

FILED SARPY CO. NE.
INSTRUMENT NUMBER
99-010326

99 APR -7 PM 4: 21

Glenn G. [Signature]
REGISTER OF DEEDS

99-10326
Counter D
Verify M
D.E. M
Proof M
Fee \$ 165.50
Chk Cash Chg

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES AND RENTS**

DATED as of March 30, 1999

between

FAZOLI'S RESTAURANTS, INC., as Trustor

and

Lawyers Title Insurance Corporation, as Trustee

for the benefit of

BANKBOSTON, N.A., as Agent for itself and the other Banks, as Beneficiary

Notice: This instrument secures, inter alia, obligations which may provide for:

- (a) a variable rate of interest;
- (b) future and/or revolving credit advances or readvances, which when made, shall have the same priority as advances or readvances made on the date hereof whether or not (i) any advances or readvances were made on the date hereof and (ii) any indebtedness is outstanding at the time any advance or readvance is made; and/or
- (c) after-acquired property provisions and secures future advances pursuant to a line of credit for business or commercial purposes.

Notwithstanding anything to the contrary contained herein, the maximum principal indebtedness secured under any contingency by this instrument shall in no event exceed \$80,000,000.

Restaurant No. 1734
Recording Office: Sarpy County, Nebraska
BUSDOCS:721707.1

After recording, please return to:
Land America, National Commercial Services
Attention: Susan Regis Gibson
4111 Executive Parkway ~ Suite 304
Westerville, OH 43081-3862

010326

DAKOTA TITLE & ESCROW CO. L135401

99-10326 A

LEASEHOLD DEED OF TRUST

THIS LEASEHOLD DEED OF TRUST is made as of the 30th day of March, 1999, by and among FAZOLI'S RESTAURANTS, INC., a Kentucky corporation, whose mailing address is 2470 Palumbo Drive, Lexington, Kentucky 40509, as Trustor (Trustor hereinafter referred to as "*Grantor*"), and Lawyers Title Insurance Corporation whose mailing address is 30 North LaSalle Street, Suite 3440, Chicago, Illinois 60602 ("*Trustee*"), and BANKBOSTON, N.A., a national banking association having a principal place of business at 100 Federal Street, Boston, Massachusetts 02110, as Agent for itself and the other Banks who are or may become parties to the Credit Agreement (as defined in the Deed of Trust Rider attached hereto as *Exhibit C*) (in such capacity, the "*Beneficiary*").

FOR VALUABLE CONSIDERATION, Grantor irrevocably transfers, conveys, and assigns to Trustee, in trust, with power of sale, for the benefit and security of Beneficiary, under and subject to the terms and conditions of this Deed of Trust, the Property (as defined in the Leasehold Deed of Trust Rider).

The Property and the entire estate and interest conveyed to the Trustee are referred to collectively as the "*Trust Estate*."

For the purpose of securing:

- (a) The payment of the Obligations (as defined in the Leasehold Deed of Trust Rider), including the Obligations evidenced under the Notes (as defined in the Leasehold Deed of Trust Rider) executed by the Borrowers, in the total principal amount of \$80,000,000.00 Dollars with interest thereon, which have been delivered and are payable to the order of each of the respective Banks, and which by this reference are hereby made a part hereof, and any and all modifications, extensions, and renewals thereof, and
- (b) Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the rate provided in the Credit Agreement.

The covenants, agreements, conditions, representations and warranties contained in the Leasehold Deed of Trust Rider which is attached hereto as *Exhibit C* are incorporated herein by reference as if fully set out herein; and all references to any covenants, agreements,

conditions, definitions, representations and warranties contained in this Leasehold Deed of Trust shall be deemed to include the covenants, agreements, conditions, definitions, representations and warranties contained herein and in said Leasehold Deed of Trust Rider. Capitalized terms which are used but are not defined herein, but which are defined in or by reference in said Leasehold Deed of Trust Rider, shall have the same respective meanings herein as in the Leasehold Deed of Trust Rider.

To protect the security of this Leasehold Deed of Trust:

1. Payment of Indebtedness; Covenant of Title.

- (a) Grantor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Notes, charges, fees, and all the sums as provided in the Loan Documents.
- (b) Grantor hereby covenants with Beneficiary that Grantor is lawfully seized of the Property hereby conveyed, that Grantor warrants and will defend the title to the Property against the lawful claims of all persons whomsoever, that Grantor has the right to grant and convey the Property, and that the Property is unencumbered by any mortgage, trust deed, and/or contract to purchase, except the first position lien granted by Grantor and except for the Permitted Encumbrances.

2. Actions Affecting Trust Estate. Grantor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and shall pay all costs and expenses, including cost of evidence of title and attorney fees, in any such action or proceeding in which Beneficiary or Trustee may appear. Should Grantor fail to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and without notice to or demand upon Grantor and without relieving Grantor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Grantor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and reasonable attorney fees. Any such costs and expenses not paid within ten (10) days of written demand shall draw interest at the default rate provided in the Credit

Agreement. Grantor's obligation to reimburse Trustee or Beneficiary for said costs is contingent upon Grantor's receipt of invoices evidencing such costs incurred by the Beneficiary or Trustee.

3. Eminent Domain. As set forth in Sections 2.5 and 2.6 of *Exhibit C* attached hereto.

4. Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Grantor and recorded in the county in which the Trust Estate is located, and by otherwise complying with the provisions of the applicable law of the State of Nebraska, substitute a successor or successors to the Trustee named herein or acting hereunder.

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

6. Inspections. Beneficiary, or its agents, representatives, or workmen, is authorized to enter at any reasonable time upon or in any part of the Trust Estate upon reasonable notice to Grantor for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

7. Acceleration Upon Default, Additional Remedies. Should an Event of Default occur, Beneficiary may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest, or notice of any kind. Thereafter, Beneficiary may:

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon, and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability, or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom, or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues, and profits thereof, including those past due and unpaid, and apply

the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues, and profits, and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipts and application of rents, issues, or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any event of default, including the right to exercise the power of sale.

- (b) Commence an action to foreclose this Leasehold Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.
- (c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Grantor's interest in the Trust Estate to be sold, which notice Trustee shall cause to be duly filed for record in the appropriate official records of the county in which the Trust Estate is located.

