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**THIS DOCUMENT WAS PREPARED BY AND
AFTER RECORDING SHOULD BE MAILED TO:**

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (as amended, extended, renewed, consolidated, spread or otherwise modified from time to time, this "**Deed of Trust**") is executed as of December 12, by **U.S. RESTAURANT PROPERTIES OPERATING L.P.**, a Delaware limited partnership whose address is 5310 Harvest Hill Road, Suite 270, L.B. 168, Dallas, Texas 75230 ("**Grantor**"), in favor of **GARY W. ORR**, whose address is c/o Comerica Bank-Texas, P.O. Box 650282, Dallas, Texas 75262-0282, as trustee ("**Trustee**"), for the benefit of **COMERICA BANK-TEXAS**, a Texas banking association whose address is 1601 Elm Street, Dallas, Texas 75201 ("**Comerica**"), not individually but solely as collateral agent for the Noteholders (as hereinafter defined) under a certain Intercreditor/Collateral Agency Agreement dated as of January 31, 1997, by and among each Loan Party (as defined therein), Comerica, the other Banks (as hereinafter defined) and the Term Note Purchasers (as hereinafter defined) (as amended from time to time, together with any and all replacements and substitutions therefor, the "**Agency Agreement**") (Comerica, as such collateral agent, together with any and all successors to such agency, being hereinafter referred to as "**Beneficiary**").

RECITALS:

A. Grantor and the Banks have entered into a certain Third Amended and Restated Secured Loan Agreement dated as of June 27, 1997 (as amended from time to time, together with any and all replacements and substitutions therefor, the "**Loan Agreement**"), establishing (1) a revolving credit facility (the "**Facility**") for the benefit of Grantor in the principal amount of up to One Hundred Ten Million Dollars (\$110,000,000) (such amount being sometimes referred to herein and in the Loan Agreement as the "**Overall Commitment Amount**"), and (2) an arrangement under which Comerica, on behalf of the Banks and the Other Institutions (as hereinafter defined), from time to time may issue one or more letters of credit for the account of Grantor (collectively, the "**Letters of Credit**"), so long as the Letter of Credit Exposure (as hereinafter defined) shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000) at any time. As used herein, the term "**Letter of Credit Exposure**" means, at any time, the undrawn portion of all unexpired Letters of Credit then outstanding, plus all amounts drawn, but not yet reimbursed, under any previously issued Letters of Credit.

B. Pursuant to the Loan Agreement and as more particularly provided therein, (1) the aggregate principal amount of all advances (including readvances after payment) outstanding in respect of the Facility at any time, when combined with the Letter of Credit Exposure at such time, is not permitted to exceed the Overall Commitment Amount, (2) at any time when the sum of such

BENEFICIARY'S ADDRESS:

Comerica Bank-Texas
8850 Boedeker, 4th Floor
Dallas, TX 75225

**STORE NUMBER: 3645
STATE: OREGON
LEASEHOLD**

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aggregate principal amount and such Letter of Credit Exposure exceeds the Overall Commitment Amount, Grantor is required to immediately pay to Bank Agent (as hereinafter defined) the amount of such excess, together with all interest accrued and unpaid on the amount of such excess, and (3) Grantor is required to immediately pay to Bank Agent, as a reimbursement for the benefit of the Banks and the Other Institutions, all amounts from time to time drawn under any of the Letters of Credit.

C. Pursuant to the Loan Agreement, Grantor has executed and delivered Grantor's Fourth Amended and Restated Revolving Credit Note dated June 27, 1997, payable to the order of Comerica, as agent for the Banks and for any and all other commercial, financial and banking institutions which from time to time are parties to the Loan Agreement (such other institutions being hereinafter collectively referred to as the "**Other Institutions**"), in the principal amount of One Hundred Ten Million Dollars (\$110,000,000), or so much thereof as shall have been advanced by any of the Banks or any of the Other Institutions and shall be outstanding thereunder. Said Note, as amended, extended, renewed, consolidated, increased in amount or otherwise modified from time to time, together with any and all promissory notes that may be given from time to time in substitution or replacement therefor, is hereinafter referred to as the "**Bank Note**." The Bank Note evidences advances and readvances made from time to time pursuant to the Loan Agreement, including amounts from time to time drawn under any of the Letters of Credit. The Bank Note bears interest and is payable as set forth therein and in the Loan Agreement and matures on December 23, 1998 (unless such maturity shall be extended or unless such maturity shall be accelerated pursuant to the terms of the Loan Agreement or the terms of the Bank Note), all as more particularly provided in the Loan Agreement and the Bank Note.

D. Grantor and the Term Note Purchasers have entered into certain Note Purchase Agreements dated as of January 31, 1997 (as amended from time to time, together with any and all replacements and substitutions therefor, the "**Note Agreements**"), pursuant to which the Term Note Purchasers have agreed, subject to the terms and conditions contained in their respective Note Agreements, to purchase one or more of Grantor's 8.06% Series A Senior Secured Guaranteed Notes Due January 31, 2000, in the aggregate stated principal amount of Twelve Million Five Hundred Thousand Dollars (\$12,500,000) (the "**Series A Notes**") or one or more of Grantor's 8.30% Series B Senior Secured Guaranteed Notes Due January 31, 2002, in the aggregate stated principal amount of Twenty-Seven Million Five Hundred Thousand Dollars (\$27,500,000) (the "**Series B Notes**"). The Series A Notes and the Series B Notes, as amended, extended, renewed, consolidated, increased in amount or otherwise modified from time to time, together with any and all promissory notes that may be given from time to time in substitution or replacement therefor, are hereinafter collectively referred to as the "**Term Notes**." Each of the Term Notes bears interest, provides for the payment of certain premiums (including a Make-Whole Amount, as such term is defined in the Note Agreements) and other amounts (including late charges, fees, reimbursements, costs, expenses and indemnities) and is payable as set forth therein, with final maturity on the due date thereof specified above (unless such maturity shall be extended or unless such maturity shall be accelerated pursuant to the terms of the Note Agreements or the terms of the Term Notes).

E. As required by the Loan Agreement and the Note Agreements, Grantor has agreed to execute and deliver this Deed of Trust to Trustee for the benefit of Beneficiary, as collateral agent for the Noteholders, as security for the aggregate indebtedness and other obligations from time to time owing by Grantor under each of the Financing Documents (as hereinafter defined) (including the aggregate indebtedness from time to time evidenced by the Bank Note and the aggregate indebtedness from time to time evidenced by each of the Term Notes), whether now existing or hereafter arising and whether consisting of principal, interest, premiums, late charges, fees, reimbursements, costs, expenses, indemnities or any other amounts whatsoever,

howsoever said indebtedness or other obligations may be amended, extended, renewed, consolidated, increased in amount or otherwise modified from time to time (said aggregate present and future indebtedness and other obligations of Grantor being hereinafter referred to as the "**Secured Indebtedness**"), and as security for the keeping, performance and observance of, and compliance with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by Grantor from time to time pursuant to each of the Financing Documents.

