effect such compliance, unless such changes are required because of Lessee's specific use.

b) Refrain from any activity which would make it impossible to insure the premises against casualty, would increase the insurance rate, or would prevent Lessor from taking advantage of any ruling of the Oregon Insurance Rating Bureau or its successor allowing Lessor to obtain reduced premium rates for longterm fire insurance policies, unless Lessee pays the additional cost of the insurance.

c) Refrain from any use which would be reasonably offensive to other tenants or owners or users of neighboring premises or which would tend to create a nuisance or damage the reputation of the premises.

d) Refrain from loading the floors or storage areas beyond the point considered safe by a competent engineer or architect selected by Lessor.

e) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the

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written consent of Lessor.

VIII

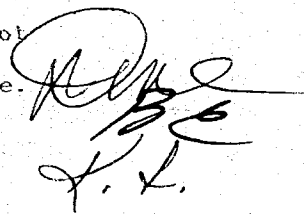
LESSOR'S OBLIGATION TO MAKE REPAIRS AND MAINTENANCE: The following shall be the responsibility of the Lessee:

- a) Repairs and maintenance of the roof and gutters, exterior walls (including painting), bearing walls, structural members and foundation.
- b) Repair and maintenance of exterior water, sewage, gas, and electrical services up to the point of entry to the leased premises but does not include plugged drains and sewers.
- c) Repair of the heating and air conditioning system other than ordinary maintenance.

LESSEE'S OBLIGATION TO MAKE REPAIRS AND FOR MAINTENANCE: The following shall be the responsibility of the Lessee:

- a) Repair of interior walls, ceiling, doors and windows and related hardware, light fixtures, switches, and wiring and plumbing from the point of entry to the premises.
- b) Any repairs necessitated by the negligence of Lessee, its agents, employees, and invitees.
- c) Ordinary maintenance of the heating and air conditioning systems and any repairs necessary because of improper maintenance.
- d) Any repairs or alterations required under Lessee's obligation to comply with laws and regulations as set forth in paragraph VIII-a hereinabove.
- e) Keeping parking lot free from trash, keeping all trash and garbage out of sight, and removing snow from parking lot.
- f) All other repairs to the premises which Lessor is not required to make in accordance with paragraph VII hereinabove.

LESSOR'S INTERFERENCE WITH LESSEE: Any repairs,

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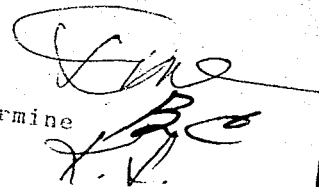
replacements, alterations, or other work performed on or around the leased premises by Lessor shall be done in such a way as to interfere as little as reasonably possible with use of the premises by Lessee. Lessee shall have no right to abatement of rent or any claim against Lessor for any inconvenience or disturbance resulting from Lessor's activities performed in conformance with requirement of this provision.

X

REIMBURSEMENT FOR REPAIRS ASSUMED: If Lessee fails or refuses to make repairs which are required by this section, Lessor may make the repairs and charge the actual costs of repairs to the Lessee. Such expenditures by Lessor shall be reimbursed by Lessee on demand together with interest at the rate of 15% per annum from the date of expenditure by Lessor. Except in an emergency creating an immediate risk of personal injury or property damage, neither party may perform repairs which are the obligation of the other party and charge the other party for the resulting expense unless at least thirty (30) days before work is commenced the defaulting party is given notice in writing outlining with reasonable particularity the repairs required, and such party fail within that time to initiate such repairs in good faith. It is agreed between the parties that the cleanliness of the premises is very much controlled by the condition of the carpets and linolium, therefore, when carpeting and linolium show signs of heavy wear and good house-keeping dictates it should be replaced, Lessee shall replace same with equal grade of coverings at Lessee's cost.

XI

INSPECTION OF PREMISES: Lessor shall have the right to inspect the premises at any reasonable time or times to determine

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the necessity of repair. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessor has received from Lessee notice in writing of the repairs that are required.