8. Foreclosure by Power of Sale. Should Beneficiary elect to foreclose by exercise of the Power of Sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Leasehold Deed of Trust and the Notes and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

- (a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published, and delivered to Grantor such notice of default, and notice of sale as then required by law and this Leasehold Deed of Trust. Trustee shall without demand on Grantor, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such notice of sale, either as a whole, or in separate lots

or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Grantor, Trustee, and Beneficiary, may purchase at such sale and Grantor hereby covenants to warrant and defend the title of such purchaser or purchasers.

- (b) As may be permitted by law, after deducting all costs, fees, and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of any sale to the payment of (i) all sums expended under the terms hereof not then repaid, with accrued interest at Fourteen Percent (14%) per annum; (ii) all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.
- (c) Trustee may, in the manner provided by law, postpone sale of all or any portion of the Trust Estate.

9. Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Leasehold Deed of Trust, Leasehold Deed of Trust Rider, or under any Loan Document, or any laws now or hereafter in force, notwithstanding that some or all of the such indebtedness and Obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment, or otherwise. Neither the acceptance of this Leasehold Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them shall be entitled to enforce this Leasehold Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in

their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either or both of them may pursue inconsistent remedies. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against the Grantor to the extent such action is permitted by law.

10. Request for Notice. Trustee hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to them at the address set forth in the first paragraph of this Leasehold Deed of Trust.

11. Governing Law. This Leasehold Deed of Trust shall be governed by the laws of the State of Nebraska. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect the provisions of such Loan Documents which can be given effect without the conflicting provision and, to this end, the provisions of the Loan Documents are declared to be severable. This instrument cannot be waived, changed, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge, or termination is sought.

12. Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and that no further advances may be obtained under the Credit Agreement or any of the other Obligations, and that no amounts remain available for drawing under any letter of credit or similar Obligation and, upon surrender of this Leasehold Deed of Trust and the Notes to Trustee for cancellation and retention, and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "*the person or persons entitled thereto.*"

13. Acceptance by Trustee. Trustee accepts this Trust when this Leasehold Deed of Trust, duly executed by Grantor and acknowledged, is made a public record as provided by law.

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99-10326 I

Recording Office: Sarpy County, Nebraska

Restaurant No. 1734

EXHIBIT A

DESCRIPTION OF PREMISES

The leasehold estate created by that certain Ground Lease Agreement, dated as of December 4, 1995, between Wiltham Place Limited Partnership, as Lessor, and Fazoli's Restaurants, Inc., as Lessee, a Memorandum of said lease being recorded on July 2, 1996 as Instrument No. 96-13054 in the Recorder's Office of Sarpy County, Nebraska (the "Lease").

The Lease covers and affects the premises described in the attached Schedule A.

99-10326 I

SCHEDULE A

#1734

Lot 2, Wiltham Place Replat I, an Addition to the City of LaVista, as surveyed, platted and recorded, Sarpy County, Nebraska; more particularly described as follows: Beginning at the Southeast corner of said Lot 2; thence along the Southerly line of said Lot 2, N 89°49'57" W, 207.00 feet (206.62 feet record) to the Southwest corner of said Lot 2, said point being on the Easterly right-of-way line of 84th Street, as now established; thence along the Westerly line of said Lot 2 and along said Easterly right-of-way line the following two courses: 1) N 00°11'46" E, 55.45 feet (55.66 feet record); 2) N 05°24'26" E, 128.02 feet (127.88 feet record) to the Northwest corner of said Lot 2; thence along said Northerly line, S 89°51'07" E, 194.78 feet (194.82 feet record) to the Northeast corner of said Lot 2; thence along the Easterly line of said Lot 2, S 00°00'38" W, 183.00 feet to the Point of Beginning.

99-10326K

Recording Office: Sarpy County, Nebraska

Restaurant No. 1734

EXHIBIT B

PERMITTED ENCUMBRANCES

Those exceptions listed on Schedule B of a certain Title Insurance Policy issued to Beneficiary by Lawyers Title Insurance Corporation with respect to the Premises described in *Exhibit A*.

99-10326 L

EXHIBIT C

LEASEHOLD DEED OF TRUST RIDER

Leasehold Deed of Trust Rider attached to and made a part of that certain Leasehold Deed of Trust, dated as of March 30, 1999 (the "Leasehold Deed of Trust") from Fazoli's Restaurants, Inc, a Kentucky corporation having its principal office at 2470 Palumbo Drive, Lexington, Kentucky 40509 (the "Grantor"), to Lawyers Title Insurance Corporation having its mailing address at 30 North LaSalle Street, Suite 3440, Chicago, Illinois 60602 (hereinafter referred to as the "Trustee"), for the benefit of BankBoston, N.A., a national banking association having its principal office at 100 Federal Street, Boston, MA 02110, as Agent for itself and the other Banks who are or may become parties to the Credit Agreement (the "Beneficiary" or "Grantee").

With intent to be legally bound, Grantor and Beneficiary agree that the following terms and conditions are herein made a part of the Leasehold Deed of Trust as an integral part thereof. The provisions of this Leasehold Deed of Trust Rider are supplementary to the provisions of the Leasehold Deed of Trust to which this Leasehold Deed of Trust Rider is attached and to the extent any provision of this Leasehold Deed of Trust Rider deals with the same subject matter as similar provisions of the Leasehold Deed of Trust, the provisions hereof are to be construed to expand such similar provisions and not to limit the general application of any general provision contained in the Leasehold Deed of Trust. To the extent any provision of this Leasehold Deed of Trust Rider conflicts with the Leasehold Deed of Trust, the language in the Leasehold Deed of Trust shall control. In case any one or more provisions of this Leasehold Deed of Trust Rider may be found to be invalid or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of any other provisions of this Leasehold Deed of Trust Rider. Unless otherwise defined herein, capitalized terms used in the Leasehold Deed of Trust and this Leasehold Deed of Trust Rider shall have meanings ascribed to them in the Credit Agreement.

1. REPRESENTATIONS AND WARRANTIES.

The Grantor hereby represents, covenants and warrants to Beneficiary as follows.

1.1. Title to Property. The Grantor warrants its title to the Property, subject only to the Permitted Encumbrances.

1.2. Authority; No Encumbrances. The Property is now free and clear of all encumbrances whatsoever except Permitted Encumbrances, and the Grantor has good right and lawful authority to mortgage and convey the same in the manner and form hereby mortgaged and conveyed.