ARTICLE I

DEED OF TRUST

Section 1.1. In consideration of the matters described in the foregoing Recitals and in order to secure the obligations described in this Deed of Trust, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby expressly acknowledged by all parties, and for the further consideration of the uses, purposes and trusts hereinafter set forth, Grantor hereby irrevocably grants, bargains, sells, conveys, transfers, assigns and sets over unto Trustee and Trustee's successors or substitutes in this trust, and unto their respective successors and assigns, the following (collectively, the "**Property**"):

(a) the leasehold or subleasehold estate and all other right, title and interest of Grantor (whether as lessee, sublessee, licensee or any like capacity) in and to the land described in Exhibit A attached hereto and made a part hereof (the "**Land**") and any and all other property under or by virtue of any and all leases, subleases, use, occupancy and similar agreements now or hereafter in effect, as amended, supplemented, extended, renewed or otherwise modified from time to time (collectively, the "**Ground Lease**") (including that certain lease or sublease, a copy of the first page of which is attached hereto as Exhibit C and made a part hereof) (the Land and any other property demised pursuant to the Ground Lease being hereinafter collectively referred to as the "**Demised Premises**");

(b) any and all rights, privileges and benefits to which Grantor is now or hereafter may be entitled under or by virtue of the Ground Lease, including (i) any and all right, title and interest of Grantor in and to (and Grantor's right to collect and receive) any and all security deposits, unearned or prepaid rent, reimbursements, rebates, refunds, damages and claims for damages, including any such claim arising as a result of any rejection or disaffirmance of the Ground Lease by the lessor, sublessor, licensor or other party thereto in a like capacity (collectively, the "**Ground Lessor**") (whether as debtor in possession or otherwise) or by any trustee of the Ground Lessor pursuant to any Insolvency Law (as hereinafter defined), (ii) any and all rights of Grantor to amend, supplement, terminate, cancel, reject, disaffirm, assume or otherwise modify the Ground Lease, to exercise options, to give consents and to release or discharge the Ground Lessor of or from any obligations, and (iii) any and all rights, privileges and benefits of Grantor under any Insolvency Law, including Grantor's right to remain in possession after rejection or disaffirmance of the Ground Lease by the Ground Lessor (whether as debtor in possession or otherwise) or by any trustee of the Ground Lessor (the leasehold estate, right, title and interest described in clause (a) of this Section 1.1 and the rights, privileges and benefits described in this clause (b) being hereinafter collectively referred to as the "**Leasehold Estate**");

(c) all right, title and interest of Grantor, of whatever character (whether vested or contingent, whether now owned or hereafter acquired and whether arising under the

Ground Lease or otherwise) in and to (i) all buildings, structures and improvements now or hereafter situated on the Land (collectively, the "**Building**"), (ii) all leasehold improvements and all fixtures, fittings, machinery, appliances, equipment, apparatus, furnishings and other tangible personal property now or hereafter located in or on, or attached to, and used or intended to be used in connection with the Land or the Building or in connection with the operation thereof (collectively, the "**Equipment**") (the Building and the Equipment being hereinafter collectively referred to as the "**Improvements**"), (iii) all streets, roads, sidewalks, alleys, ways, passages, public places, vaults, water courses, strips and gores adjoining or otherwise providing access to, or used or intended to be used in connection with, the Land or any of the Improvements, and the land lying in the bed thereof, and (iv) all proceeds, products, extensions, additions, improvements, betterments, renewals, substitutions, replacements, accessions, accretions and relictions of and to all or any part of the Land, the Improvements or any of the Property described above;

(d) all easements, rights-of-way, estates, interests, benefits, powers, rights (including lateral support, drainage, slope, riparian, littoral, sewer, water, air, oil, gas, mineral and subsurface rights), privileges, claims, franchises, licenses, profits, tenements, hereditaments, reversions, remainders and appurtenances in any way now or hereafter belonging, relating or appertaining to all or any part of the Land, the Improvements or any of the Property described above;

(e) all right, title and interest of Grantor (whether as lessor, sublessor, licensor or any like capacity) in and to any and all other leases, subleases, use, occupancy and similar agreements now or hereafter relating to all or any part of the Land, the Improvements or any of the Property described above (collectively, the "**Operating Leases**") (including that certain lease, sublease, use, occupancy or other agreement, a copy of the first page of which is attached hereto as Exhibit B and made a part hereof, as amended, renewed or extended from time to time), together with any and all guaranties and security of, for or otherwise relating to any of the Operating Leases, and together with all rents, royalties, issues, profits, revenues, income and other monetary benefits of and from the Land, the Improvements or any of the Property described above, whether now or hereafter payable or accruing (collectively, the "**Rents**"), including all rent and other money now or hereafter payable or accruing under or in connection with any of the Operating Leases, and all rights of Grantor to collect and receive the same; provided, however, that permission is hereby given to Grantor, so long as no Default (as hereinafter defined) shall have occurred, to collect and use the Rents as, but not before, they become due and payable (subject, however, to any separate lockbox, rental collection, cash management or similar agreements relating to the Rents now or hereafter in effect), which permission shall terminate immediately, at Beneficiary's option, upon the occurrence of any Default, without the necessity of any action;

(f) all judgments, settlements, claims, awards, insurance proceeds and other proceeds and compensation, and interest thereon, now or hereafter made or payable in connection with any casualty or other damage to the Land, the Improvements or any of the Property described above, or in connection with any condemnation proceedings affecting the Land, the Improvements or any such Property or any damage to or taking of the Land, the Improvements or any such Property or any rights thereto or any interest therein in connection with any exercise of the power of eminent domain (or any conveyance in lieu of or under threat of any such taking), together with any and all refunds or rebates of, or with respect to, any insurance premiums, utility charges, taxes or other impositions relating to the Land, the Improvements or any such Property and interest thereon, and together with all accounts, accounts receivable, contract rights, general intangibles, actions and rights in action arising from or relating to the Land, the Improvements or any such Property

(including all rights of Grantor in and to unearned or prepaid insurance premiums, utility charges, taxes or other impositions relating thereto, any deposits with respect thereto and any interest thereon); and

(g) all further or greater estate, right, title and interest of Grantor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to the Land, the Improvements or any of the Property described above and any rights or interests appurtenant thereto.

TO HAVE AND TO HOLD the Property, together with the rights, privileges and appurtenances thereto belonging, unto Trustee and Trustee's successors or substitutes in this trust and unto their respective successors and assigns forever, **IN TRUST**, however, upon the terms, provisions and conditions and for the uses set forth in this Deed of Trust.

Section 1.2. For the same good and valuable consideration, Grantor hereby grants to Beneficiary, its successors and assigns, in order to secure the obligations secured by this Deed of Trust, a security interest in the Equipment and all other personal property (whether tangible or intangible) and fixtures described in Section 1.1 of this Deed of Trust, and in any and all other personal property (whether tangible or intangible) and fixtures now or hereafter constituting part of the Property. All references in this Deed of Trust to the lien or security created or evidenced by this Deed of Trust shall be deemed to refer also to the aforesaid security interest. This Deed of Trust, when filed for record in the land records for the County in which the Land is located (the "**Land Records**"), shall be effective as a financing statement filed as a fixture filing with respect to all fixtures described in Section 1.1 of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or any financing statement relating to this Deed of Trust shall be sufficient to be effective as a financing statement. Any failure to file any financing statement relating to this Deed of Trust shall not impair the validity and enforceability of this Deed of Trust (including the aforesaid security interest) in any respect whatsoever.

