

03 OCT 15 PM 3:23

Vol M03 Page 76861

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Bank of America, N.A.
WA1-501-37-01
800 Fifth Avenue, 37th Floor
Seattle, WA 98104
Attn: Linda Lukenbill
Loan Number: 3142387

State of Oregon, County of Klamath
Recorded 10/15/03 3:23 p m
Vol M03 Pg 76861-77
Linda Smith, County Clerk
Fee \$ 111.00 # of Pgs 17

1st 76501

Space above this line for Recorder's Use

**FIRST DEED OF TRUST, ASSIGNMENT OF RENTS
AND FIXTURE FILING**

This First Deed of Trust is made as of October 1, 2003, by McMahan's of San Fernando, a California corporation, dba McMahan's of San Fernando, Inc., as grantor ("Trustor"), to First American Title Insurance Company, as trustee ("Trustee"), for the benefit of BANK OF AMERICA, N.A., a national banking association, as beneficiary ("Beneficiary").

The Tax Account Number for the property subject to the lien of this instrument is:
R508105.

Notice to Recorder:

THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER THE OREGON UNIFORM
COMMERCIAL CODE.

TRUSTOR'S ORGANIZATIONAL IDENTIFICATION NUMBER: C0297797.

1. GRANT IN TRUST.

1.1 The Property. For the purpose of securing payment and performance of the Secured Obligations defined in Section 2 below, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in the following property (collectively, the "Property"):

(a) The real property located in the City of Klamath Falls, County of Klamath, State of Oregon, as described in Exhibit A hereto;

(b) All buildings, structures, improvements, fixtures and appurtenances now or hereafter placed on such real property, and all apparatus and equipment now or hereafter attached to the real property or any building on the real property, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment (but excluding all racks and other moveable equipment), all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust;

(c) All easements and rights of way appurtenant to such real property; all crops

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x10

(growing or to be grown on such real property); all standing timber upon such real property; all development rights or credits and air rights; all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant to such real property) and shares of stock pertaining to such water or water rights, ownership of which affect such real property; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon such real property;

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions relating to the use and enjoyment of all or any part of such real property, and any and all guaranties and other agreements relating to or made in connection with any of the foregoing;

(e) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the real property, buildings or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the real property, buildings or the other property described above or any part of them, subject to Trustor's rights to use certain proceeds as provided in the Loan Agreement, as hereinafter defined; and

(f) All additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

1.2 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing under the Oregon Uniform Commercial Code, as amended or recodified from time to time, covering any Property which now is or later may become a fixture attached to the real property described in Paragraph 1.1(a) or any building located thereon.

2. THE SECURED OBLIGATIONS.

2.1 Purpose of Securing. Trustor makes the grant, conveyance, transfer and assignment set forth in Section 1 for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(a) Payment of all obligations of G & S Co., a California general partnership ("Obligor") to Beneficiary arising under the following instrument(s) or agreement(s) (the "Debt Instrument"):

(i) A promissory note (the "Note") dated as of October 1, 2003, payable by Obligor as maker in the stated principal amount of Seven Million One Hundred Fifty Thousand Dollars (\$7,150,000) to the order of Beneficiary. The Maturity Date of the Note and this Deed of Trust shall be October 31, 2008. THE NOTE MAY CONTAIN PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE;

(ii) A certain Standing Loan Agreement and SWAP Commitment dated as of October 1, 2003, between Obligor as "Borrower" and Beneficiary as "Bank" (the "Loan Agreement") and under any "Loan Documents" as defined in the Loan Agreement; provided that this Deed of Trust does not secure any provision in any Loan Document that is expressly stated to be unsecured.

