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After Recording Return to:  
 Justin Throne  
 Attorney at Law  
 280 Main Street  
 Klamath Falls, Oregon 97601

State of Oregon, County of Klamath  
 Recorded 12/31/03 11:20 A m  
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 Linda Smith, County Clerk  
 Fee \$ 76<sup>00</sup> # of Pgs 11

## TRUST DEED and SECURITY AGREEMENT

This **TRUST DEED and SECURITY AGREEMENT** is made this 30<sup>th</sup> day of December, 2003 between JOSE ENRIQUE VENEGAS and MARIA TERESA VENEGAS, husband and wife (collectively, the "Grantor"), in favor of First American Title Insurance Company ("Trustee"), for the benefit of LESTER NEUMEYER and KAY NEUMEYER, husband and wife (collectively, the "Beneficiary").

### WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale, the real property in Klamath County, State of Oregon, more particularly described in Exhibit A attached hereto and specifically made a part hereof, together with all and singular tenements, hereditaments, appurtenances, buildings, improvements, easements, royalties, water, water rights, together with personal property listed in Exhibit B, attached hereto and specifically made a part hereof, and all fixtures and other rights thereunder belonging or in anywise now or hereafter attached to or used in connection with said real estate (collectively, the "Property").

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor herein contained and payment of the sum of \$45,000.00, with interest thereon according to the terms of a promissory note of even date herewith (the "Note"), payable to the Beneficiary and made by Grantor, the final payment of principal and interest thereof to be due and payable December 31, 2013. The date of maturity of the debt secured by this Trust Deed is December 31, 2013.

Grantor and Beneficiary covenant and agree as follows:

1. Payment of Principal and Interest. Grantor shall promptly pay when due all payments of principal and interest required under the Note; any default, late charges or interest, or other charges or fees provided in the Note; and all other sums due under the Note or this Trust Deed and will strictly perform all obligations imposed by the Note and this Trust Deed.
2. Preservation and Maintenance of the Property. Grantor shall protect, preserve and maintain the Property in good condition and repair; shall restore or repair all or any part of the

Property promptly and in a good and workmanlike manner to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing, in the event of a damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair; shall not remove or demolish any building or improvement thereon; and shall not commit or permit any waste of the Property. Beneficiary or Beneficiary's agents may enter upon the Property and inspect the Property.

3. Compliance with Law. Grantor shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property and zoning and land use laws, and, in this connection, Grantor shall make all required repairs, alterations and additions.

4. Casualty Insurance. Grantor shall provide and continuously maintain insurance on the buildings and all other improvements now or hereafter erected on the Property against loss or damage by fire and such other hazards as Beneficiary may from time to time require, in an amount equal to the value of such buildings, written in companies acceptable to Beneficiary. All insurance policies and renewals thereof shall be in a form acceptable to Beneficiary and shall include a standard mortgagee clause in favor of and in form acceptable to Beneficiary with loss payable to Beneficiary. All insurance policies shall be evaluated and adjusted by Beneficiary on an annual basis. All policies of insurance shall be delivered to the Beneficiary as soon as issued. If the Grantor shall fail for any reason to procure any such insurance and to deliver the policies to Beneficiary at least fifteen (15) days prior to the expiration of any policy of insurance now or hereafter placed on the Property, the Beneficiary may procure the same at Grantor's expense. Grantor shall promptly reimburse Beneficiary for any premium purchased by Beneficiary, and until Grantor reimburses Beneficiary for such premiums, they shall accrue interest at the same interest rate as stated on the Note from the date of payment by Beneficiary and shall be secured by this Trust Deed. Coverage under any policy may not be canceled, permitted to lapse, or otherwise diminished without a minimum thirty (30) days' prior written notice to Beneficiary. The amount collected under any fire or other insurance policy may be applied by the Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected, or any part thereof, may be released to Grantor, to be applied, to the extent possible, to repairing or replacing the Property. In the event of loss, Grantor shall immediately give notice to Beneficiary. Beneficiary may make proof of loss if Grantor fails to do so within fifteen (15) days after such casualty. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. Charges, Taxes. Grantor shall keep the Property free from construction liens and shall pay all taxes, assessments and other charges that may be levied or assessed upon or against the Property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts thereof to Beneficiary within fifteen (15) days after making such payment, and shall save Beneficiary harmless therefrom and reimburse Beneficiary for all costs and attorney fees incurred by Beneficiary in defending its security against any such liens. Grantor may elect to pay real property taxes using the installment method so long as all real property taxes are paid currently. Should Grantor fail to pay any taxes, assessments, liens or other charges payable by Grantor, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at its option, make payment thereof.