1.3. Governmental Filings. Other than the recording of this Leasehold Deed of Trust and the filing of financing statements with the appropriate recording and filing offices in the state where the Property is located, no approval, authorization or other action by, or filing with, any federal, state, or local commission, board or agency, is required under existing law in connection with the execution and delivery by Grantor of this Leasehold Deed of Trust.

1.4. No Subleases. There are presently in effect no subleases of the Property or any part thereof, except as listed as a Permitted Encumbrance.

1.5. Absence of Litigation. Except as otherwise disclosed in the Credit Agreement, there are no actions, suits, proceedings or investigations, including, without limitation, condemnation and eminent domain proceedings, pending or, to the best of Grantor's knowledge, threatened, against or affecting the Property, or which may involve or affect the validity of this Leasehold Deed of Trust, and Grantor is not in default with respect to any order, writ, injunction, decree or demand of any court or any administrative agency or governmental authority affecting the Property or the use thereof.

2. CERTAIN COVENANTS AND CONDITIONS.

The Grantor covenants and agrees as follows.

2.1. Rent and Governmental Charges. Grantor shall pay before the same become delinquent (i) all rent, additional rent and other payments required to be paid by the lessee under the Lease, and (ii) all taxes, charges, sewer use fees, water rates and assessments of every name and nature, whether or not assessed against Grantor, if applicable or related to the Property, or any interest therein, or applicable or related to any of the Obligations, which, if unpaid, might by law become a lien or charge upon all or any part of the Property; provided, however, that so long as no distraint, foreclosure sale or other levy upon or transfer with respect to the Property or any part thereof shall have been effected or threatened, Grantor shall not be required to pay any such taxes, charges, fees, rates and assessments by reason of this §2.1 if (i) the amount, applicability or validity thereof is currently being contested by Grantor in

good faith by appropriate legal proceedings, and (ii) Grantor shall have set aside on its books adequate reserves with respect thereto.

2.2. Provision for Payment of Governmental Charges and Other Obligations. To assure the payment of all taxes, charges, sewer use fees, water rates, ground rents and assessments of every name and nature, or any other obligations which may have or acquire priority over this Leasehold Deed of Trust, and which are assessed or payable with reference to the Property, upon the occurrence and during the continuance of an Event of Default, Grantor, if so requested by Beneficiary, shall deposit with Beneficiary, on the first day of each month, a sum determined by Beneficiary to be sufficient to provide, in the aggregate, a fund adequate to pay any such amounts at least ten (10) days before the same become delinquent; and whenever Beneficiary determines sums accumulated under the provisions of this §2.2 to be insufficient to meet the obligation for which such deposits were made, Grantor shall pay, on the demand of Beneficiary, any amount required to cover the deficiency therein. Every such deposit may, at the option of Beneficiary, be applied directly against the obligation with reference to which it was made, or, to the fullest extent permissible according to law, any other obligation of Grantor secured hereby. Such deposits and those under any other Mortgage Instruments shall be held in one or more separate accounts and not commingled with other assets of Beneficiary. Such deposits may, to the fullest extent permitted by law, be invested by Beneficiary for its own account, without any obligation to pay income from such investment, or interest on such deposits, to Grantor, or to account to Grantor for such income in any manner.

2.3. Maintenance of Property; Alterations. Grantor shall (i) keep and maintain that portion of the Property which constitutes personal property of Grantor in good condition, repair and working order, damage from casualty expressly not excepted, (ii) keep and maintain such portion of the Property as Grantor is required to maintain pursuant to the terms of the Lease, in the condition required under the terms of the Lease, (iii) shall make all such needful and proper repairs, replacements, additions and improvements thereto as shall be necessary for the proper conduct of its business thereon, and (iv) shall not permit or commit waste on the Property. Except as expressly permitted by the Credit Agreement, Grantor shall not permit removal or alteration of anything which constitutes a part of the Property without the consent of Beneficiary except that Grantor may remove personal property or fixtures which have become obsolete, provided that Grantor shall substitute personal property or fixtures of equal utility and equal or greater value for the items so removed. Subject to the terms and conditions of the Lease, the Grantor

shall have the right at all times to make or permit such alterations, improvements or new construction, structural or otherwise (herein sometimes called collectively "alterations"), of or on the Property to be made in all cases subject to the following conditions:

(a) all work done in connection with any alterations shall be done promptly and in a first-class and workmanlike manner;

(b) the cost of all alterations shall be paid promptly so as to keep the Property free of all liens;

(c) no alterations of any kind shall be made to the Property which shall change the use or reduce the value of the Property in any material respect; and

(d) no alteration involving an estimated cost of materials and construction labor as reasonably estimated by the Grantor in excess of \$75,000 shall be undertaken without the prior written consent of Beneficiary, which shall not be unreasonably withheld or delayed.

Grantor shall permit Beneficiary to enter the Property at any reasonable time to determine whether Grantor is in compliance with its obligations under this Leasehold Mortgage. All construction on the Property shall comply with, and each and every part of the Property shall be maintained and used in accordance with, all applicable federal, state and local laws and governmental regulations, the Lease, and any lawful private restrictions or other requirements or provisions, relating to the maintenance or use thereof.

2.4. Insurance. The Grantor agrees, at Grantor's sole cost and expense, to keep the Property insured or to cause the Landlord to keep the Property insured (in accordance with the terms of the Lease), at all times throughout the term of this Leasehold Deed of Trust with policies of insurance as follows:

(a) property or physical hazard insurance on an "all risks" basis, with broad form flood and earthquake coverages, and building code, valuable papers, extra expenses, extended period of indemnity and electronic data processing coverages, with a full replacement cost endorsement (including builder's risk during any period or periods of time that construction or remodeling is being performed on the Property) and an "agreed amount" clause, in an amount equal to 100% of the full replacement cost of all improvements (excluding only the reasonable value of footings and foundations) and Grantor's contents therein, such amount to be

determined annually by an insurer or qualified appraiser selected and paid for by Grantor and acceptable to Beneficiary, and in any event, in an amount sufficient to prevent Grantor from incurring any coinsurance liability;

(b) if at any time the Property or any portion thereof is located in a "Flood Hazard Area" pursuant to the Flood Disaster Protection Act of 1973 (or any successor thereto), flood insurance in such total amount as Beneficiary shall reasonably require from time to time (or the maximum amount available, if less); and

(c) insurance with respect to other insurable risks and coverages relating to the Property (including, without limitation, commercial general liability insurance (broad form), boiler insurance, builder's risk insurance and worker's compensation insurance) in such amounts and containing such terms and conditions as Beneficiary may reasonably require from time to time.