Section 1.3. Grantor, for itself and its successors and assigns forever, hereby covenants with and warrants to Trustee and Beneficiary, and their respective successors and assigns forever, that (a) Grantor is the sole lessee under the Ground Lease and the sole owner and holder of the Leasehold Estate, (b) the Ground Lease is in full force and effect and has not been replaced, substituted for, amended, supplemented, renewed, extended or otherwise modified (except as heretofore disclosed to Beneficiary, in writing), (c) the Leasehold Estate is a good and valid tenancy and interest in the Demised Premises, terminable only as provided in the Ground Lease or in accordance with the United States Bankruptcy Code, (d) no default or other cause for termination exists under the Ground Lease and no state of facts exists which, with notice or the passage of time, or both, would constitute such a default or cause for termination if not cured or corrected, (e) to the best of Grantor's knowledge and belief, the Ground Lessor is well and lawfully seized and possessed of the Demised Premises as a good indefeasible estate in fee simple, (f) Grantor has good and absolute title to the Equipment and all other parts of the Property constituting personal property (except Equipment owned by any person, other than Grantor, leasing space in the Building and Equipment leased by any such lessee from any person other than Grantor), (g) Grantor has good right, full power and lawful authority, without the joinder or consent of any person, to grant, bargain, sell, convey, transfer, assign and set over the Property in manner and form as written above, and (h) the Property is free and clear of all claims, demands, liens, security interests, charges, encumbrances and exceptions to title, subject, however, to the Permitted Exceptions (as hereinafter defined). Grantor hereby binds itself, and its successors and assigns forever, to **WARRANT** and **DEFEND** the Property unto Trustee and Trustee's successors or substitutes in this trust, and unto their respective successors and assigns forever, against the claims of all persons whomsoever claiming or who may claim the same or any part thereof, subject, however, to the Permitted Exceptions.

Section 1.4. For the same good and valuable consideration, Grantor hereby assigns, transfers and sets over to Beneficiary, its successors and assigns, all of the Rents and all rights of Grantor to collect and receive the same; provided, however, that permission is hereby given to Grantor, so long as no Default shall have occurred, to collect and use the Rents as, but not before, they become due and payable (subject, however, to any separate lockbox, rental collection, cash management or similar agreements relating to the Rents now or hereafter in effect), which permission shall terminate immediately, at Beneficiary's option, upon the occurrence of any Default, without the necessity of any action. The assignment set forth in this Section 1.4 and the assignment set forth in clause (e) of Section 1.1 of this Deed of Trust shall, to the extent permitted by law, constitute an absolute and present assignment of the Rents, subject, however, to the aforesaid conditional permission given to Grantor to collect and use the same. Neither the existence nor the exercise of such conditional permission shall subordinate such assignment to any subsequent assignment by Grantor. Beneficiary is hereby irrevocably authorized and empowered, at its option, (i) to demand, collect, receive and enforce payment of any and all such Rents after the occurrence of any Default, and to give receipts, releases and satisfactions therefor, whether or not Beneficiary shall have taken, or at any time shall take, possession of all or any part of the Land or the Improvements, and (ii) to notify all lessees, licensees, invitees, occupants and other users of all or any part of the Property of Beneficiary's rights under this Section and clause (e) of Section 1.1.

Section 1.5. Beneficiary in any event shall have the right and is hereby authorized and empowered to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein or acting hereunder, without other formality than the appointment and designation of such substitute, or such successor, in a writing executed by Beneficiary. The authority hereby conferred shall extend to the appointment of other substitute and successor trustees successively until the Secured Indebtedness and all other obligations secured by this Deed of Trust shall have been fully, finally and indefeasibly paid and performed, the Noteholders shall have no continuing obligation to make any loans or advancements, issue any Letters of Credit or otherwise extend credit of any kind under any of the Financing Documents and this Deed of Trust shall have been cancelled and released of record. Upon the making of any such appointment and designation, all of the estate and title of the Trustee then acting hereunder in the Property shall vest in the substitute or successor trustee so appointed and designated, and such substitute or successor shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee named herein. Nevertheless, upon Beneficiary's written request, the Trustee ceasing to act shall execute and deliver an instrument transferring to such substitute or successor all of the estate and title of such Trustee in the Property, together with all such rights, powers, privileges, immunities and duties, and shall duly assign, transfer and deliver to such substitute or successor any properties and moneys held by said Trustee under this Deed of Trust. Neither Trustee nor any such substitute or successor shall be required to give bond for the faithful performance of its duties unless required by Beneficiary.

ARTICLE II

SECURED OBLIGATIONS; CERTAIN DEFINED TERMS

Section 2.1. This Deed of Trust is made to secure payment of the Secured Indebtedness and to secure the keeping, performance and observance of, and compliance with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by Grantor from time to time pursuant to each of the Financing Documents. If the Secured Indebtedness shall be fully, finally and indefeasibly paid in accordance with the Financing Documents, and if Grantor shall keep, observe, perform and comply with, or shall cause to be kept, performed, observed and complied with, all of the aforesaid covenants, agreements, conditions and provisions, and if Grantor shall cause any and all other debts, obligations and liabilities secured by this Deed of Trust to be fully, finally and indefeasibly paid and satisfied, and if none of the Noteholders shall then have any continuing obligation to make any loans or advancements, issue any Letters of Credit or otherwise extend credit of any kind under any of the Financing Documents, then this Deed of Trust and the grants, conveyances and assignments herein contained shall be of no further force and effect and shall be cancelled and released by Beneficiary after written request by, and at the expense of, Grantor, but otherwise shall remain in full force and effect.

Section 2.2. As used herein, the following terms have the following meanings:

(a) **"Bank Agent":** Comerica, as agent for the Banks and for the Other Institutions under the Loan Agreement and the Bank Note, and any and all other payees under the Bank Note from time to time in an agency capacity, together with any and all successors to any such agency.

(b) **"Banks":** collectively, Comerica, Compass Bank, a Texas banking association formerly known as Compass Bank-Dallas, First American Bank Texas, SSB, a Texas savings bank, and Guaranty Federal Bank, F.S.B., a federal savings bank.

(c) **"Bank Noteholders":** collectively, (i) Bank Agent, (ii) any person from time to time holding the Bank Note in whole or in part for its own account, (iii) the person or persons for whose benefit the Bank Note shall be held from time to time by Bank Agent or by any other holder from time to time of the Bank Note in an agency capacity (including the Banks and the Other Institutions, each for so long as the Bank Note shall be so held for its benefit), and (iv) any and all other persons from time to time owed any indebtedness or other obligations by Grantor under any of the Loan Documents.

(d) **"Financing Documents":** collectively, the Loan Documents and the Note Purchase Documents.

(e) **"Loan Documents":** collectively, the Bank Note, the Loan Agreement, this Deed of Trust and any and all other documents and instruments evidencing, securing or otherwise governing the responsibilities of Grantor in respect of all or any part of the portion of the Secured Indebtedness evidenced by, arising under or relating to the Loan Agreement or the Bank Note or in respect of the Property or any other security for all or any part of such portion of the Secured Indebtedness, as said documents or instruments may be amended, extended, renewed, consolidated, increased in amount or otherwise modified from time to time.