The amount so paid, with interest at the rate set forth in the Note, shall be added to and become part of the debt secured by this Trust Deed, without waiver of any rights arising from breach of any covenant herein. Grantor may, in good faith, contest a construction lien so long as a lien bond, executed by a corporation authorized to issue surety bonds in the State of Oregon, in the amount of \$1,000 or 150% of the lien amount, whichever is greater, is furnished by Grantor on behalf of Beneficiary in accordance with ORS 87.067(1), or so long as Grantor makes a deposit in the amount and in accordance with ORS 87.076(2).

6. Reimbursement of Expenses. Grantor shall pay all costs, fees and expenses of the Trustee including appraisal fees, receiver's fees, the cost of title search as well as the other costs and expenses of Trustee incurred in connection with or in enforcing this obligation and Trustee's and attorney's fees actually incurred. Should Grantor fail to reimburse Beneficiary for any such expense within fifteen (15) days after receipt of demand therefor or if such expense shall be for the enforcement of the terms of the Note or this Trust Deed whether or not reimbursement is demanded of Grantor, then the amount so paid, with interest at the rate set forth in the Note, shall be added to and become part of the debt secured by this Trust Deed, without waiver of any rights arising from breach of any covenant herein.

7. Defense of Title. Grantor shall appear in and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee; and in any suit, action or proceeding in which Beneficiary or Trustee may appear, including any suit for the foreclosure of this Trust Deed, to pay all costs and expenses, including evidence of title and Beneficiary's or Trustee's attorney fees. If Grantor defaults under this covenant and Beneficiary is required to pay for such defense, then interest shall accrue thereon as provided in Section 5 above and all such sums shall be added to and become part of the debt secured by this Trust Deed, as set forth in Section 5 above.

8. Condemnation. Grantor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation, exercise of the power of eminent domain or other taking, whether direct or indirect, of the Property, or part thereof, and Grantor shall appear in and prosecute or defend any such action or proceeding unless otherwise agreed to by Beneficiary and Grantor in writing. Grantor (notwithstanding that Beneficiary may not be a party to any such proceeding) will promptly give Beneficiary copies of notices, pleadings, judgments, determinations and other papers received by Grantor. If Grantor elects not to prosecute or defend any such action within fifteen (15) days after service on Grantor of a summons relating thereto from a court of competent jurisdiction, or if Grantor fails to notify Beneficiary in writing of Grantor's election to prosecute or defend such action within said fifteen (15) period, Grantor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Grantor, to commence, appear in and prosecute, and be represented by counsel in Beneficiary's or Grantor's name, any action or proceeding relating to any condemnation or other taking of the Property or part thereof, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Beneficiary. Beneficiary shall apply such proceeds first to any reasonable costs and expenses and attorney fees, both in trial and appellate courts, necessarily paid or incurred by

Beneficiary in such proceedings, and shall apply the balance to the indebtedness secured hereby. Grantor shall not enter into any agreement for the taking of all or a part of the Property, unless Beneficiary shall have first consented thereto in writing.

9. Assignments and Transfers. Grantor covenants not to voluntarily or involuntarily, directly or indirectly, transfer, sell, encumber or otherwise dispose of all or any portion of its ownership of the Property or any part thereof without Beneficiary's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the above, Grantor may transfer the Property to a corporation or limited liability company in which Grantor is the sole shareholder or member. The addition of any other shareholder(s) or member(s) to such corporation or limited liability company shall be a transfer in violation of this covenant.

10. Further Encumbrances. Grantor covenants not to voluntarily or involuntarily encumber the Property or any part thereof without Beneficiary's prior written consent.

11. Hazardous Substances. Grantor shall (i) not permit any hazardous or dangerous objects, materials or products to be located upon or generated, stored, transported to or from, disposed of or used in any portion of the Property; (ii) not permit any hazardous or dangerous use to be made of the Property; and (iii) shall keep the Property in a safe condition in full compliance with all safety, health and environmental statutes, ordinances and regulations (collectively, the "Environmental Covenants"). In the event of a breach by Grantor of any of the Environmental Covenants, Grantor agrees to defend, indemnify and hold Beneficiary and Beneficiary's agents, employees, heirs, personal representatives, successors and assigns harmless against a) any and all costs, actual and foreseeable consequential damages, and losses arising from or related to any such breach; b) all costs of any required alterations, reconstruction, repairs, clean up or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans resulting from any such breach, whether prior to or following the repayment of the Note or prior to or following the foreclosure of or trustee's sale under this Trust Deed; and c) for any lien imposed against the Property or any portion thereof to secure the payment of any costs relating to the removal of hazardous materials and/or any resulting restoration of the Property because of any such breach. This indemnification shall be secured by this Trust Deed if and to the extent so elected by Beneficiary in writing at any time prior to a foreclosure or trustee's sale under the Trust Deed. If not so elected this indemnity shall survive any foreclosure of or trustee's sale under this Trust Deed and shall at Beneficiary's option not be included in any debt which is statutorily extinguished in connection therewith. The creation or filing of any lien against the Property or any portion thereof as a result of the actual or alleged presence on the Property of any hazardous materials, any misrepresentation of Grantor herein or failure of Grantor to make any payment or promptly or continuously pursue any action referred to in this paragraph shall constitute a default under this Trust Deed.

