

maie: Nexsen Pruet Jacobs + Pollard

212 S. Tryon St Ste 1706

Charlotte NC 28281

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BK1868 P3709

ASSIGNMENT OF LESSOR'S INTEREST IN LEASE



THIS ASSIGNMENT, made this 10th day of August, 1995, by T & M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company (herein called "Assignor"), FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association (herein called "Assignee"),

WITNESSETH:

FOR VALUE RECEIVED, Assignor hereby grants, transfers and assigns to the Assignee all of the right, title and interest of Assignor in and to that certain Lease or all those Leases, now existing or hereafter entered into, with modifications, if any, described in Schedule A hereof, covering premises in Forsyth County, State of North Carolina, described on Exhibit A attached hereto; TOGETHER WITH ANY OR ALL EXTENSIONS AND RENEWALS THEREOF AND ALSO TOGETHER WITH ANY AND ALL GUARANTEES OF THE LESSEE'S OBLIGATIONS UNDER ANY THEREOF AND UNDER ANY AND ALL EXTENSIONS AND RENEWALS THEREOF. Each of said leases together with any guarantees, modifications, extensions, and renewals thereof is hereinafter referred to as the "Lease."

This assignment is made for the purpose of securing:

A. The payment of the principal sum, interest and indebtedness evidenced by a certain promissory note, and any amendments, extensions or renewals thereof, including the nonrecourse provisions contained therein, in the original principal sum of Six Million Three Hundred Five Thousand and no/100 DOLLARS (\$6,305,000.00) made by Assignor herein to Assignee herein and dated the 10th day of August, 1995, and secured by "mortgage" (it being agreed that the word "mortgage" as used above and as used hereinafter shall be construed to mean "trust deed" or "deed of trust" or "deed to secure debt" or "security deed" if the context so requires, and any amendments, extensions or modifications thereof) on real property referred to in "Schedule A" hereinafter and as in said mortgage more particularly described, reference being hereby made to such description as though herein fully set forth.

B. Payment of all other sums with interest becoming due and payable to the Assignee under the provisions of this assignment or of said note and mortgage.

C. The performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein or in said note and mortgage.

THE ASSIGNOR WARRANTS that the Assignor is the sole owner of the entire lessor's interest in said Lease: that said Lease is valid and enforceable and has not been altered, modified or amended in any manner whatsoever save as herein set forth: that the lessee named therein is not in default under any of the terms, covenants or conditions thereof, that no rent reserved in said Lease has been assigned or anticipated and that no rent for any period subsequent to the date of this assignment has been collected in advance of the time when the same became due under the terms of said Lease.

THE ASSIGNOR COVENANTS with the Assignee to observe and perform all the obligations imposed upon the lessor under said Lease; give prompt notice to the Assignee of any Notice of Default by the Assignor under the Lease received by the Assignor together with a complete copy of any such notice: at the sole cost and expense of the Assignor, enforce, short of termination of the Lease, the performance or observance of each and every covenant and condition of the Lease by the lessee to be performed or observed; and not to do or permit to be done anything to impair the security thereof; not to collect any of the rent, income and profits arising or accruing under said Lease or from the premises described in said mortgage in advance of the time when the same shall become due; not to execute any other assignment of lessor's interest in said Lease or assignment of rents arising or accruing from said Lease or from the premises described in said mortgage; not to subordinate said Lease to any mortgage or any other encumbrance or permit, consent or agree to said subordination without Assignee's prior written consent; not to alter, modify or change the terms of said Lease or give any consent or exercise any option required or permitted by such terms without the prior written consent of Assignee or cancel or terminate said Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises demised thereby or of any interest therein so as to effect directly or indirectly, proximately or remotely a merger of the estates and rights of, or a termination or diminution of the obligations of, lessee thereunder; not to alter, modify or change the terms of any guaranty of said Lease or cancel or terminate such guaranty without the prior written consent of the Assignee; not to consent to any assignment of or subletting under said Lease, whether or not in accordance with its terms, without the prior written consent of the Assignee; at the Assignee's request to assign and transfer to the Assignee any and all subsequent leases upon all or any part of the premises described in said Lease or said mortgage and to execute and deliver at the request of the Assignee all such further assurances and assignments in the premises as the Assignee shall from time to time require.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. So long as there shall exist no default by the Assignor in the payment of the principal sum, interest and indebtedness secured hereby and by said note and mortgage or in the performance of any obligation, covenant or agreement herein or in said note and mortgage or in said Lease contained on the part of the Assignor to be performed beyond any applicable cure periods, the Assignor shall have the right to collect at the time of, but not prior to, the date provided for the payment thereof, all rents, income and profits arising under said Lease or from the premises described therein and to retain, use and enjoy the same.