XII

ALTERATIONS PROHIBITED: Lessee shall make no improvements or alterations on the leased premises of any kind without first obtaining Lessor's written consent. All improvements and alterations performed on the leased premises by either Lessor or Lessee shall be the property of Lessor when installed unless the applicable Lessor's consent or work sheet specifically provides otherwise.

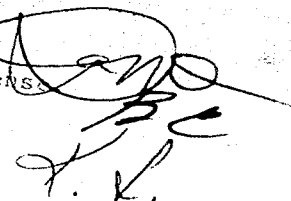
INSURANCE: LESSEE shall keep the leased premises insured for fire and extended coverage for full insurable value at their expense, and Lessee shall bear the expense of any insurance insuring the property of Lessor on the premises. During all periods this lease shall be in existence, Lessee shall further have in effect a liability insurance policy insuring Lessor against any and all claims of third parties on the leased premises in a sum not less than \$500,000.00 with a \$1,000,000.00 umbrella.

FIRST AMERICAN MANAGEMENT COMPANY'S officers, partners and AGRI-COMMERCE CENTER, (a joint venture) shall be noted as an additional named insured on the said policy.

XIV

DAMAGE AND DESTRUCTION:

a) Partial Damage: If the leased premises are partly damaged property shall be repaired by Lessor at Lessor's expense. Repairs shall be accomplished with all reasonable dispatch



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subject to interruptions and delays from labor disputes and matters beyond the control of Lessor and shall be performed in accordance with the provisions of paragraph IX hereinabove.

EMINENT DOMAIN:

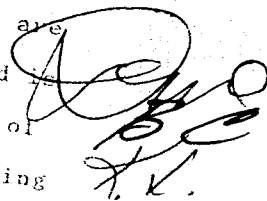
a) Partial Taking: If a portion of the lease premises is condemned and paragraph b) does not apply, the lease shall continue on the following terms:

(i) Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

(ii) Lessor shall proceed as soon as reasonably possible to make such repairs and alterations to the premises as are necessary to restore the remaining premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

(iii) After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Lessor to restore the balance of the property in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the leased premises as an economic unit on account of the partial taking. If the parties are unable to agree upon the amount of the reduction of rent, the amount shall be determined by arbitration in the manner as is provided in paragraph XXV hereinbelow.

(iiii) If a portion of Lessor's property not included in the leased premises is taken and severance damages are awarded on account of the leased premises, or an award is made for detriment to the leased premises as a result of activity by a public body not involving a physical taking

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of any portion of the premises, this shall be regarded as a partial condemnation to which subparagraphs (i) and (iii) apply, and the rent shall be reduced to the extent of reduction in rental value of the premises as though a portion had been physically taken.

b) Total Taking: If a condemning authority takes all of the leased premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use which lessee was then making of the premises, the lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination under paragraph (i) hereinabove. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the premises. Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

c) Sale In Lieu of Condemnation: Sale of all or part of the leased premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this paragraph XV as a taking by condemnation.

LIENS:

a). Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the leased premises and shall keep the premises free from any liens. If lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any

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amount so added shall bear interest at the rate of 15% per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.

b) Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

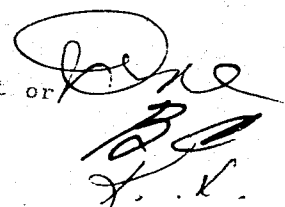
XVI

ASSIGNMENT AND SUBLEASE: No part of the leased property may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Lessor. This provision shall apply to all transfers by operation of law, and shall further apply to any sale of a controlling interest in a partnership or stock of a corporation. No consent in one instance shall prevent the provision from applying to a subsequent instance. The consent provided for herein shall not be unreasonably withheld by Lessor.

XVII

DEFAULT: The following shall be events of default:

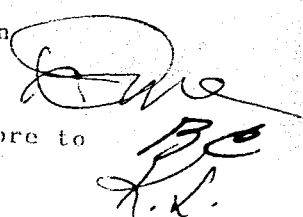
a) Default in Rent: Failure of Lessee to pay any rent or other charge within five (5) days after it is due.