12. Uniform Commercial Code Security Agreement. This instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property that, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code. Grantor agrees to and hereby appoints Beneficiary the attorney-in-fact of Beneficiary to execute and deliver to Beneficiary, upon its request, any financing statements, as well as extensions, renewals and amendments thereof. Grantor shall pay

all costs of filing such financing statements and any extensions, renewals, amendments and releases and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Without the prior written consent of Beneficiary, Grantor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Grantor's breach of any covenant or agreement of Grantor contained in this Instrument, including but not limited to the covenants to pay when due all sums secured by this Trust Deed, Beneficiary shall have the remedies of a secured party under the Uniform Commercial Code, and, at Beneficiary's option, may also invoke any other remedies provided for in this Trust Deed or under Oregon law governing trust deeds. In exercising any of said remedies, Beneficiary may proceed against items of real property and items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the Uniform Commercial Code or of the other remedies provided for in this Trust Deed or under Oregon law governing trust deeds.

13. Grantor's Warranties. Grantor warrants to and with Beneficiary that it is lawfully seized in fee simple of the Property and has a valid, unencumbered title thereto except as disclosed to Beneficiary and Grantor covenants that it will warrant and forever defend the same against all persons whatsoever. Grantor further warrants that the debt secured by this Trust Deed is for business or commercial purposes and that Grantor has full authority to execute this Trust Deed.

14. Successor Trustee. Beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, the latter shall be vested with all title, powers, and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, which, when recorded in the land records of the county in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

15. Events of Default. In the event of a default, the entire principal sum with accrued interest thereon due under the Note and this Trust Deed shall, at the option of the Beneficiary, become due and payable forthwith, without notice. No failure to exercise such option shall be deemed a waiver on the part of the Beneficiary of any right accruing thereafter. Grantor agrees that the occurrence of any of the following shall constitute a default under this Trust Deed:

- 15.1. Grantor's failure to pay when due any payment of any kind under the Note or any taxes, assessments, insurance premiums or any other lien or charge upon the Property;
- 15.2. Grantor's prepayment of any interest or principal under the Note before such payment is due, without the written consent of Beneficiary.
- 15.3. Grantor's failure to perform any other covenant in the Note or this Deed of Trust, including but not limited to any (attempted) transfer of the Property or further encumbrance of the Property without prior written consent of Beneficiary;

- 15.4. Default of any kind under the Note or this Trust Deed;
- 15.5. Filing by Grantor of a petition in bankruptcy or for an arrangement, reorganization or any other form of debt relief, or if such petition is filed against Grantor;
- 15.6. Entry of a decree or order for the appointment of a trustee, receiver or liquidator for Grantor or Grantor's property;
- 15.7. Commencement of any proceeding for dissolution or liquidation of Grantor;
- 15.8. Assignment by Grantor of all or substantially all of its assets for the benefit of its creditors or admits in writing its inability to pay its debts generally as they become due; or
- 15.9. An attachment, execution or other judicial seizure of any portion of Grantor's assets.

16. Acceleration; Remedies. Upon default by Grantor in payment of any indebtedness secured hereby or in its performance of any agreement of Grantor hereunder, Beneficiary may declare all sums secured thereby immediately due and payable. In such event Beneficiary may at its election, in addition to any other remedies available at law or in equity, proceed to foreclose this Trust Deed in equity as a mortgage or direct the Trustee to foreclose this Trust Deed by advertisement and sale in the manner provided in ORS 86.735 through 86.795. Beneficiary shall be entitled to collect all costs and expenses incurred in pursuing any of its remedies, including but not limited to reasonable attorney fees, whether or not any action or proceeding is commenced and any such fees incurred in any appellate or bankruptcy proceeding, and costs of documentary evidence, abstracts and title or foreclosure reports or guaranties. If Beneficiary invokes the power of sale, Beneficiary shall proceed as set forth in ORS 86.735 et.seq. The proceeds of any foreclosure sale, whether as a judicial foreclosure or by advertisement and sale, shall be applied in the following order: a) to all costs and expenses of the sale, including but not limited to trustee's and attorney's fees, publication fees, service fees and costs of foreclosure title guaranty; b) to all sums secured by this Trust Deed in such order as Beneficiary in its sole discretion directs; and c) the excess, if any to the Clerk of the Court of the county in which the Property is located. Grantor consents to a personal deficiency judgment for any part of the debt hereby secured which shall not be paid by the sale of the Property, unless such judgment is prohibited by law, and Grantor expressly waives (i) any claim of homestead and (ii) all rights to possession of the Property during the period allowed by law for redemption. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, Beneficiary may make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Grantor and without regard to the adequacy of the Property for the repayment of the obligations secured by this Trust Deed or the solvency of the Grantor or any person or persons liable for the payment of the debt secured by this Trust Deed. Each remedy

provided in this Trust deed is distinct and cumulative to all other rights or remedies under this Trust Deed or afforded by law or equity and may be exercised concurrently, independently, or successively, in any order whatsoever.