Notwithstanding the foregoing, if and to the extent that the Lease requires Grantor to maintain insurance with respect to the Property providing for risks and coverages in addition to, or in amounts greater than, those required by this §2.5, then Grantor shall also comply with such requirements of the Lease.

The Grantor shall deposit certified copies of all insurance policies (or certificates thereof acceptable to Beneficiary) providing coverage applicable to the Property, whether or not required by this Leasehold Deed of Trust, with Beneficiary forthwith after the binding thereof, and shall deliver to Beneficiary new policies (or certificates acceptable to Beneficiary) for any insurance about to expire at least thirty (30) days before such expiration. All such insurance policies (other than liability policies) shall be first payable in case of loss to Beneficiary by means of a standard non-contributory mortgagee clause, shall be written by such companies, on such terms, in such form and for such periods and amounts as Beneficiary shall from time to time approve, shall be primary and without right of contribution from other insurance which may be available, shall waive any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of Grantor and Beneficiary, shall provide that with respect to Beneficiary, the insurance shall not be invalidated by any action or inaction by Grantor including without limitation any representations made by Grantor in the procurement of such insurance, and shall provide that such policies shall not be cancelled or amended without at least thirty (30) days prior written notice to Beneficiary. All liability insurance policies shall include Beneficiary as

an additional insured. All such insurance policies shall provide that all losses thereunder shall be adjusted by (but not disbursed to) Grantor, so long as no Event of Default has occurred and is continuing, and after an Event of Default has occurred and so long as any such Event of Default continues, Grantor shall not consent to a final adjustment in any amount without obtaining Beneficiary's prior written approval. After the occurrence of an Event of Default, Grantor hereby grants Beneficiary full power and authority as irrevocable attorney-in-fact of Grantor to cancel or transfer such insurance, to collect and endorse any checks issued in the name of Grantor and to retain any premium and to apply the same to the Obligations secured hereby.

Unless the Lease provides otherwise, the proceeds of any casualty insurance described in this §2.4, in respect of any loss of any of the Property shall be disbursed in accordance with §2.5.

2.5. Casualties and Takings. All proceeds of any property or hazard insurance or awards of damages on account of any taking or condemnation for public use of or injury to the Property shall (a) so long as no Default or Event of Default has occurred and is continuing, be disbursed to the Grantor and applied by Grantor in the manner provided in § 4.3.4 of the Credit Agreement, and (b) in all other circumstances, be held by Beneficiary as cash collateral for the Obligations. The Beneficiary may, at its sole option, disburse from time to time all or any part of such proceeds so held as cash collateral, upon such terms and conditions as Beneficiary may reasonably prescribe, for direct application by Grantor solely to the repair or replacement of the Property or portion thereof so damaged or destroyed, or Beneficiary may apply all or any part of such proceeds to the Obligations with the Total Commitment (as defined in the Credit Agreement), if not then terminated, being reduced by the amounts so applied to the Obligations.

The provisions of this §2.5 shall be subject to the terms of the Lease governing the disposition of property insurance proceeds and taking awards and, in the event of a conflict between this §2.5 and the Lease, the provisions of the Lease shall control.

2.6. Notice of Condemnation. Grantor, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation or requisition of the Property or any portion thereof, shall notify Beneficiary of the pendency of such proceeding. The Beneficiary may participate in such proceedings, and Grantor from time to time shall deliver to Beneficiary all instruments requested by Beneficiary to permit such participation.

2.7. Subleases; Assignments; Subordination. Grantor shall not sublease the Property or any part thereof without the prior written consent of Beneficiary. If Grantor shall enter into a sublease, Grantor shall faithfully keep, observe and satisfy all the obligations on the part of the sublessor to be kept, performed and satisfied under every sublease from time to time in force with reference to the Property, and shall not alter or terminate any such sublease, or any guarantee of such sublease, except in the ordinary course of business, or accept any rentals for more than one month in advance. Grantor hereby assigns to Beneficiary all rents and profits under any and all subleases of the Property, and Grantor hereby authorizes Beneficiary or Beneficiary's agents to collect the rents and profits and hereby directs such subtenants, sublessees and licensees of the Property to pay the rents and profits to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Grantor of any Event of Default, Grantor shall collect and receive such rents and profits and apply them to the Obligations, to the extent then due, with the balance, so long as no Event of Default has occurred, to the account of Grantor. Grantor agrees that each and every subtenant, sublessee and licensee of the Property shall pay, and hereby irrevocably authorizes and directs each and every subtenant, sublessee and licensee to pay, all rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand therefor without any obligation on the part of said subtenant, sublessee or licensee to inquire as to the existence of an Event of Default and notwithstanding any notice or claim of Grantor to the contrary, and Grantor agrees that Grantor shall have no right or claim against said subtenant, sublessee or licensee for or by reason of any rents paid to Beneficiary following receipt of such written demand. At any time on notice from Beneficiary, Grantor shall submit to Beneficiary for examination all such subleases, or the rents and profits thereof, in form satisfactory to Beneficiary. The Beneficiary shall have the right, by the execution of suitable written instruments from time to time, to subordinate this Leasehold Deed of Trust, and the rights of Beneficiary hereunder, to any sublease or subleases from time to time in force with reference to the Property, and, on the execution of any such instrument, this Leasehold Deed of Trust shall be subordinate to the sublease for which such subordination is applicable with the same force and effect as if such sublease had been executed and delivered, and a notice thereof recorded to the extent required to give notice to third persons, prior to the execution, delivery and recording of this Leasehold Deed of Trust.