This Deed of Trust also secures payment of all obligations of Obligor under the Debt Instrument which arise after the Debt Instrument is extended, renewed, modified or amended pursuant to

any written agreement between Obligor and Beneficiary, and all obligations of Obligor under any successor agreement or instrument which restates and supersedes the Debt Instrument in its entirety;

(b) Payment and performance of all obligations of Trustor as "Guarantor" under that certain Limited Guaranty dated as of October 1, 2003 in favor of Beneficiary as "Bank" (the "Guaranty");

(c) Payment and performance of all obligations of Trustor under this Deed of Trust;

(d) Payment and performance of all obligations of Obligor under any Swap Contract with respect to which there is a writing evidencing the parties' agreement that said Swap Contract shall be secured by this Deed of Trust. "Swap Contract" means any document, instrument or agreement with Beneficiary, now existing or entered into in the future, relating to an interest rate swap transaction, forward rate transaction, interest rate cap, floor or collar transaction, any similar transaction, any option to enter into any of the foregoing, and any combination of the foregoing, which agreement may be oral or in writing, including, without limitation, any master agreement relating to or governing any or all of the foregoing and any related schedule or confirmation, each as amended from time to time; and

(e) Payment and performance of all future advances and other obligations that Trustor (or any successor in interest to Trustor) or Obligor (if different from Trustor) may agree to pay and/or perform (whether as principal, surety or guarantor) to or for the benefit of Beneficiary, when a writing signed by Trustor (or any successor in interest to Trustor) evidences said parties' agreement that such advance or obligation be secured by this Deed of Trust.

This Deed of Trust does not secure any obligation which expressly states that it is unsecured, whether contained in the foregoing Debt Instrument or in any other document, agreement or instrument.

2.2 Terms of Secured Obligations. All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Debt Instrument described in Paragraph 2.1(a) and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Debt Instrument which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

3. ASSIGNMENT OF RENTS.

3.1 Assignment. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary, as security for the Secured Obligations, all rents, royalties, issues, profits, revenue, income and proceeds of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (collectively, the "Rents"), and confers upon Beneficiary the right to collect such Rents with or without taking possession of the Property. In the event that anyone establishes and exercises any right to develop, bore for or mine for any water, gas, oil or mineral on or under the surface of the Property, any sums that may become due and payable to Trustor as bonus or royalty payments, and any damages or other compensation payable to Trustor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Paragraph.

3.2 Grant of License. Notwithstanding the provisions of Paragraph 3.1, Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Paragraph 5.2, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of the security for the Secured Obligations.

4. RIGHTS AND DUTIES OF THE PARTIES

4.1 Representations and Warranties. Trustor represents and warrants that Trustor lawfully possesses and holds fee simple title to all of the Property.

4.2 Taxes, Assessments, Liens and Encumbrances. Unless Trustor is in good faith disputing such taxes, levies, charges and assessments, Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock, imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. Trustor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing, and shall also pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now or hereafter encumbers or appears to encumber all or part of the Property, whether the lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust.

4.3 Damages and Insurance and Condemnation Proceeds.

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments and rights to payment (collectively, the "Claims"):

(i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it;

(ii) all other awards, claims and causes of action, arising out of any breach of warranty or misrepresentation affecting all or any part of the Property, or for damage or injury to, or defect in, or decrease in value of all or part of the Property or any interest in it;

(iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Beneficiary; subject to Trustor's right to receive and use such proceeds for the purpose of rebuilding or repairing the Property pursuant to Section 4.3(c) hereof; and

(iv) all interest which may accrue on any of the foregoing.

(b) Trustor shall immediately notify Beneficiary in writing if:

(i) any damage occurs or any injury or loss is sustained in the amount of more than One Hundred Thousand Dollars (\$100,000) to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or

(ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

If Beneficiary chooses to do so, it may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on breach of warranty or misrepresentation, or for damage or injury to, defect in, or decrease in value of all or part of the Property, and it may make any compromise or settlement of the action or proceeding; provided, however, that prior to the occurrence of an Event of Default, Beneficiary shall not settle or compromise any such action or proceeding without the prior written consent of Trustor. Beneficiary, if it so chooses, may

participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance.