2. Upon or at any time after default in the payment of the principal sum, interest and indebtedness secured hereby and by said note and mortgage or in the performance of any obligation, covenant or agreement herein or in said note, mortgage or Lease contained on the part of the Assignor to be performed, the Assignee without in any way waiving such default may at its option without notice and without regard to the adequacy of the security for the said principal sum, interest and indebtedness secured hereby and by said note and mortgage, either in person or by agent, with or without bringing any action or proceeding, or by a Receiver appointed by a court, take possession of the premises described in said Lease and/or mortgage and have, hold, manage, lease and operate the same on such terms and for such period of time as the Assignee may deem proper and either with or without taking possession of said premises in its own name, demand, sue for or otherwise collect and receive all rents, income and profits of said premises, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Assignee and to apply such rents, income and profits to the payment of: (a) all expenses of managing the premises, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as the Assignee may deem necessary or desirable and all expenses of operating and maintaining the premises, including, without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which the Assignee may deem necessary or desirable, and the costs of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the premises; and (b) the principal sum, interest and indebtedness secured hereby and by said note and mortgage, together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph numbered "2." as the Assignee in its sole discretion may

determine, any statute, law, custom or use to the contrary notwithstanding. The exercise by the Assignee of the option granted it in this paragraph numbered "2." and the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver of any default by the Assignor under said note or mortgage or under said Lease or this assignment.

3. The Assignee shall not be liable for any loss sustained by the Assignor resulting from the Assignee's failure to let the premises after default or from any other act or omission of the Assignee and managing the premises after default unless such loss is caused by the willful misconduct and bad faith of the Assignee. Nor shall the Assignee be obligated to perform or discharge nor does the Assignee hereby undertake to perform or discharge any obligation, duty or liability under said Lease or under or by reason of this assignment and the Assignor shall, and does hereby agree, to indemnify the Assignee for, and to hold the Assignee harmless from, any and all liability, loss or damage which may or might be incurred under said Lease or under or by reason of this assignment and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Lease. Should the Assignee incur any such liability under said Lease or under or by reason of this assignment or in defense of any such claims or demands, the amount hereof, including costs, expenses and a reasonable attorneys' fees as defined in the Loan Agreement executed in connection herewith, shall be secured hereby and the Assignor shall reimburse the Assignee therefor immediately upon demand and upon the failure of the Assignor to do so the Assignee may, at its option, declare all sums secured hereby and by said note and mortgage immediately due and payable. And it is further understood that this assignment shall not operate to place responsibility for the control, care, management or repair of said premises upon the assignee, nor for the carrying out of any of the terms and conditions of said Lease; nor shall it operate to make the Assignee responsible or liable for any waste committed on the property by the tenants or any other parties, or for any dangerous or defective condition of the premises, or for any negligence in the management, upkeep, repair or control of said premises resulting in loss or injury or death to any tenant, licensee, employee or stranger.

4. The Assignee shall have the right to assign the Assignor's right, title and interest in said Lease to any subsequent holder of said mortgage, subject to the provisions of this instrument, and to assign the same to any person acquiring title to the mortgaged premises through foreclosure or otherwise. After the Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in said premises, no Assignee of the Assignor's interest in said Lease shall be liable to account to the Assignor for the rents, income and profits thereafter accruing.

5. Upon payment in full of the principal sum, interest and indebtedness secured hereby and by said note and mortgage as evidenced by the mortgage being canceled of record in the appropriate register of deeds office, this assignment shall become and be void and of no effect. The Assignor hereby authorizes and directs the lessee named in said Lease or any other or future lessee or occupant of the premises described therein or in said mortgage upon receipt from the Assignee of written notice to the effect that the Assignee is then the holder of said note and mortgage and that a default exists thereunder or under the assignment to pay over to the Assignee all rents, income and profits arising or accruing under said Lease or from the premises described therein or in said mortgage and to continue so to do until otherwise notified by the Assignee.