(f) **"Note Purchase Documents"**: collectively, the Term Notes, the Note Agreements, this Deed of Trust and any and all other documents and instruments evidencing, securing or otherwise governing the responsibilities of Grantor in respect of all or any part of the portion of the Secured Indebtedness evidenced by, arising under or relating to any of the Note Agreements or any of the Term Notes or in respect of the Property or any other security for all or any part of such portion of the Secured Indebtedness, as said documents or instruments may be amended, extended, renewed, consolidated, increased in amount or otherwise modified from time to time.

(g) **"Noteholders"**: collectively, the Bank Noteholders and the Term Noteholders.

(h) **"Term Note Purchasers"**: collectively, Jefferson-Pilot Life Insurance Company, Pacific Mutual Life Insurance Company, Ohio National Life Insurance Company, Reliastar Life Insurance Company, Northern Life Insurance Company, Reliastar Bankers Security Life Insurance Company, Reliastar United Services Life Insurance Company, Alexander Hamilton Life Insurance Company of America and First Alexander Hamilton Life Insurance Company.

(i) **"Term Noteholders"**: collectively, the holder or holders from time to time of any of the Term Notes.

Section 2.3. The principal balance of the indebtedness from time to time outstanding under the Bank Note, the amount of any Letters of Credit from time to time issued and outstanding under the Loan Agreement and the principal balance of the indebtedness from time to time outstanding as a result of drawings under any Letters of Credit may, in the aggregate, be reduced from time to time (including reductions to a zero balance) without any such reduction operating to cancel, extinguish, release, satisfy, discharge or otherwise impair the lien and security created or evidenced by this Deed of Trust or the portion thereof relating to the Facility and to such obligations. This Deed of Trust and such lien and security, and the portion thereof relating to the Facility and to such obligations, shall remain in full force and effect, without loss of priority, as to any future advances and extensions of credit (including Letters of Credit issued and drawings thereunder) made after any such reduction (including any such reduction to a zero balance) until the Secured Indebtedness and all other obligations secured by this Deed of Trust shall have been fully, finally and indefeasibly paid and performed, the Noteholders shall have no continuing obligation to make any loans or advancements, issue any Letters of Credit or otherwise extend credit of any kind under any of the Financing Documents and this Deed of Trust shall have been cancelled and released of record. Grantor waives the benefit of any applicable law having a contrary effect.

Section 2.4. Each and every loan, future advance and other extension of credit made under the Loan Agreement or any of the other Financing Documents shall be secured by this Deed of Trust equally with, and with the same priority as, the proceeds initially advanced in respect of the Secured Indebtedness.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF GRANTOR

Section 3.1. Without limiting the representations and warranties set forth in any of the other Financing Documents, Grantor further represents and warrants to Trustee, Beneficiary and the Noteholders that:

(a) Grantor is the lawful record owner of the Leasehold Estate, subject only to such easements, rights of way, building lines, restrictions and other matters (if any), which do not and would not reasonably be expected to have a material adverse effect on the value of the Land, the Improvements or any of the Property or the intended use or purpose thereof or on the business or operations of Grantor (the "Permitted Exceptions");

(b) Grantor has good title to the Ground Lease, the Operating Leases and the Rents and good right, full power and lawful authority, without the joinder or consent of any person, to assign the same in manner and form as written above, and that the Ground Lease, the Operating Leases and the Rents are free and clear of all claims, demands, liens, security interests, charges, encumbrances and exceptions to Grantor's title; and

(c) Grantor has not previously sold, assigned, transferred, mortgaged or pledged the Ground Lease or any or all of the Operating Leases or the Rents, whether absolutely, conditionally, collaterally or otherwise.

Section 3.2. Without limiting the covenants and agreements set forth in any of the other Financing Documents, Grantor further covenants and agrees:

(a) to pay the Secured Indebtedness as provided in the Financing Documents;

(b) to perform and comply at all times with all covenants, representations, warranties and other obligations of Grantor under the Operating Leases, and to preserve and maintain the Operating Leases in full force and effect;

(c) without the prior written consent of Beneficiary, not to:

(i) modify or amend any of the Operating Leases; provided, however, that, notwithstanding the preceding provisions of this clause (i), Grantor may (A) reduce or increase the Rents payable under any Operating Lease from time to time so long as such Rents are at no time materially less than the then-prevailing market rate for comparable leases and (B) make such other modifications as are reasonable, are made in good faith and do not and would not reasonably be expected to have a material adverse effect on the value of the Land, the Improvements or the Property or the intended use or purpose thereof or on the business or operations of Grantor; or

(ii) take, or permit or suffer to be taken, any action that would allow or cause a forfeiture or termination of Grantor's interest in and to all or any part of the Property or that would allow or cause to exist upon or against Grantor's interest in or to the Property any claim, demand, lien, security interest, charge, encumbrance or exception to title (other than the Permitted Exceptions);

(d) not to waive, discount, set-off, compromise, or in any manner release or discharge any lessee or other person of and from any obligations, covenants, conditions and agreements by said lessee or other person to be kept, observed and performed under any Operating Lease (including the obligation to pay Rents in the manner and at the place and time specified in such Operating Lease), or in any manner impair the value of the Land, the Improvements or any of the Property or the security of this Deed of Trust; provided, however, that, notwithstanding the preceding provisions of this subparagraph, Grantor may (i) reduce or increase the Rents payable under any Operating Lease from

time to time so long as such Rents are at no time materially less than the then-prevailing market rate for comparable leases and (ii) make such other modifications as are reasonable, are made in good faith and do not and would not reasonably be expected to have a material adverse effect on the value of the Land, the Improvements or any of the Property or its intended use or purpose or on the business or operations of Grantor (it being understood that Grantor's right to do any of the foregoing may also be subject to further limitations pursuant to obligations of Grantor under its partnership agreement or other internal organizational and governance documents);

(e) without the prior written consent of Beneficiary, not to permit or suffer any affiliate of Grantor to be a party to any of the Operating Leases in any event;

(f) to hold any Rents collected or received by Grantor in trust for the use and benefit of Beneficiary, subject, however, to the conditional permission given to Grantor to collect and use the same as provided in clause (e) of Section 1.1 of this Deed of Trust;

(g) not to receive or collect any Rents more than one month in advance of the due date thereof;

(h) comply with all applicable restrictive covenants, zoning ordinances, building codes, applicable health and environmental laws and regulations, including the Americans With Disabilities Act of 1990, as amended; and

(i) timely perform all of its obligations under the Permitted Exceptions.

Section 3.3. To the extent that Grantor has the power and authority to bind the lessee or any other party under any of the Operating Leases, Grantor hereby agrees on behalf of each such lessee or other party that the foregoing covenants and agreements shall be binding on such lessee or other party and that any modification, amendment or other change whatsoever to such Operating Lease in violation of these covenants and agreements shall be ineffective and void as to Beneficiary.

Section 3.4. Grantor hereby irrevocably authorizes and directs, and further covenants and agrees at all times to irrevocably authorize and direct, all lessees and other parties under the Operating Leases to pay the Rents directly to Beneficiary, upon Beneficiary's request, without further direction or consent, at such address as Beneficiary may specify from time to time.