2.8. Prior Mortgages. If this Leasehold Deed of Trust, by its terms, is not, or any time hereafter, becomes subject or subordinate to a prior deed of trust or mortgage, Grantor shall fully perform its obligations under such prior deed of trust or mortgage and shall not, without the

consent of Beneficiary, agree to the modification, amendment or extension of the terms or conditions of such prior deed of trust or mortgage. Nothing contained in this §2.8 is intended, nor shall it be deemed, to constitute consent by Beneficiary to a subordination of the lien of this Leasehold Deed of Trust.

2.9. Encumbrances. Grantor shall not create or permit to be created or permit to exist any encumbrance on the Property (other than any lien for property taxes not yet due and payable and the Permitted Encumbrances) even if such encumbrance is inferior to this Leasehold Deed of Trust, without the prior express written consent of Beneficiary.

2.10. Transfers of Ownership. Grantor shall not sell or permit any transfer of any interest in the Property, or any part thereof, without the prior express written consent of Beneficiary, except as expressly permitted by the Credit Agreement.

2.11. Priority of Lien; After-Acquired Property; No Merger of Estates. This Leasehold Deed of Trust is and will be maintained as a valid deed of trust lien on the Property subject only to the Permitted Encumbrances. All property of every kind acquired by Grantor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Leasehold Deed of Trust shall, immediately upon the acquisition thereof by Grantor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien of this Leasehold Deed of Trust. The Grantor will do, execute, acknowledge and deliver all and every such further conveyances, mortgages, and assurances as Beneficiary shall reasonably require for accomplishing the purposes of this Leasehold Deed of Trust. If any action or proceeding shall be instituted to recover possession of the Property or for the foreclosure of any other mortgage or Leasehold Deed of trust or for any other purpose affecting the Property or this Leasehold Deed of Trust, Grantor will immediately, upon service thereof on or by Grantor, deliver to Beneficiary a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers, however designated, served in any such action or proceeding.

The Grantor will not release, surrender or terminate the Lease without the prior written consent of the Beneficiary, nor without similar consent will the Grantor modify the Lease so as to reduce the term thereof, or to increase the rentals payable thereunder, or to alter those provisions relating to grace periods, notices to be given to the Beneficiary, construction, use, reconstruction, or demolition of the building on the Premises, payment of governmental charges as provided in the Lease,

renewal privileges or in any other manner which would impair the security of this Leasehold Deed of Trust. The Grantor further covenants and agrees that there shall be no merger of the Lease, or of the leasehold estate created thereby, or of any building, Building Service Equipment or other improvement now or hereafter constituting a portion of the Property, with the fee estate of the owner or owners of the land and premises described in the Lease, by reason of the fact that the Lease or the leasehold interest created thereby, or any interest in any such building, equipment or other improvements, may be held by or for the account of any person or persons who shall be the owner or owners of such fee estate in said land and premises, unless and until all persons at the time having an interest in the fee estate in said land and premises and all persons, including the Beneficiary, at the time having an interest in the Lease, leasehold estate, buildings, equipment and improvements, shall join in a written instrument effecting such merger and shall duly record the same. If any action or proceeding shall be instituted to evict the Grantor or recover possession of the Property or for the foreclosure of any other mortgage or for any other purpose affecting the Lease or this Leasehold Deed of Trust, the Grantor will immediately, upon service thereof on or by the Grantor, deliver to the Beneficiary a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers however designated, served in such action or proceeding and in any such action or proceeding.

2.12. Fixtures and Equipment; Financing Statement. This Leasehold Deed of Trust constitutes a security agreement under the Uniform Commercial Code, and Grantor hereby grants to Beneficiary to secure the payment and performance of the Obligations and also to secure the performance of all agreements and covenants herein contained, a security interest in all fixtures, Building Service Equipment and any other property included in the Property, now owned or hereafter acquired by Grantor, which might otherwise be deemed "personal property" (and all accessions thereto and the proceeds thereof). Some of such "personal property" is now or is to become fixtures on the Premises. The Grantor covenants and agrees that, upon the subsequent acquisition of fixtures, Building Service Equipment or such personal property included in the Property, it will provide to Beneficiary such further assurances as may be required by Beneficiary to establish Beneficiary's first and prior security interest in such fixtures, Building Service Equipment and property. **IT IS INTENDED BY GRANTOR AND BENEFICIARY THAT THIS LEASEHOLD DEED OF TRUST BE EFFECTIVE AS A FINANCING STATEMENT FILED WITH THE REAL ESTATE RECORDS AS A FIXTURE FILING.** For this purpose, Grantor is the "debtor" and Beneficiary is the "secured party", and the record owner of the fee simple

estate of the premises described in Exhibit A hereto is Wiltham Place Limited Partnership, a Nebraska limited partnership. A mailing address for Grantor and address of Beneficiary from which information concerning the security interest may be obtained are set forth in the introductory paragraph of this Leasehold Deed of Trust. Grantor shall execute, deliver and cause to be recorded and filed from time to time with all necessary public offices, at Grantor's sole cost and expense, continuances and such other instruments as will maintain Beneficiary's priority of security in all fixtures, Building Service Equipment and other personal property included in the Property. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Beneficiary's sole election.

2.13. Performance of Lease. Grantor covenants that the Grantor will:

(a) diligently perform and observe all of the terms, covenants and conditions of the Lease required to be performed and observed by the Grantor as such lessee unless such performance or observance shall have been waived or not required by the lessor;

(b) promptly notify the Beneficiary in writing of any material default by the lessor in the performance or observance of any of the terms, covenants or conditions on the part of lessor to be performed or observed,

(c) promptly advise the Beneficiary in writing of the giving of any notice by the lessor to the Grantor of any default by the Grantor under the Lease;

(d) exercise any option to renew or extend the term of the Lease in such manner as will cause the term of the Lease to be effectively renewed or extended for the period provided by such option if this Leasehold Deed of Trust continues beyond such Lease term, and give immediate written notice thereof to the Beneficiary;

(e) promptly after the execution and delivery of this Leasehold Deed of Trust or of any instrument or agreement supplemental thereto, notify the lessor in writing of the execution and delivery thereof and deliver to the lessor a copy of each such instrument or agreement; and

(f) within thirty (30) days after written demand by the Beneficiary, upon the request of Beneficiary, use reasonable efforts to obtain from the lessor and furnish to the Beneficiary the estoppel certificate of the lessor in such form as may be reasonably required by Beneficiary.