(c) Except as hereinafter set forth, all proceeds of the Claims assigned to Beneficiary under this Paragraph shall be paid to Beneficiary. In each instance, Beneficiary shall apply those proceeds first toward reimbursement of all of Beneficiary's out of pocket costs and expenses of recovering the proceeds, including reasonable attorneys' fees. Provided no Event of Default has occurred and is continuing, Beneficiary shall permit Trustor, at Trustor's option, to either (i) apply such proceeds to reduce the principal balance due on the Note, or (ii) to use all proceeds from Claims to pay the costs of repairing, reconstructing or replacing the Property and Beneficiary shall promptly release such proceeds to Trustor for this purpose. If any proceeds are released to Trustor, neither Beneficiary nor Trustee shall be obligated to see to, approve or supervise the proper application of such proceeds. If the proceeds are held by Beneficiary to be used to reimburse Trustor for the costs of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition on the date hereof, or such other condition as Beneficiary may reasonably approve in writing. Beneficiary may, at Beneficiary's option, condition disbursement of the proceeds on Beneficiary's approval, not to be unreasonably withheld or delayed, of such plans and specifications prepared by a licensed architect reasonably satisfactory to Beneficiary, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage of completion of construction, application of payments, and satisfaction of liens as Beneficiary may reasonably require.

4.4 Insurance. Trustor shall provide and maintain in force at all times all risk property damage insurance on the Property and such other type of insurance on the Property as may be required by Beneficiary in its reasonable judgment, provided that such insurance is available on commercially reasonable terms and is of the type maintained by similar retail businesses in the same areas. It is agreed that Trustor's current insurance policies set forth on Exhibit G to the Loan Agreement provide coverage which meets or exceeds the requirements of this Section 4.4. At Beneficiary's request, Trustor shall provide Beneficiary with a counterpart original of any policy, together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. Each such policy of insurance shall be in an amount, for a term, and in form and content satisfactory to Beneficiary, and shall be written only by companies approved by Beneficiary. In addition, each policy of hazard insurance shall include a Form 438BFU or equivalent loss payable endorsement in favor of Beneficiary. Notwithstanding the foregoing, Trustor's compliance with the insurance requirements set forth in the Loan Agreement shall constitute compliance with this Section 4.4.

4.5 Maintenance and Preservation of Property.

(a) Trustor shall keep the Property in good condition and repair and shall not commit or allow waste of the Property. Trustor shall not remove or demolish the Property or any part of it, or alter, or add to the Property in any material respect, except if such portions of the Property are either (i) replaced, within a reasonable time, by Improvements of equal suitability owned by Borrower free and clear of any lien or security interest (other than liens in favor of the Bank or otherwise permitted by this Deed of Trust) or (ii) obsolete or no longer material to the maintenance, operation or current use of such Property; provided, however, in no event shall Trustor take any action described in clauses (i) or (ii) hereof if such action would materially diminish the value of the Property or reduce the square footage of the Property. Trustor shall not initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except with Beneficiary's express prior written consent in each instance, not to be unreasonably withheld.

(b) If all or part of the Property becomes damaged or destroyed, unless Trustor exercises any of its rights under Section 4.7(a) hereof, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether Trustor receives insurance proceeds to pay costs of the

work of repair or reconstruction under Paragraph 4.3, unless the failure to receive such insurance proceeds results from the Beneficiary's breach of such Paragraph 4.3 or from the Beneficiary's gross negligence, bad faith or willful misconduct.

(c) Trustor shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen, or any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under this Deed of Trust.

(d) Trustor represents and warrants to Beneficiary that THE REAL PROPERTY CONVEYED BY THIS DEED OF TRUST IS NOT USED PRINCIPALLY FOR AGRICULTURAL PURPOSES.

(e) Intentionally deleted.

(f) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

4.6 Releases, Extensions, Modifications and Additional Security. Without affecting the personal liability of any person, including Trustor (or Obligor, if different from Trustor), for the payment of the Secured Obligations or the lien of this Deed of Trust on the remainder of the Property for the unpaid amount of the Secured Obligations, Beneficiary and Trustee are respectively empowered as follows:

(a) Beneficiary may from time to time and without notice:

- (i) release any person liable for payment of any Secured Obligation;
- (ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;
- (iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or
- (iv) alter, substitute or release any property securing the Secured Obligations.

(b) Trustee may perform any of the following acts when requested to do so by Beneficiary in writing:

- (i) consent to the making of any plat or map of the Property or any part of it;
- (ii) join in granting any easement or creating any restriction affecting the Property;
- (iii) join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or
- (iv) reconvey the Property or any part of it without any warranty.