Section 3.5.

(a) Grantor shall at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Grantor from time to time pursuant to the Ground Lease, and Grantor shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, would impair or tend to impair the rights of Grantor under the Ground Lease or would be grounds for the Ground Lessor to terminate the Ground Lease or declare a forfeiture of the Leasehold Estate, in whole or in part.

(b) Grantor shall give Beneficiary immediate notice of any default under the Ground Lease or of the receipt by Grantor of any notice of default from the Ground Lessor. Beneficiary, at its option, may take any action from time to time deemed necessary or desirable by Beneficiary to prevent or cure, in whole or in part, any default by Grantor under the Ground Lease. Grantor shall give Beneficiary immediate notice of the commencement of any action or

proceeding seeking eviction of Grantor from all or any part of the Demised Premises or seeking termination of the Ground Lease, damages in connection with any default under the Ground Lease or any other right or remedy that would impair or tend to impair the value of the Leasehold Estate or Grantor's continued ownership of the Leasehold Estate. Grantor shall give Beneficiary immediate notice of the commencement of any arbitration or appraisal proceeding or procedure under the Ground Lease. Grantor shall, promptly after obtaining knowledge thereof, give written notice to Beneficiary of any actual or contemplated filing by or against the Ground Lessor of a petition under any Insolvency Law, and use its best efforts to give prompt oral notice to Beneficiary of any such actual or contemplated filing. Grantor shall keep Beneficiary fully and promptly informed concerning the progress of each such action, proceeding or procedure and of each proceeding resulting from any such filing.

(c) Grantor shall not modify, change, supplement, alter or amend the Ground Lease in any respect, either orally or in writing, and shall not waive, excuse, condone or in any way release or discharge the Ground Lessor of or from the obligations, covenants, conditions and agreements by the Ground Lessor to be kept, performed, observed or complied with thereunder; provided, however, that Grantor may take any of the foregoing actions from time to time so long as (i) no Default shall then exist, (ii) the rent payable under the Ground Lease shall not be increased as a result of any such action, (iii) each such action shall be reasonable, shall be taken in good faith and shall be taken on an arms' length basis or (if not on an arms' length basis) shall have results reasonably equivalent to those that would reasonably be expected to follow an arms' length transaction, and (iv) such action shall not impair or otherwise adversely affect the lien and security of this Deed of Trust or the value of the Land, the Improvements or any of the Property, the intended use or purpose thereof or the business or operations of Grantor. Grantor shall not terminate, cancel, reject, disaffirm, sever or surrender, or permit or suffer the termination, cancellation, rejection, disaffirmance, severance or surrender of, the Ground Lease or the Leasehold Estate, and Grantor shall not, without Beneficiary's prior written consent, exercise any right to do so under any applicable federal or state law relating to bankruptcy, reorganization, arrangement, composition, readjustment, liquidation, dissolution, conservatorship, receivership, insolvency or other relief for debtors, whether now in effect or hereafter enacted (any such present or future law being sometimes herein referred to as an "Insolvency Law").

ARTICLE IV

RESPECTING DEFAULTS AND REMEDIES OF BENEFICIARY

Section 4.1. The term "Default", as used herein, means the occurrence of a default or an event of default (as such terms, or any capitalized variations of such terms, are defined in any of the Financing Documents), as well as any failure of Grantor punctually and properly to keep, perform, observe or comply with, or to cause to be kept, performed, observed or complied with, any covenant, agreement, condition or other provision required to be kept, performed, observed or complied with by or on behalf of Grantor from time to time pursuant to this Deed of Trust or any of the other Financing Documents.

Section 4.2. At any time during the continuance of any Default, Beneficiary may, at Beneficiary's option, to the extent permitted by law, (i) take any one or more of the actions and exercise and enforce any one or more of the rights and remedies provided in this Deed of Trust or in any of the other Financing Documents, or (ii) pursue any other right, power or remedy available to Beneficiary, at law or in equity. Beneficiary may take such actions and exercise and enforce such rights and remedies, at Beneficiary's option, separately or concurrently and in such order as Beneficiary may desire, either with or without entry in or on or taking possession of all or any part of the Land, the Improvements or any of the Property and whether or not all or any part of the Secured Indebtedness shall have been declared to be immediately due and payable or shall

otherwise be due and payable.

Section 4.3. Without limiting the foregoing, at any time during the continuance of any Default, Beneficiary may, at its option, proceed by any appropriate judicial or non-judicial action or proceeding to (i) foreclose this Deed of Trust as a mortgage, or (ii) exercise the power of sale hereinafter described and sell or cause the sale of the Property, as an entirety or in separate portions, pursuant to such exercise. Any person (including Grantor, Trustee, Beneficiary or any of the Noteholders) may bid and purchase at any foreclosure sale or at any sale pursuant to any exercise of the aforesaid power of sale. Any such foreclosure or sale may, to the extent permitted by law, be pursued for any part of the Secured Indebtedness then due and payable, subject to the continuing encumbrance of this Deed of Trust as security for the balance of the Secured Indebtedness not then due and payable. One or more exercises of the powers herein granted shall not extinguish or exhaust any such power unless and until the entire Property has been sold or this Deed of Trust is required to be cancelled and released of record. It is agreed that in the event a foreclosure hereunder should be commenced by Trustee or his substitute or successor, Beneficiary may at any time before the sale of the Property direct the Trustee to abandon the sale, and may then institute a suit for the collection of the Secured Indebtedness and for the foreclosure of this Deed of Trust; and it is further agreed that if Beneficiary should institute a suit for the collection of the Secured Indebtedness and for the foreclosure of this Deed of Trust, Beneficiary may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee, his substitute or successor to sell the Property in accordance with the provisions of this Deed of Trust. If Beneficiary or Trustee shall exercise any right, power or remedy available under any of the Financing Documents or under applicable law, (whether by exercise of the power of sale or otherwise), and if such exercise and any related proceedings shall be discontinued or abandoned for any reason, or if any such proceedings shall result in a final determination adverse to Beneficiary or Trustee, then, to the extent permitted by law, Grantor, Beneficiary, Trustee and the Noteholders shall be restored to their respective former positions and to their respective rights, powers and remedies under the Financing Documents, and all rights, powers and remedies of Beneficiary, Trustee and the Noteholders shall continue to be available as if no such exercise and no such proceedings had occurred.