17. Non-Waiver. The entering upon and taking possession of the Property, the collection of the proceeds of casualty and other insurance policies or compensation or awards for any taking of the Property, or the application of release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. No waiver of any default or breach by Grantor hereunder shall be implied from any delay or omission by Beneficiary to take any action on account of such default other than the default specified in the waiver, and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein must be in writing and shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition or a breach of any other covenant, term or condition. The consent or approval by Beneficiary to or of any acts by Grantor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of Beneficiary hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy.

18. Successors and Assigns. This Trust Deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term "Beneficiary" shall mean the holder and owner of the Note, whether or not named as Beneficiary herein.

19. Construction. This Trust Deed shall be construed according to the laws of the State of Oregon. In construing this Trust Deed, it is understood that the headings shall be for reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions thereof. In construing this Trust Deed and whenever the context so requires, the masculine, feminine and neuter gender, and the singular and plural number shall be deemed to include the others whenever the context so indicates.

20. Integration and Modification. This Trust Deed represents the entire understanding of the parties hereto and supercedes all prior negotiations, written or oral. This Trust Deed may not be modified except by subsequent agreement in writing by the parties hereto.

21. Severability. If any provision of this Trust Deed shall be found invalid or illegal, such provision shall be ineffective and shall not invalidate the remaining portions of this Trust Deed.

22. Attorney Fees. If either party is required to pay an attorney to enforce the terms of this Trust Deed, then it will be entitled to be indemnified from the other for its attorney fees, including but not limited to attorney fees in arbitration, at trial, or appeal or in bankruptcy.

23. Time of Essence. Time is of the essence of this Deed of Trust.

24. Waiver of Statute of Limitations. To the extent permitted by law, Grantor hereby

waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Trust Deed or to any action brought to enforce the Note or any other obligation secured by this Trust Deed.

25. Notices. Any notice by Beneficiary or Trustee to Grantor shall be made to Grantor at the following address:

Jose Enrique and Maria Teresa Venegas  
P.O. Box 345  
Malin, OR 97632

Any notice made by Grantor to Beneficiary shall be made to Beneficiary at the following address:

Lester and Kay Neumeyer  
P.O. Box 164  
Malin, OR 97632

Any notice shall be deemed given when actually delivered or when mailed, sent by overnight courier or sent by facsimile transmission so long as there is a receipt, transmission report or other proof of delivery. The address of a party may change by written notice to the other party in accordance with the terms of this section.

**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.**

**WARNING**

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.

IN WITNESS WHEREOF, Grantor has hereunder set its hand the day and year first above written.

GRANTOR:

Jose Enrique Venegas  
Jose Enrique Venegas

Maria Teresa Venegas  
Maria Teresa Venegas

STATE OF OREGON

County of

Klamath

This instrument was acknowledged before me on  
by Jose Enrique Venegas and Maria Teresa Venegas.

December 30, 2003

Stacy Collins  
Notary Public for Oregon

My commission expires: 8-2-07



**EXHIBIT A****REAL PROPERTY DESCRIPTION:**

The real property and building known as Papa T's Drive-In, located at 2009 Broadway, Malin, Oregon 97632, more particularly described as follows:

Lots 1, 2, 3, and 4 in Block 61 of the City of Malin, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, EXCEPT THEREFROM the West 50 feet of said lots conveyed to Joe Halousek and Gladys Halousek, husband and wife, by Deed dated October 27, 1949, recorded November 12, 1949, in Deed Volume 235 page 171, records of Klamath County, Oregon; and ALSO EXCEPTING the East 16 feet of said lots conveyed to the City of Malin, by two deeds dated December 11, 1929, recorded January 3, 1930, in Deed Volume 89 pages 507 and 508, records of Klamath County, Oregon,

SUBJECT TO:

All easements of record.

**EXHIBIT B****PERSONAL PROPERTY DESCRIPTION:**

1. Univex slicer
2. Refrigerator
3. Tables and chairs
4. Salad bar
5. Ice cream maker
6. Upright freezer
7. Ice cream machine
8. Gas grill range (4x6)
9. Cash register
10. Fryolator deep fryer
11. Broaster
12. Mixer and attachments
13. Grill and booths
14. Manitowoc ice machine
15. Stove