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b) Default in Other Covenants: Failure of Lessee to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within twenty (20) days after written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

c) Insolvency: Insolvency of Lessee; an assignment by Lessee for the benefit of creditors, the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee, the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within 10 days. If Lessee consists of two or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within 10 days after an event of default occurs the remaining individuals produce evidence satisfactory to Lessor that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Lessee under the lease.

d) Abandonment: Failure of Lessee for 15 days or more to



occupy the property for one or more of the purposes permitted under this lease unless such failure is excused under other provisions of this lease shall be an abandonment of the property.

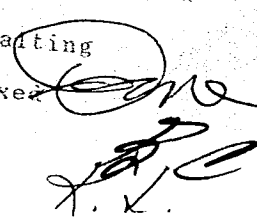
XVIII

REMEDIES ON DEFAULT:

a) Termination: In the event of a default the lease may be terminated at the option of Lessor by notice in writing to Lessee. If the lease is not terminated by election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default. If the lease is terminated, Lessee's liability to Lessor for damages shall survive such termination, and Lessor may re-enter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

b) Reletting: Following re-entry or abandonment, Lessor may relet the premises and in that connection may make any suitable alterations or refurbish the premises, or both, or change the character or use of the premises, but Lessor shall not be required to relet for any use or purpose other than that specified in the lease or which Lessor may reasonably consider injurious to the premises, or to any tenant which Lessor may reasonably consider objectionable. Lessor may relet all or part of the premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

c) Damages: In the event of termination on default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as

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damages:

(i) The loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured.

(ii) The reasonable costw of re-entry and re-letting including without limitation the cost of any clean up, refurbishing, removal of Lessee's property and fixtures, or any other expense occasioned by Lessee's failure to quit the premises upon termination and to leave them in the required condition, any remodeling costs, attorney fees, court costs, broker commissions, and advertising costs.

(iii) Any excess of the value of the rent and all of Lessee's other obligations under this lease over the reasonable expected return from the premises for the period commencing on the earlier of the date of trial or the date the premises are relet and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

d) Right to Sue More Than Once: Lessor may sue periodically to recover damages during the period ocrresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

e) Remedies Cumulative: The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

XIX

SURRENDER AT EXPIRATION:

a) Condition of Premises: Upon expiration of the lease term or earlier termination on account of default, Lessee shall

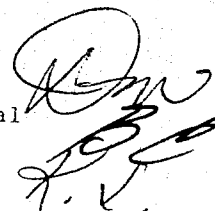
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deliver all keys to Lessor and surrender the leased premises in first-class condition and broom clean. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the alteration so require.

b) Fixtures and Furnishings: All fixtures placed upon the leased premises during the term shall, at Lessor's option, become the property of Lessor. If Lessor so elects, Lessee shall remove any or all fixtures which would otherwise remain the property of Lessor, and shall repair any physical damage resulting from the removal. If Lessee fails to remove such fixtures, Lessor may do so and charge the cost to Lessee with interest at the legal rate from the date of expenditure. Prior to expiration or termination of the lease term, Lessee shall remove all furnishings, furniture and trade fixtures remain its property. If Lessee fails to do so, this shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by notice in writing given to Lessee within 20 days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from date of expenditure by Lessor.

XX

WAIVER: No failure of Lessor to enforce any term hereof shall be deemed a waiver, nor shall any acceptance of a partial

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payment of rent be deemed a waiver of Lessor's right to the full amount thereof.

XXI

HEIRS, ASSIGNS, SUCCESSORS: This lease is binding upon and inures to the benefit of the heirs, assigns and successors in the interest to the parties.

XXII

TIME: Time is of the essence of this agreement.

XXIII

HOLDING OVER: Any holding over after expiration hereof, with the consent of Lessor, shall be construed as a month-to-month tenancy in accordance with the terms hereof, as applicable. No such holding over or extension of this lease shall extend the time for the exercise of the option unless agreed upon in writing by Lessor.