Section 4.4. Without limiting the foregoing, at any time during the continuance of any Default, Trustee is authorized and empowered and it shall be Trustee's special duty, at the request of Beneficiary, to enforce this trust and, after advertising the time, place and terms of sale and mailing, filing and posting notices as required by applicable law, sell the Property (either as an entirety or in separate lots or parcels or items as Trustee may deem expedient) at public auction in accordance with applicable laws, beginning within three hours of the time stated in such notices on the first Tuesday in any month between the hours of ten o'clock a.m. and four o'clock p.m., to the highest bidder for cash. After each such sale, Trustee shall deliver to such purchaser or purchasers thereof good and sufficient conveyances of the Property so sold, with general warranty of title binding Grantor and its successors and assigns. Grantor hereby covenants to warrant and defend the title of such purchaser or purchasers. The recitals in each such conveyance of any matters or facts shall be full and conclusive evidence of the truthfulness of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against Grantor, its successors and assigns. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

Section 4.5. Upon any such public sale pursuant to the aforementioned power of sale or pursuant to any foreclosure, after deducting all costs, fees and expenses incident to such sale

(including costs of advertising the sale and making the conveyance and including a reasonable commission to Trustee in an amount not to exceed five percent (5%) of the proceeds of such sale, which commission shall be payable in addition to attorneys' fees provided for in any of the Financing Documents), Trustee shall apply the proceeds of such sale first to payment of the then-outstanding Secured Indebtedness and any other sums secured hereby (including attorneys' fees), then to pay all sums expended under the terms hereof, not then repaid, with accrued interest at the highest rate from time to time in effect under the Bank Note or the Term Notes, and finally, any surplus then remaining shall be paid over to the person or persons legally entitled thereto. Upon any such sale, Beneficiary may (if permitted by applicable law, and after allowing for costs and expenses of the sale), in paying the purchase price and to the extent thereof, apply all or any part of the Secured Indebtedness then due, in lieu of cash, to the amount payable in respect of the Secured Indebtedness upon distribution of the net proceeds of such sale. Upon any such public sale, Grantor, its successors and assigns and any and all other persons claiming any interest in the Property by, through or under Grantor, shall forthwith surrender and deliver possession of the Land, the Improvements and the Property so sold to the purchaser or purchasers at such public sale. In the event of any failure by Grantor, its successors or assigns or any such other person, to do so, they shall thereupon become and be tenants at will of such purchaser or purchasers, and, in the event of their failure to surrender possession of the Land, the Improvements and the Property so sold upon demand, such purchaser or purchasers, and their respective successors and assigns, shall be entitled to institute and maintain an action for forcible detainer thereof in the Justice of the Peace Court in the Justice Precinct in which the Land is situated.

Section 4.6. Without limiting the foregoing, at any time during the continuance of any Default, Beneficiary, to the extent permitted by law and without regard to the value or adequacy of the Property or any other security for the Secured Indebtedness or the solvency of Grantor, shall be entitled as a matter of right and without notice, if it so elects, to the appointment of a receiver to enter upon and take possession of the Land, the Improvements or any of the Property, collect the Rents and apply the Rents so collected as the court making such appointment may direct or as otherwise permitted by law. Grantor hereby specifically and irrevocably consents to such appointment and waives notice of any motion or application therefor. The receiver shall have all rights and powers permitted under law and such other rights and powers as the court making such appointment shall confer. The receiver shall be liable to account only for Rents actually received by the receiver.

Section 4.7. Without limiting the foregoing, at any time during the continuance of any Default, Beneficiary, to the extent permitted by law and without regard to the value or adequacy of the Property or any other security for the Secured Indebtedness or the solvency of Grantor, shall have the right, power and authority, if it so elects, with or without taking possession of all or any part of the Land, the Improvements or any of the Property, in Beneficiary's own name or in the name of Trustee or otherwise, to demand, collect, receive, sue for, attach and levy all or any part of the Rents, to give proper receipts, releases and acquittances therefor and, after deducting all necessary and reasonable expenses of collection (including reasonable attorneys' fees), apply the net proceeds thereof, together with any funds of Grantor or any other person deposited with Beneficiary, toward payment of the Secured Indebtedness, in such order and priority as Beneficiary may determine. Collection and application of all or any part of the Rents as contemplated in this Section shall not cure or waive any Default, waive, modify or affect any notice of Default or any other notice under the terms of this Deed of Trust or any of the other Financing Documents or invalidate any act done pursuant to any such notice, and any exercise of Beneficiary's right to collect and apply Rents shall continue for so long as Beneficiary shall elect, notwithstanding that such collection and application of Rents may have cured for a time the original Default. If, after exercising rights under this Section, Beneficiary shall thereafter elect to discontinue the exercise of such right, the same or any other right under this Section may be

reasserted at any time and from time to time following any subsequent Default.

Section 4.8. Neither Trustee, Beneficiary nor any of the Noteholders shall be obligated to perform or discharge any obligation, duty or liability under any of the Operating Leases or under or by reason of this Deed of Trust or any of the other Financing Documents. Grantor shall, and does hereby agree to, defend and indemnify Trustee, Beneficiary and the Noteholders, and hold each of them harmless, from and against (i) any and all liability, loss or damage that may or might be incurred by any or all of them under any of the Operating Leases or under or by reason of this Deed of Trust or any of the other Financing Documents or in any manner related to the Land, the Improvements or any of the Property or the use thereof or to the operation of any enterprise on or related thereto, and (ii) any and all claims and demands whatsoever that may or might be asserted against any or all of them by reason of any alleged obligations or undertakings on its or their part to perform or discharge any of the terms, covenants or agreements contained in any of the Operating Leases or under or by reason of this Deed of Trust or any of the other Financing Documents. This Deed of Trust shall not operate to place responsibility upon Trustee, Beneficiary or the Noteholders, or any of them, for the control, care, management or repair of the Land, the Improvements or any of the Property or for the carrying out of any of the terms and conditions of the Ground Lease or any of the Operating Leases; nor shall this Deed of Trust operate to make Trustee, Beneficiary or the Noteholders, or any of them, responsible or liable for any act or omission by any lessee or other party under any of the Operating Leases or by Grantor, or for any waste committed on the Land, the Improvements or any of the Property by any such lessee or by Grantor or any other person, or for any dangerous, defective or illegal condition of or on the Land, the Improvements or any of the Property, or for any negligence in the operation, management, upkeep, repair or control of the Land, the Improvements or any of the Property resulting in loss, injury or death to any lessee, licensee, invitee, occupant, user, employee, stranger or other person, and Grantor shall, and does hereby agree to, defend and indemnify Trustee, Beneficiary and the Noteholders, and hold each of them harmless, from and against the same.

ARTICLE V

MISCELLANEOUS

Section 5.1. To the extent any covenant, agreement, condition or other provision of this Deed of Trust is irreconcilably inconsistent with any covenant, agreement, condition or other provision of the Loan Agreement or any of the Note Agreements, such inconsistent provision of the Loan Agreement or such Note Agreement, as the case may be, shall control only as between Grantor and each party to the Loan Agreement or such Note Agreement, as the case may be, but not any person which is not a party thereto. All covenants, agreements conditions and other provisions of this Deed of Trust shall run with the Land and shall bind and inure to the benefit of Grantor, Trustee, Beneficiary, the Noteholders and their respective successors and assigns, whether so expressed or not.