4.7 Reconveyance.

(a) If no Event of Default has occurred under the Loan Agreement, the Trustor may upon 60 days prior written notice to Beneficiary, (i) substitute new collateral for the Property, subject to the provisions of Section 1.7 of the Loan Agreement, or (ii) withdraw the Property upon payment to the Beneficiary of an amount equal to 110% of the loan value assigned by the Beneficiary to such Property as shown on Schedule 1 to the Loan Agreement (the "Release Price").

(b) When all of the Secured Obligations have been paid in full and no further commitment to extend credit continues, or upon Trustor's compliance with the provisions of clause (a) above, Trustee shall reconvey the Property, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

4.8 Compensation and Reimbursement of Costs and Expenses.

(a) Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary and Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a reconveyance. Trustor shall also pay or reimburse all of Beneficiary's and Trustee's reasonable and documented out of pocket costs and expenses which may be incurred in rendering any such services.

(b) Trustor further agrees to pay or reimburse Beneficiary for all reasonable and documented costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee to protect or preserve the Property or to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under Paragraph 5.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable and documented attorneys' fees and other legal costs, costs of any sale of the Property and any cost of evidence of title.

(c) Trustor shall pay all obligations arising under this Paragraph promptly following demand by Trustee or Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Secured Obligations, and shall bear interest from the date the obligation arises at the rate provided in any instrument or agreement evidencing the Secured Obligations. If more than one rate of interest is applicable to the Secured Obligations, the highest rate shall be used for purposes hereof. If the instrument or agreement evidencing the Secured Obligations does not state a rate of interest, interest shall accrue at the rate of ten percent (10%) per annum.

4.9 Exculpation and Indemnification.

(a) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to it in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of

Trust;

76868

(iii) Beneficiary's failure to produce Rents from the Property or to perform any of the obligations of the lessor under any lease covering the Property;

(iv) any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property; or

(v) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in operating or managing the Property upon exercise of the rights or remedies afforded Beneficiary under Paragraph 5.3, unless the loss is caused by the gross negligence, bad faith or willful misconduct of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(b) Trustor agrees to indemnify Trustee and Beneficiary against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which either may suffer or incur in performing any act required or permitted by this Deed of Trust or by law or because of any failure of Trustor to perform any of its obligations. This agreement by Trustor to indemnify Trustee and Beneficiary shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and/or reconveyance of this Deed of Trust. Notwithstanding the foregoing, Trustee and Beneficiary shall not be entitled to indemnification for any loss caused by their own gross negligence, bad faith or willful misconduct.

4.10 Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

4.11 Substitution of Trustee. From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county where the Property is situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

4.12 Site Visits, Observations and Testing. The Beneficiary and its agents and representatives will have the right at any reasonable time, after giving reasonable written notice to the Trustor, to enter and visit the Property, (i) for the purposes of observing the Property, and (ii) only if the Beneficiary has reasonable cause to believe that there is material environmental contamination on the Property, for the purposes of taking and removing environmental samples, and conducting tests on any part of the Property. To the extent such investigation and testing is done in response to such reasonable cause, and is reasonably related to environmental contamination the Beneficiary reasonably believes to exist on the property, the Trustor shall reimburse the Beneficiary on demand for the reasonable and documented out-of-pocket costs of such environmental investigation and testing. The Beneficiary will make reasonable efforts during any site visit, observation or testing conducted pursuant this paragraph to avoid interfering with the Trustor's use of the Property. The Beneficiary is under no duty, however, to visit or observe the Property or to conduct tests, and any such acts by the Beneficiary will be solely for the purposes of protecting the Beneficiary's security and preserving the Beneficiary's rights under this Agreement. No site visit, observation or testing or any report or findings made as a result thereof

("Environmental Report") (i) will result in a waiver of any default of the Obligor or Trustor; (ii) impose any liability on the Beneficiary or Trustee; or (iii) be a representation or warranty of any kind regarding the Property (including its condition or value or compliance with any laws) or the Environmental Report (including its accuracy or completeness). In the event the Beneficiary has a duty or obligation under applicable laws, regulations or other requirements to disclose an Environmental Report to the Trustor or any other party, the Trustor authorizes the Beneficiary to make such a disclosure. The Trustor further understands and agrees that any Environmental Report or other Information regarding a site visit, observation or testing that is disclosed to the Trustor by the Beneficiary or its agents and representatives is to be evaluated (including any reporting or other disclosure obligations of the Trustor) by the Trustor without advice or assistance from the Beneficiary.