XXIV

NOTICES: Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposit in the United States Mail as Certified Mail/Return Receipt requested addressed to the address as follows:

Lessor:

FIRST AMERICAN MANAGEMENT CO.
P.O. Box 1045
Eagle Point, OR. 97524

Lessee:

DAVID MICHAEL ELLIS
KATHLEEN K. LONG
6200 S. 6th Street
Klamath Falls, OR. 97603

XXV

ARBITRATION: If any dispute arises between the parties, either party may request arbitration, which said arbitration shall proceed according to the Oregon Statutes governing arbitration. No arbitrator chosen by the parties shall be an

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attorney or judge, but rather shall be chosen from related fields of business endeavor. The award to the arbitrator shall have the effect provided by Oregon Statute. The arbitration shall take place in the county where the leased premises are located. Costs of the arbitration shall be shared equally by the parties.

XXVI

If the lease is not in default, Lessee may exercise the option to renew this lease for an additional term of sixty (60) months as follows:

- a) The renewal term shall commence on the day following the date of termination of the within lease term; and
- b) The terms and conditions of the lease for each renewal term shall be identical with the within agreement, except for the rental amount which shall be determined in accordance with the provisions of paragraph XXVII hereinafter.

ADDITIONAL RENT DURING SUBSEQUENT TERMS OF THIS LEASE
AGREEMENT:

The rental payable by Lessee during the initial five year renewal period shall be the greater of the options as follows:

- a) Lessee shall be required to pay the sum of 5% of the average of the preceding six months' total monthly revenue from gross sales of MIKE AND KATHY'S COUNTRY KITCHEN, or or \$2,000.00 per month, whichever of two said sums shall be greater during the remaining term of this lease; or
- b) A base rent which shall be computed based upon the average of the actual rent paid by Lessee during the last twenty-four (24) months of the within lease term or same terms of original five (5) years which ever is greater.

K. L. B.C. one

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WITNESS OUR HANDS AND SEALS the day and year first-above written.

DAVID MICHAEL ELLIS,
DBA, MIKE AND KATHY'S
COUNTRY KITCHEN

FIRST AMERICAN MANAGEMENT CO.
BY: BRUCE L. CARPENTER
LESSOR

KATHLEEN K. LONG
DBA, MIKE AND KATHY'S
COUNTRY KITCHEN

Kathleen K. Long
STATE OF OREGON) ss.
County of Klamath)

Bruce L. Carpenter
Bruce L. Carpenter

Personally appeared the above-named David Michael Ellis and Kathleen K. Long and acknowledged the foregoing instrument to be their voluntary act and deed.

DATED before me this 17th day of September, 1986.

NOTARY PUBLIC FOR OREGON

My Commission expires: 11/12/87

STATE OF OREGON
County of Klamath) ss.

Personally appeared Bruce L. Carpenter, who being duly sworn, did say that he is the President of FIRST AMERICAN MANAGEMENT CO., a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation by authority of its board of directors; and acknowledged said instrument to be his voluntary act and deed.

DATED before me this _____ day of September, 1986.

Lee Anderson
NOTARY PUBLIC FOR OREGON
My Commission Expires 7-5-88

es:

K.L.
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EXHIBIT "A"

Building commonly known as the Resturant on Lot 1, Tract 1237, AGRI-COMMERCE CENTER. The building directly behind the resturant property currently leased by HANSEN & MARTINO, (a partnership) is not involved in this lease.

Return to:
First American Management Co.
P.O. Box 1045
Eagle Point, Ore. 97524

H. Bie
Dane

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the _____ 22nd _____ day
of _____ September _____ A.D., 19 86 at 1:41 o'clock P M., and duly recorded in Vol. M86
of _____ Deeds _____ on Page 17046.

FEE \$69.00

Evelyn Biehn, County Clerk
By *E. Smith*