Section 5.2. Grantor agrees, to the extent permitted by law, that neither Grantor nor any person at any time claiming through or under Grantor or who hereafter may otherwise acquire any interest in or title to all or any part of the Property or any other security for the Secured Indebtedness shall set up, claim or seek to take advantage of any law now or hereafter in force pertaining to the rights of sureties or providing for any appraisal, valuation, stay, notice of election to accelerate maturity or to declare the Secured Indebtedness due, extension, redemption, moratorium, homestead or exemption from execution or sale, in order to prevent or hinder the foreclosure of this Deed of Trust during the continuance of any Default, the final and absolute sale of all or any part of the Property or the final and absolute putting into possession thereof, immediately after any such sale, of the purchaser or purchasers at such sale or the enforcement of any other rights or remedies of Beneficiary or any of the Noteholders under this

Deed of Trust or under any of the other Financing Documents. Grantor, for itself and for any and all persons who may at any time claim through or under Grantor or who hereafter may otherwise acquire any interest in or title to all or any part of the Property or any other security for the Secured Indebtedness, hereby irrevocably waives and releases, to the extent permitted by law, all benefit of any and all such laws, any and all rights of redemption from sale pursuant to any judgment, order or decree of foreclosure of this Deed of Trust or any power of sale now or hereafter available to Beneficiary under applicable law, and any and all right to have the assets constituting the Property or any other security for the Secured Indebtedness marshalled upon any foreclosure or other enforcement of this Deed of Trust. Neither Beneficiary nor any of the Noteholders shall be required to accept the Property, any part or parts thereof or any other security for the Secured Indebtedness in satisfaction of all or any part of the Secured Indebtedness. Neither Beneficiary nor any of the Noteholders shall be required to accept any apportionment of the Secured Indebtedness to or among any part or parts of the Property or any other security for the Secured Indebtedness. If any law now in force of which Grantor might take advantage despite this Section shall be repealed or shall cease to be in force after the date hereof, then such law shall not thereafter be deemed to preclude the application of this Section.

Section 5.3. If any covenant, agreement, condition or other provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Deed of Trust, the legality, validity, and enforceability of the remaining covenants, agreements, conditions and other provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable covenant, agreement, condition or other provision there shall be added automatically as a part of this Deed of Trust a covenant, agreement, condition or other provision as similar in terms to such illegal, invalid, or unenforceable covenant, agreement, condition or other provision as may be possible as well as being legal, valid and enforceable. If the rights, liens, security title and security interests created or evidenced by this Deed of Trust shall be invalid or unenforceable as to any part of the Secured Indebtedness, then the unsecured portion of the Secured Indebtedness shall be completely paid prior to the payment of the remaining and secured portion of the Secured Indebtedness, and all payments made on the Secured Indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Indebtedness.

Section 5.4. Whenever this Deed of Trust requires or permits any consent, approval, notice (except for notices required in connection with any exercise of the power of sale provided above or any notice of any foreclosure, all of which shall be given in the manner required by law), request, or demand from one party to another, the consent, approval, notice, request, or demand must be in writing to be effective and shall be deemed to have been given when sent or delivered in accordance with the provisions of the Agency Agreement.

Section 5.5. The substantive laws of the State in which the Land is located and of The United States of America shall govern the validity, construction, enforcement and interpretation of this Deed of Trust, to the extent required by principles of conflicts of laws recognized in such State or in The United States of America; otherwise, the laws of the State of New York shall govern.

Section 5.6. Time is of the essence of this Deed of Trust.

Section 5.7. Nothing contained in this Deed of Trust or any of the other Financing Documents, or any other security or guaranty documents or instruments, and no acts of the parties hereto, shall be construed to create a relationship of principal and agent, partnership, or joint venture between or among Grantor, Trustee, Beneficiary and the Noteholders, or any of them (except for the agency relationships expressly established pursuant thereto).

Section 5.8. Each reference in this Deed of Trust to any gender shall be deemed also to

include any other gender, and the use in this Deed of Trust of the singular shall be deemed also to include the plural and vice versa, unless the context clearly requires otherwise. As used in this Deed of Trust, the term "**person**" means any and all individuals, sole proprietorships, partnerships, joint ventures, associations, trusts, estates, business trusts, limited liability companies, corporations (non-profit or otherwise), financial institutions, governments (and agencies, instrumentalities and political subdivisions thereof), and other entities, authorities and organizations of every type. As used in this Deed of Trust, unless the context clearly requires otherwise, (i) the words "herein," "hereof," "hereunder," "hereinafter" and "hereto" and words of similar import shall be deemed to refer to this Deed of Trust as a whole and not to any particular Article, Section, subsection, paragraph, subparagraph, Exhibit or Schedule, and (ii) the words "include" and "including" shall be deemed to be followed by the words "but not limited to."

Section 5.9. In no event, whether as a result of alleged negligence on the part of Trustee, Beneficiary, any of the Noteholders or any of their respective agents, representatives or employees, or otherwise, shall Trustee, Beneficiary or any of the Noteholders be liable to Grantor for any loss of profits or revenue, business interruption, cost of capital, loss of use, claims of Grantor's customers or any other such special, indirect or consequential damages or claims arising out of or in any way connected with this Deed of Trust.

Section 5.10. Grantor and certain affiliates of Grantor have heretofore executed and delivered, and will hereafter execute and deliver, to or for the benefit of Beneficiary certain other mortgages, deeds of trust and other documents and instruments encumbering certain other property of Grantor and such affiliates located in various States of The United States of America as additional security for the Secured Indebtedness or for the obligations of such affiliates under certain guaranties of the Secured Indebtedness. The holder of any such security or any such guaranty, whether acting as a fiduciary or otherwise, may foreclose or otherwise enforce such security or such guaranty or otherwise enforce its rights, powers and remedies with respect to, and realize upon, such security or guaranty, either before or concurrently with or after a foreclosure or other enforcement of this Deed of Trust, any other such security or guaranty or any of the other Financing Documents (whether or not every aspect of any such foreclosure or other enforcement may be commercially reasonable), all without impairing or being deemed to have waived any rights, benefits, liens or security evidenced by or arising under or in connection with this Deed of Trust, any other such security or guaranty or any of the other Financing Documents, and without being deemed to have made an election thereby or to have accepted the benefits of such security or guaranty (or the proceeds thereof) in full settlement of the Secured Indebtedness and of its rights with respect thereto. No judgment, order or decree rendered against Grantor with respect to any such other security or guaranty or any of the other Financing Documents, whether rendered in the State in which the Land is situated or elsewhere, shall in any manner affect the security of this Deed of Trust, and any deficiency or other debt represented by any such judgment, order or decree shall, to the extent permitted by law, be secured by this Deed of Trust to the same extent that the Secured Indebtedness shall have been secured by this Deed of Trust prior to the rendering of such judgment, order or decree. Grantor, for itself and for any and all persons who may at any time claim through or under Grantor or who hereafter may otherwise acquire any interest in or title to all or any part of the Property or any other security for the Secured Indebtedness, hereby irrevocably waives and releases, to the extent permitted by law, all benefit of any and all laws that would limit or prohibit the effectiveness of anything set forth in this Section.

Section 5.11. If all or any part of any payment on account of the Secured Indebtedness shall be invalidated, set aside, declared or found to be void or voidable or required to be repaid to Grantor or to any trustee, custodian, receiver, conservator, master, liquidator or other person pursuant to any present or future law relating to bankruptcy, reorganization, arrangement, composition, readjustment, liquidation, dissolution or insolvency or pursuant to any common law

or equitable cause, then, to the extent of such invalidation, set aside, voidness, voidability or required repayment, neither the Secured Indebtedness nor the lien or security of this Deed of Trust shall be deemed to have been paid, cancelled, extinguished, released, satisfied or discharged, and, to the extent of such invalidation, set aside, voidness, voidability or required repayment, the Secured Indebtedness and the lien and security of this Deed of Trust shall be immediately and automatically revived without the necessity of any action by Grantor, Trustee, Beneficiary or any of the Noteholders, and the lien and security of this Deed of Trust shall continue in full force and effect thereafter in accordance with the terms hereof.