5. ACCELERATING TRANSFERS, DEFAULT AND REMEDIES.

5.1 Accelerating Transfers

(a) "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, or other transfer other than leases entered into in the ordinary course of business, whether voluntary, involuntary, by operation of law or otherwise, of all or any material part of the Property or any interest in it, including any transfer or exercise of any right to drill for or to extract any water (other than for Trustor's own use), oil, gas or other hydrocarbon substances or any mineral of any kind on or under the surface of the Property. If Trustor is a corporation, "Accelerating Transfer" also means any transfer or transfers of shares possessing, in the aggregate, more than fifty percent (50%) of the voting power. If Trustor is a partnership, "Accelerating Transfer" also means withdrawal or removal of any general partner, dissolution of the partnership under applicable law, or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the partnership interests. If Trustor is a limited liability company, "Accelerating Transfer" also means withdrawal or removal of any managing member, termination of the limited liability company or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the voting power or in the aggregate more than fifty percent of the ownership of the economic interest in the Trustor.

(b) Trustor agrees that Trustor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole discretion. If any Accelerating Transfer occurs without Beneficiary's prior consent as required herein, Beneficiary in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies provided by Paragraph 5.3 of this Deed of Trust.

5.2 Events of Default. The occurrence of any one or more of the following events, at the option of Beneficiary, shall constitute an event of default ("Event of Default") under this Deed of Trust:

(a) Any "Event of Default" as defined in the Loan Agreement occurs; or

(b) Trustor fails to make any payment or perform any material obligation which arises under the Guaranty or under this Deed of Trust by the earlier of ten (10) business days of written demand thereof, or thirty (30) days after the due date thereof; or

(c) [Intentionally Omitted]

(d) An event occurs which gives Beneficiary the right or option to terminate any Swap Contract which is secured by this Deed of Trust and any amount owed to the Beneficiary in connection with such Swap Contract is not paid in full by the earlier of ten (10) business days of written demand thereof, or thirty (30) days after the due date thereof; or

(e) Any default occurs under any other deed of trust on all or any part of the Property, or under any obligation secured by such deed of trust, whether such deed of trust is prior to or subordinate to this Deed of Trust and, as a result of such default, either (i) the indebtedness secured by such deed of trust is not paid in full within five (5) business days of acceleration thereof by the beneficiary under such deed of trust., or (ii) such beneficiary brings an action to foreclose or to obtain specific enforcement of such deed of trust.

5.3 Remedies. At any time after the occurrence of an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, as well as any other rights and remedies authorized by law. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately and may terminate any Swap Contract which is secured by this Deed of Trust.

(b) Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(c) Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; completing any unfinished construction; contracting for and making repairs and alterations; performing such acts of cultivation or irrigation as necessary to conserve the value of the Property; and preparing for harvest, harvesting and selling any crops that may be growing on the property. Trustor hereby irrevocably constitutes and appoints Beneficiary as its attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. Trustor agrees to deliver to Beneficiary all books and records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Paragraph.

(d) Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under this Deed of Trust; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted hereunder either with or without giving notice to any person.

(e) Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

(f) Beneficiary may cause the Property to be sold by Trustee as permitted by applicable law. Before any such trustee's sale, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the Property, either as a whole or in separate parcels, and in such order as Trustee may determine, at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any trustee's sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any trustee's sale by public announcement at the time and place noticed for that sale. At any trustee's sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States. Any person, including Trustor, Trustee or Beneficiary, may purchase at the trustee's sale. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any trustee's sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

5.4 Application of Sale Proceeds and Rents.

(a) Beneficiary and Trustee shall apply the proceeds of any sale of the Property in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs, fees and expenses of the sale, including costs of evidence of title in connection with the sale; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto.