2.14. Environmental Assessments. At any time after an Event of Default shall have occurred and be continuing hereunder, or, whether or not an Event of Default shall have occurred, at any time after Beneficiary shall receive notice of a Release or threatened Release of Hazardous Substances from Grantor, or shall have received notice from any other source deemed reliable by Beneficiary that a Release of Hazardous Substances may have occurred, Beneficiary may at its election after five (5) days prior notice to Grantor obtain one or more environmental assessments of the Property prepared by a geohydrologist, an independent engineer or other qualified consultant or expert approved by Beneficiary evaluating or confirming (i) whether any Hazardous Substances are present in the soil or water at or adjacent to the Property, and (ii) whether the use and operation of the Property comply with all applicable Environmental Laws. Environmental assessments may include detailed visual inspections of the Property including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and ground water samples, as well as such other investigations or analyses as are necessary or appropriate for a complete determination of the compliance of the Property and the use and operation thereof with all applicable Environmental Laws. All such environmental assessments shall be at the sole cost and expense of Grantor.

3. DEFAULT AND REMEDIES.

3.1. Default; Acceleration of Obligations. If an Event of Default shall occur and be continuing, then Beneficiary may exercise the remedies provided under this Leasehold Deed of Trust, under the Credit Agreement, under any and all other instruments and documents providing security for the Obligations, or under the laws of the state where the Property is situated, or any one or more of such remedies.

3.2. Remedies Cumulative. No remedy herein conferred on Beneficiary is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing.

3.3. Right of Beneficiary to Cure an Event of Default. If an Event of Default shall occur and be continuing, Beneficiary shall have the

right, but without any obligation so to do, to cure such default for the account of Grantor and to make any payment or take any action necessary to effect such cure. Without limiting the generality of the foregoing, Grantor hereby authorizes Beneficiary to pay any rents, additional rents or other payments required to be paid by lessee under the Lease; to pay all taxes, sewer use fees, water rates and assessments, with interest, costs and charges accrued thereon, which may at any time be a lien upon the Property, or any part thereof; to pay the premiums for any insurance required hereunder; to incur and pay reasonable expenses in protecting its rights hereunder and the security hereby granted; and to pay any balance due under any security agreement on any fixtures and equipment included as a part of the Property; and the payment of all amounts so incurred shall be secured hereby as fully and effectually as any other obligation of Grantor secured hereby. If Beneficiary shall make any payment or take action in accordance with this §3.3, Beneficiary will give to Grantor written notice of the making of any such payment or the taking of any such action. In any such event, Beneficiary and any person designated by Beneficiary shall have, and is hereby granted, the right to enter upon the Property at reasonable times and from any time and from time to time for the purpose of taking any such action, and all monies expended by Beneficiary in connection therewith (including, but not limited to, reasonable legal expenses and disbursements), together with interest thereon at an annual rate of interest equal to the rate applicable to overdue payments under the Credit Agreement (or the highest rate permitted by law, whichever shall be less), from the date of each such expenditure, shall be paid by Grantor to Beneficiary forthwith upon demand by Beneficiary, and shall be secured by this Leasehold Deed of Trust, and Beneficiary shall have, in addition to any other right or remedy of Beneficiary, the same rights and remedies in the event of non-payment of any such sums by Grantor as in the case of a default by Grantor in the payment of any installment of principal or interest due and payable under the Credit Agreement.

3.4. Operation of Property. Upon the occurrence of an Event of Default, Beneficiary may hold, sublease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Beneficiary may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Beneficiary shall deem necessary or desirable), and apply all rents, profits and other amounts collected in connection therewith in accordance with the other provisions of this Leasehold Deed of Trust.

3.5. Receiver. Upon the occurrence and during the continuance of an Event of Default, or any actual or threatened waste to all or any part of the Property, or at any time while a suit is pending to foreclose or reform this Leasehold Deed of Trust or to enforce any provision hereof, Beneficiary shall have the right to apply without notice for the appointment of a receiver of all or any part of the Property and the rents and profits thereof, and such receiver shall have all the broad and effective functions and powers anywhere entrusted by a court to a receiver. Beneficiary shall be entitled to the appointment of said receiver forthwith as a matter of absolute right, without regard to the adequacy or inadequacy of the value of the Property or the solvency or insolvency of Grantor or any other defendant, and Grantor hereby waives any right to object to the appointment of such receiver and expressly consents thereto. The income, profits, rents, issues and revenues from the Property shall be applied by such receiver according to the provisions of this Leasehold Deed of Trust and the practice of the court appointing such receiver.

3.6. Certain Terms of Foreclosure Sale. At any foreclosure sale, any combination, or all, of the Property or security given to secure the indebtedness secured hereby, may be offered for sale for one total price, and the proceeds of such sale accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, Grantor hereby waiving the application of any doctrine of marshaling; and, in case Beneficiary, in the exercise of the power of sale herein given, elects to sell in parts or parcels, said sales may be held from time to time, and the power shall not be fully executed until all of the property or security not previously sold shall have been sold.

3.7. Uniform Commercial Code. If the provisions of the Uniform Commercial Code are applicable to any property or security given to secure the indebtedness secured hereby which is sold in combination with or as a part of the Property, or any part thereof, at one or more foreclosure sales, any notice required under such provisions shall be fully satisfied by the notice given in execution of the power of sale or other provision in accordance with which the sale of real property pursuant to such foreclosure is held with respect to the Property or any part thereof.

3.8. Other Mortgage Instruments. The Obligations secured by this Leasehold Deed of Trust may also be secured by various other deeds of trust or mortgages or both (collectively, including this Leasehold Deed of Trust, the "Mortgage Instruments") conveying or encumbering real estate in the state in which the Property is situated and in other jurisdictions. An Event of Default under the Credit Agreement shall be an Event of Default under all Mortgage Instruments. Except as may be

expressly stated in this Leasehold Deed of Trust or in such other Mortgage Instruments, all the property conveyed or encumbered by the Mortgage Instruments is security for the Obligations secured by the Mortgage Instruments without allocation of any one or more of the parcels or properties serving as security under the Mortgage Instruments to any part of the Obligations. The Beneficiary may act at the same time or at different times to pursue a remedy or remedies under the Mortgage Instruments or under any of them by proceedings appropriate to the state in which the property serving as security lies, and no such action shall stay or bar enforcement, or be construed as a waiver of, any remedy of Beneficiary under any other instrument in the same state or jurisdiction or in any other state or jurisdiction.