Section 5.12. This Deed of Trust may be executed in one or more identical counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same Deed of Trust. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE(S) FOLLOW

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the day and year first above written.

**U.S. RESTAURANT PROPERTIES
OPERATING L.P.**

By: USRP MANAGING, INC.
Its General Partner

By: 
Fred H. Margolin/Vice President

STATE OF TEXAS

)
) ss.

COUNTY OF DALLAS

)

Before me, JENNIFER HICKS, Notary Public in and for said State and County, on this day personally appeared FRED H. MARGOLIN, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the VICE PRESIDENT of USRP MANAGING, INC., a Delaware corporation, the general partner of U.S. RESTAURANT PROPERTIES OPERATING L.P., a Delaware limited partnership, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation and said limited partnership.

Given under my hand and official seal this 12 day of December, 1997.


Notary Public, State of Texas



SIGNATURE PAGE TO DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT BY U.S. RESTAURANT PROPERTIES OPERATING L.P. FOR THE BENEFIT OF COMERICA BANK-TEXAS, AS COLLATERAL AGENT

EXHIBIT A

41820

#3645

PROPERTY DESCRIPTION

A parcel of land lying in the Northwest Quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian in the County of Klamath, State of Oregon, being more particularly described as follows:

Starting at the northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian; thence South 0°00'30" East along the westerly boundary of Section 3 and the centerline of Washburn Way 917.42 feet to its intersection with the centerline of South Sixth Street, formerly known as The Dalles-California Highway, at Engineer's Station 9+17.42 on Washburn Way and Engineer's Station 16+14.87 on South Sixth Street, the recorded bearing of the centerline of South Sixth Street being South 55°52'30" East; thence continuing South 0°00'30" East along the west line of said Section 3 and the centerline of Washburn Way, 48.32 feet to a point on the south boundary of South Sixth Street which is 40.0 feet distant from, when measured at right angles to, the centerline of South Sixth Street; thence South 55°52'30" East parallel to said centerline 125.56 feet to the true point of beginning of this description; thence continuing South 55°52'30" East parallel to said centerline 181.50 feet to a point; thence South 34°07'30" West at right angles to said centerline, 160.00 feet to a point; thence North 55°52'30" West 150.27 feet to a point on the easterly boundary of Washburn Way; thence North 0°00'30" West along the easterly boundary of Washburn Way 103.29 feet to the beginning of a 49.00 foot radius curve to the right; thence along said 49.00 foot radius curve, the long chord of which bears North 53°51'50" East 79.16 feet, 92.14 feet, more or less, to the true point of beginning;

EXCEPTING THEREFROM any portion lying within the right of way of South Sixth Street and any portion lying within the right of way of Washburn Way.
Containing 30,957 square feet, 0.71 Acres.

LEASE OR
SUBLEASE AGREEMENT

THIS AGREEMENT (the "Lease"), is made this 25th day of March, 1983 (the "lease date"), by and between BURGER KING LIMITED PARTNERSHIP I, a New York limited partnership with its principal offices located at Two World Trade Center, 105th Floor, New York, New York 10048 ("Lessor"), and JOHN V. RACHOR and SUSAN L. RACHOR ("Lessee"), whose address is 1881 Crater Lake Highway, Medford, Oregon 97501. (The terms "Lessor" and "Lessee" shall mean respectively "Sublessor" and "Sublessee" whenever the context requires or permits it.)

In consideration of the covenants contained in this Agreement, the parties agree as follows:

I.
PROPERTY LEASED

§1.1 DEMISE. Lessor leases to Lessee and Lessee leases from Lessor the following property (the "land") along with the Burger King Restaurant (the "building") and other improvements to be constructed on it (collectively called "the premises").

Legal Description: See Exhibit "A" attached hereto and made a part hereof.

Commonly described as: Burger King Restaurant #3645
2710 S. 6th Street
Klamath Falls, Oregon

subject to conditions and restrictions of record, if any.

§1.2 ERECTION OF BUILDING. Commencement of this Lease is conditioned on the completion of the building in accordance with plans and specifications prepared by Lessor's architect. Lessor has agreed to construct or contract for the construction of the building promptly and to complete or contract to complete it as promptly as conditions will permit, but in any event before one hundred eighty (180) days from the lease date; provided, however, that this period shall be extended by any time lost in construction due to delays caused by strike, lockout, acts of God, shortage of materials, or other conditions beyond the control of Lessor. In the event the building is not completed within one (1) year from the date of this Lease, this Lease may be terminated, prior to completion, at the option of either party, on fifteen (15) days' notice to the other party.

§1.3 COVENANT OF QUIET ENJOYMENT. The Lessor promises, subject to Lessee's performance of all of the terms and conditions of the Lease, that Lessee shall be entitled to the quiet and peaceful enjoyment and undisturbed possession of the premises for the term of this Lease.

II.
TERM

§2.1 TERM. The term of this Lease (the "term") shall commence upon the earliest of the following dates (the "commencement date"):

(a) the date 10 days following date of the issuance of a Certificate of Occupancy for the premises by appropriate governmental authorities; or

RS - BKLPI
12/15/82 - 5th Draft
#3645
JKT - 2/28/83

SUBLEASE

AGREEMENT OF SUBLEASE ("Sublease") dated as of the 3rd day of January, 1983, between BURGER KING CORPORATION, a Florida corporation with an office at 7360 North Kendall Drive, Miami, Florida 33156 ("Landlord") and BURGER KING LIMITED PARTNERSHIP I, a New York limited partnership with an office at Two World Trade Center, New York, New York 10048 ("Tenant").

W I T N E S S E T H :

1. Landlord hereby sublets to Tenant and Tenant hereby hires from Landlord certain premises (the "Sublease Premises") located at Klamath Falls, Oregon, and more particularly described in Exhibit "A". The term of this Sublease shall commence on the commencement date under the Overlease (as hereinafter defined) (the "Commencement Date") and shall end on the last day of the calendar month in which the tenth anniversary of the Commencement Date occurs, unless the term of the Overlease shall end earlier, in which case the term hereof shall end on the day preceding the expiration date of the Overlease. Tenant shall have the right to extend this lease for two (2) successive terms of five (or approximately five) years each, as follows: one term of five years commencing upon the expiration date of the original term; one term of approximately five years commencing upon the expiration date of the first extension term and expiring upon the expiration of the original term of the Overlease; and then four (4) terms of five years each coincident with the extension terms under Article III(b) of the Overlease. The right so to extend must be exercised by notice in writing given at least 120 days prior to the expiration date of the then current term. The fixed rent payable during the original and all extension terms shall be

BKLP - RS - 10/19/82
4th Draft
#3645 - Klamath Falls, OR
PAH - 1/10/83

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Amerititle the 23rd day
of December A.D., 19 97 at 3:48 o'clock P M., and duly recorded in Vol. M97
of Mortgages on Page 41802.

FEE \$110.00

By Bernetha G. Letsch, County Clerk
Kathleen Rosen