(b) Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of any sale of the Property which Beneficiary may receive or collect under Paragraph 5.3, in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Trustee, Beneficiary or any receiver; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto. Beneficiary shall have no liability for any funds which it does not actually receive.

6. MISCELLANEOUS PROVISIONS

6.1 No Waiver or Cure.

(a) Each waiver by Beneficiary or Trustee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed); or impair the security of this Deed of Trust; or prejudice Beneficiary, Trustee or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust:

(i) Beneficiary, its agent or a receiver takes possession of all or any part of the Property;

(ii) Beneficiary collects and applies Rents, either with or without taking possession of all or any part of the Property;

(iii) Beneficiary receives and applies to any Secured Obligation proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under this Deed of Trust;

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests thereon;

(v) Beneficiary receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations;

(vi) Beneficiary, Trustee or any receiver performs any act which it is empowered or authorized to perform under this Deed of Trust or invokes any right or remedy provided under this Deed of Trust.

6.2 Powers of Beneficiary and Trustee.

(a) Trustee shall have no obligation to perform any act which it is empowered to perform under this Deed of Trust unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) Beneficiary may take any of the actions permitted under Paragraphs 5.3(b) and/or 5.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(c) From time to time, Beneficiary or Trustee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Deed of Trust. Beneficiary or Trustee may from time to time obtain orders or decrees directing, confirming or approving acts in executing this trust and enforcing these rights and remedies.

6.3 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

6.4 Joint and Several Liability. If Trustor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

6.5 Applicable Law. This Deed of Trust shall be governed by Oregon law.

6.6 Successors in Interest. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Paragraph does not waive the provisions of Paragraph 5.1.

6.7 Interpretation. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any

terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

6.8 In-House Counsel Fees. Whenever Trustor is obligated to pay or reimburse Beneficiary or Trustee for any attorneys' fees, those fees shall include the reasonable allocated costs for services of in-house counsel.

6.9 Waiver of Marshaling. Trustor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust, including any rights provided by Oregon law, as amended from time to time. Each successor and assign of Trustor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

6.10 Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

6.11 ORS 41.680 DISCLOSURE. UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS BY BENEFICIARY AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES, OR SECURED SOLELY BY THE TRUSTOR'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY TO BE ENFORCEABLE.

6.12 ORS 93.040 WARNING. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

6.13 OREGON INSURANCE WARNING. The following notice is provided to comply with Oregon law. Notwithstanding any provisions below to the contrary, the negotiated insurance terms and provisions above or in the Loan Agreement shall control.

UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR CONTRACT OR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPERTY COVERAGE ELSEWHERE.

YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR CONTRACT OR LOAN BALANCE. IF THE COST IS ADDED TO YOUR CONTRACT

OR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING CONTRACT OR LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.

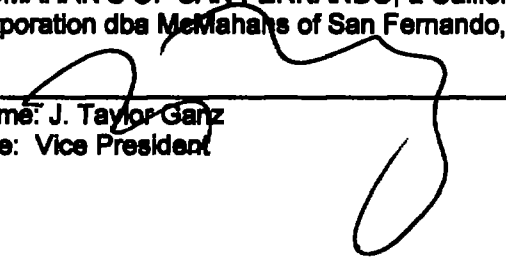
6.14 Notices. Trustor hereby requests that a copy of notice of default and notice of sale be mailed to it at the address set forth below. That address is also the mailing address of Trustor as debtor under the California and/or Oregon Uniform Commercial Codes, as applicable. Beneficiary's address given below is the address for Beneficiary as secured party under the California and/or Oregon Uniform Commercial Codes, as applicable.

Addresses for Notices to Trustor:

2237 Colby Avenue
Los Angeles, CA 90064
Facsimile: 310-445-3965

Trustor

MCMAHAN'S OF SAN FERNANDO, a California
corporation dba McMahans of San Fernando, Inc.