3.9. Rights Cumulative. Each right, power and remedy conferred upon Beneficiary by this Leasehold Deed of Trust, the Credit Agreement and by all other documents evidencing or securing the Obligations and conferred by law or in equity is cumulative and in addition to every other right, power and remedy herein or therein set forth or otherwise so existing, may be exercised from time to time, as often, and in such order, as may be deemed expedient by Beneficiary, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of, or discontinuance by, Beneficiary in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. To constitute a waiver, there must be a writing signed by an officer of Beneficiary and directed to Grantor, specifying the waiver.

In case Beneficiary shall have proceeded to enforce any right or remedy under this Leasehold Deed of Trust or the Credit Agreement by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Beneficiary, then and in every such case Grantor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceeding had been taken. In the event of a breach or default under this Leasehold Deed of Trust or under the Credit Agreement or any other document evidencing or securing the Obligations, Grantor agrees to pay and to indemnify and hold harmless Beneficiary and the Banks for all reasonable expenses, attorneys' fees, taxes and other court costs occasioned by such breach or default.

In the event any provision in this Leasehold Deed of Trust conflicts with or is inconsistent with the Credit Agreement, the Credit Agreement shall control.

4. DEFINITIONS.

The following terms as used herein shall have the following meanings:

"Bank(s)" shall mean BankBoston, N.A. and such other lending institutions which are or may become parties to the Credit Agreement.

"Beneficiary" shall mean the grantee or mortgagee named at the beginning of this instrument, any subsequent holder or holders of this Leasehold Deed of Trust or the indebtedness secured hereby, the trustee under a Leasehold Deed of trust, or any state or county official engaged in any part of the enforcement of the lien of this Leasehold Deed of Trust, and their respective successors and assigns. The word "Beneficiary" as used in this Leasehold Deed of Trust Rider shall also mean, if this instrument forms part of a Leasehold Deed of Trust, the beneficiary of this Mortgage Instrument and any subsequent owner of the beneficiary's interest in the Property or this Mortgage Instrument.

"Borrowers" shall mean Fazoli's Restaurants, Inc., a Kentucky corporation and Fazoli's Joint Venture, Ltd., a Kentucky limited partnership.

"Building Service Equipment" shall mean all apparatus, fixtures and articles of personal property owned by Grantor now or hereafter attached to or used or procured for use in connection with the operation or maintenance of any building, structure or other improvement located on or included in the Property (except apparatus, fixtures or articles of personal property belonging to sublessees or other occupants of such building or to persons other than Grantor unless the same be abandoned by any such lessee or other occupant or person), together with any and all replacements thereof and additions thereto.

"Credit Agreement" shall mean that certain Revolving Credit and Term Loan Agreement dated as of March 30, 1999, by and among Seed Restaurant Group, Inc., a Kentucky corporation, the Borrowers, the Banks and the Beneficiary, pursuant to which the Banks have agreed (a) to make a revolving credit loan to the Borrowers, and to issue letters of credit for the account of the Borrowers, in an aggregate outstanding principal

amount of up to and including \$15,000,000, and (b) to make two (2) term loans to the Borrowers in an aggregate principal amount of \$65,000,000, as such Revolving Credit and Term Loan Agreement is originally executed, or if varied, supplemented, amended or restated from time to time, as so varied, supplemented, amended or restated.

"Default" shall mean any Default under the Credit Agreement (as therein defined).

"Event of Default" shall mean any Event of Default under the Credit Agreement (as therein defined).

"Environmental Laws" shall mean the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, and any state or local statute, regulation, ordinance, order or decree relating to health, safety or the environment.

"Grantor" shall mean the person or persons named at the beginning of this instrument as Grantor, any person or persons described as "Trustor" in the Leasehold Deed of Trust to which this document is attached as Exhibit C, and any subsequent owner or owners of the equity of redemption of the Property.

"Hazardous Substances" shall mean any hazardous waste, as defined by 42 U.S.C. §6903(5), any hazardous substances as defined by 42 U.S.C. §9601(14), any pollutant or contaminant as defined by 42 U.S.C. §9601 (33) and any toxic substances, oil or hazardous materials or other chemicals or substances regulated by Environmental Laws.

"Lease" shall mean the Lease referred to and described in Exhibit A to this Leasehold Deed of Trust.

"Leasehold Deed of Trust" shall have the meaning assigned to it in the recitals to this Leasehold Deed of Trust Rider.

"Letter of Credit" shall mean a standby or documentary letter credit in such form as may be requested from time to time by the Borrowers and agreed to by the Agent (as defined in the Credit Agreement), all as further defined in §5.1 of the Credit Agreement.

"Letter of Credit Application" shall mean a letter of credit application on the customary form of Beneficiary.

"Loan Documents" shall mean the Credit Agreement, the Notes, the Letter of Credit Applications, the Letters of Credit, the Subordination and Intercreditor Agreement (as defined in the Credit Agreement), and the Security Documents (as defined in the Credit Agreement).

"Loans" shall mean the Revolver Loans (as defined in the Credit Agreement) and the Term Loans (as defined in the Credit Agreement).

"Mortgage Instruments" shall have the meaning assigned to it in §3.8 hereof.

"Note(s)" shall mean the Revolver Notes (as defined in the Credit Agreement), the Term Notes (as defined in the Credit Agreement) and the Collateral Notes (as defined in the Credit Agreement).

"Obligations" shall mean all indebtedness, obligations and liabilities of any of the Borrowers and their respective subsidiaries to any of the Banks and the Beneficiary, individually or collectively, existing on the date of the Credit Agreement or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under the Credit Agreement or any of the other Loan Documents or in respect of any of the Loans made or Reimbursement Obligations incurred or any of the Notes, Letter of Credit Applications, Letters of Credit, or other instruments at any time evidencing any thereof.

"Permitted Encumbrances" shall mean the encumbrances listed on Exhibit B to this Leasehold Deed of Trust and incorporated herein by reference as if fully set out herein and any other encumbrances within the definition of Permitted Liens (as defined in the Credit Agreement).

"Premises" shall mean all that certain tract or parcel of land more particularly described and set forth in Exhibit A attached to this Leasehold Deed of Trust and made a part hereof.

"Property" shall mean all of the described property, rights, privileges, interests and franchises more particularly described in paragraphs (a) through (i) below:

- (a) The leasehold estate created pursuant to the Lease with respect to the land described in Exhibit A annexed hereto and all buildings and other improvements now or hereafter erected or placed on the land, and all fixtures attached to the improvements or

the land, and renewals or replacements thereof or articles in substitution therefor;

(b) All of Grantor's right, title and interest under the Lease; together with the appurtenances and all the estate and rights of the Grantor of, in and to the premises which are subject to the Lease; all and each of the tenements, hereditaments and appurtenances of the Grantor belonging or in anywise appertaining to said premises, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

(c) All Building Service Equipment, and all renewals or replacements thereof or articles in substitution therefor;

(d) All modifications, extensions and renewals of the Lease and all rights to renew or extend the term of the Lease; all credits, deposits, options, privileges and rights of the Grantor, as lessee under the Lease; and to the extent not prohibited by or inconsistent with the terms of the Lease, all awards heretofore made or hereafter to be made for the taking by eminent domain of the whole or any part of the above described premises, or any estate or easement therein, including any awards for change of grade of streets, all of which awards are hereby assigned to the Beneficiary;

(e) All present and future subleases and licenses of space of the premises which are subject to the Lease or any other portion of said premises, and the rents, issues and profits payable thereunder subject, however, to the right of Grantor to receive and use the same and to exercise all rights and privileges as landlord under all of the subleases until an Event of Default shall have occurred and be continuing under this Deed of Trust, together with all rights and privileges of the Grantor as landlord thereunder;

(f) All unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Grantor pursuant to the provisions of the Leasehold Deed of Trust;

(g) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, but without limitation, proceeds of insurance provided for in this Deed of Trust and proceeds of condemnation awards;

(h) All transferable building service, building maintenance, construction, management and other similar agreements and

contracts, written or oral, express or implied, now or hereafter entered into arising or in any manner related to the construction, design, improvement, use, operation, occupation, enjoyment, sale, conversion or other disposition (voluntary or involuntary) of the premises which are subject to the Lease, or the buildings and improvements now or hereafter located thereon, or any other interest in said premises, or any combination thereof, including all property management agreements, sales contracts, contract deposits, earnest money deposits, prepaid items and payments due and to become due thereunder, and further including all payment and performance bonds, construction guaranties, warranties, construction contracts, architects agreements, general contract agreements, design agreements, engineering agreements, technical service agreements, architectural plans and specifications, sewer and water and other utility agreements, permits, approvals, licenses, building permits, service contracts, advertising contracts, purchase orders and equipment leases; and

(i) All proceeds and products of the foregoing of every type.

"Reimbursement Obligation" shall mean the Borrowers' obligation to reimburse the Beneficiary and the Banks on account of any drawing under any Letter of Credit as provided in §5.2 of the Credit Agreement.

"Release" shall mean any past or present releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.

5. MISCELLANEOUS.

5.1. Notices. All notices, requests and other communications hereunder shall be made in writing and shall be given in the manner set forth in the Credit Agreement.

5.2. Successors and Assigns; Joint and Several Liability; Partial Invalidity. All the covenants and agreements of Grantor herein contained shall be binding upon Grantor and the successors and assigns of Grantor. In case any one or more of the provisions of this Leasehold Deed of Trust may be found to be invalid, or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of any other provision thereof.

5.3. Future Advances; Revolving Credit Advances. This Leasehold Deed of Trust shall secure, and constitute a lien upon the Property for, all future advances and revolving credit advances or

readvances made by the Beneficiary or any of the Banks under the Credit Agreement at any time or times hereafter, whether or not any reference is made to this Leasehold Deed of Trust at the time such advances are made, and all such sums shall be equally secured with and, to the extent permitted by law, have the same priority as the Obligations outstanding as of the date hereof. A portion of the indebtedness evidenced by the Notes is revolving credit indebtedness. The Credit Agreement provides that the principal sum of \$15,000,000 may be advanced, repaid and readvanced from time to time in accordance with the terms and provisions of the Credit Agreement. Accordingly, the aggregate principal advances during the term of the Credit Agreement may exceed \$80,000,000; provided, however, at no time shall the aggregate outstanding principal balance exceed \$80,000,000, except for advances made to protect the lien of this Leasehold Deed of Trust as hereinabove provided. Grantor agrees that if the outstanding balance of the Credit Agreement, principal and interest, is ever repaid to zero (despite any express prohibition to the contrary contained in the Credit Agreement), the lien and security interest of this Leasehold Deed of Trust shall not be deemed released or extinguished by operation of law or implied intent of the parties. This Leasehold Deed of Trust shall remain in full force and effect as to any further advances or readvances under the Credit Agreement made after any such zero balance until the Obligations are paid in full, all agreements to make further advances and readvances have been terminated and this Leasehold Deed of Trust has been canceled of record. Grantor waives the operation of any applicable statute, case law or regulation having a contrary effect. The outstanding principal amount of the indebtedness under the Credit Agreement will bear interest at a variable rate or rates calculated in accordance with the terms and conditions of the Credit Agreement. The Credit Agreement is hereby incorporated into this Leasehold Deed of Trust with regard to all references made to it in this Leasehold Deed of Trust.

5.4. Modification. No change, amendment, modification, cancellation or discharge of this Leasehold Deed of Trust, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

5.5. Captions. Section headings are inserted for convenience of reference only, do not form part of this Leasehold Deed of Trust and shall be disregarded for purposes of the interpretation of the terms of this Leasehold Deed of Trust.

5.6. Governing Law. The Credit Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of

Massachusetts, but this Leasehold Deed of Trust and the perfection and enforcement of the lien and security interest hereunder (and any financing statement filed in connection herewith) shall be governed by and construed and enforced in accordance with the laws of the state in which the Property is situated.

5.7. Leasehold Deed of Trust - Replacement of Trustee. The Beneficiary may remove the Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act or inability to act of such Trustee, or, in its sole discretion, for any reason whatsoever, such Beneficiary may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, and all the powers, rights, duties and authority of such Trustee, as aforesaid, shall thereupon become vested in such successor.