By: 
Name: J. Taylor Ganz
Title: Vice President

with a copy (which shall not constitute
notice) to:

Irell & Manella, LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
Attn: Sandy Kanengiser, Esq.
Facsimile: 310-203-7189

Address for Notices to Beneficiary:

Bank of America, N.A.
P.O. Box 3609
Los Angeles, CA 90051

Address for Notices for Trustee:

First American Title Insurance Company
422 Main Street
Klamath, OR 97601

State of California

County of Los Angeles

On Oct. 9, 2003 before me, Lisa M. Siegel 10/9/03 personally
 appeared J. Taylor ~~BANTZ~~ BANTZ 8/10/02, personally known to me (or proved
 to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the
 within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
 capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
 behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Lisa M. Siegel

(Seal)

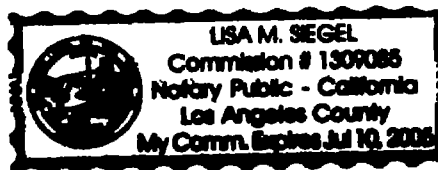


EXHIBIT A TO FIRST DEED OF TRUST

Exhibit A to FIRST DEED OF TRUST executed as of October 1, 2003 by MCMAHAN'S OF SAN FERNANDO, a California corporation dba McMahan's of San Fernando, Inc., as "Trustor" to First American Title Insurance Company as "Trustee" for the benefit of Bank of America, N.A., a national banking association, as "Beneficiary."

Description of Property

Real property in the County of Klamath, State of Oregon, described as follows:

Parcel 1:

A tract of land described as follows: Beginning at an iron pin which marks the Northeast corner of Tract 63 of Roland Park and which iron pin lies North 0°51' West along the 40 line a distance of 542.3 feet and North 89°09' East a distance of 287.2 feet from the iron pin which marks the Southwest corner of the NE 1/4 SW 1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, and running thence North 45°09' East a distance of 299.6 feet to an iron pin which lies on the Southwesterly right of way line of the State Highway, 40 feet at right angles from the brass plug in the center line of the highway; thence in a Northwesterly direction following a 3°11' curve to the left along the Southwesterly right of way line of the State Highway a distance of 150 feet (the long chord of this curve bears North 48°32' West a distance of 149.96 feet) to an iron pin; thence South 45°09' West a distance of 221.6 feet to an iron pin; thence South 20°18' East a distance of 164.5 feet, more or less, to the point of beginning, said tract being a portion of the NE 1/4 SW 1/4 of Sec. 1, Twp. 39 S., R. 9 E.W.M., and

Beginning at an iron pin which marks the Southeast corner of Tract 63, Roland Park, and which iron pin lies North 0°51' West along the 40 line a distance of 462.3 feet and North 89°09' East a distance of 262.2 feet from the iron pin which marks the Southwest corner of the NE 1/4 SW 1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, and running thence North 16°33' East along the Easterly line of above mentioned Tract 63, a distance of 83.8 feet to an iron pin; thence North 45°09' East a distance of 299.6 feet to an iron pin on the Southerly right of way line of the Klamath Falls-Lakeview Highway; thence following the Southerly right of way line of the highway the following bearings and distances; South 46°09' East a distance of 13.5 feet to an iron pin; thence North 43°51' East a distance of 10 feet to an iron pin; and South 46°09' East a distance of 216.5 feet to an iron pin; thence South 43°51' West a distance of 384 feet to an iron pin; thence North 46°09' West a distance of 198.4 feet more or less to the point of beginning, said tract in the NE 1/4 SW 1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian.

EXCEPTING THEREFROM, that tract conveyed to the State of Oregon in Deed recorded January 11, 1972 in Volume M-72 on page 342, Deed records of Klamath County, Oregon.

Parcel 2:

A tract of land situated in the NE 1/4 SW 1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point situated N. 00°51' W. 462.3 feet, N. 89°06' E. 262.2 feet, and S. 46°09' E. 198.4 feet from the Southwest corner of the said NE 1/4 SW 1/4 of Section 1; thence continuing S. 46°09' E. 106.00 feet; thence N. 43°51' E. 150.00 feet; thence N. 46°09' W. 106.00 feet; thence S. 43°51' W. 150.00 feet to the point of beginning, containing 0.37 acres, with bearings based on recorded Survey No. 625, as recorded in the office of the Klamath County Surveyor.

Tax Parcel Number: R508105

76877

Street Address of Property

6320 South 6th Street
Klamath Falls, OR 97603