6. The Assignee may take or release other security for the payment of said principal sum, interest and indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to any of its rights under this assignment.

7. Nothing contained in this assignment and no act done or omitted by the Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by the Assignee of its rights and remedies under said note and mortgage, and this assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Assignee under the terms of said note and mortgage. The right of the Assignee to collect said principal sum, interest and indebtedness and to enforce any other security therefor held by it may be exercised by the Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

8. Assignor hereby assigns any portion of an award payable by reason of condemnation action under the right of eminent domain and directs that such award shall be paid direct to Assignee herein, subject to the terms and conditions of the mortgage executed in connection herewith. The Assignor, as additional security, specifically assigns to the Assignee herein, any purchase proceeds receivable by reason of the lessee's exercising any first refusal option or any option to purchase the property as may be provided in the above referred to Lease, additions, amendments and/or supplements thereto.

9. Notwithstanding anything herein to the contrary Assignor shall be able to modify the Lease or Leases without the consent of Assignee so long as said modification does not change the financial terms of the lease, does not diminish the term of the Lease, does not release tenant from any liability or obligation under Lease, or does not increase the obligation of Landlord under Lease.

In case of any conflict between the terms of this instrument and the terms of the mortgage described above, the terms of the mortgage shall prevail.

THIS ASSIGNMENT, together with the covenants and warranties herein contained, shall return inure to the benefit of the Assignee and any subsequent holder of the said note and mortgage and shall be binding upon the Assignor, his heirs, executors, administrators, successors and assigns and any subsequent owner of the mortgaged premises.

BK1868 P3711

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal, or caused this agreement to be executed by its duly authorized officers, and the corporate seal hereunto affixed this the day first above shown.

[CORPORATE SEAL]
ATTEST
Shannon P. Brown Jr.
ASSISTANT Secretary
L.L.C.

T & H KERNERSVILLE DEVELOPMENT COMPANY, L.L.C. (SEAL)

By: TOPVALCO, INC.

James T. Keller

(SEAL)
President

By: MIDLAND KERNERSVILLE DEVELOPMENT COMPANY,
L.L.C. (SEAL)

By: *[Signature]*

(SEAL)
Administrative Member

ACKNOWLEDGEMENT

(Acknowledgement should be typed hereinafter in the form of individual or corporate acknowledgement as required by the state in which the property is located and the instrument is to be recorded.)

BK1868 P3712

STATE OF OHIO
COUNTY OF HAMILTON

Assistant I. NANCY WHITE, a Notary Public for said County and State, do hereby certify that THOMAS P. O'BRIEN, JR. personally appeared before me this day and acknowledged that he/she is Secretary of Topvalco, Inc., a corporation, authorized member ~~XXXXXX~~ of T & M Kernersville Development Company, L.L.C., a limited liability company, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary, on behalf of the said limited liability company.

Witness my and official stamp or seal, this 4th day of AUGUST, 1995.

Nancy White
Notary Public

My commission expires:

NANCY WHITE
Notary Public, State of Ohio
My Commission Expires Aug. 7, 2000

STATE OF MISSOURI
COUNTY OF ST. LOUIS

I. CHRISTOPHER M. BLANTON, a Notary Public for said County and State, do hereby certify that LEE S. WIELANSKY personally appeared before me this day and acknowledged that he/she is authorized member and manager of Midland Kernersville Development Company, L.C., a limited liability company which is an authorized member ~~XXXXXX~~ of T & M Kernersville Development Company, L.L.C., a limited liability company, and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company as authorized member and manager of said limited liability company.

Witness my and official stamp or seal, this 10th day of AUGUST, 1995.

Christopher M. Blanton
Notary Public

My commission expires:

CHRISTOPHER M BLANTON
NOTARY PUBLIC — NOTARY SEAL
STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 14, 1996

STATE OF NORTH CAROLINA—Forsyth County PRESENTED FOR REGISTRATION

The foregoing (or annexed) certificate of Christopher M. Blanton Notary Public, State of Missouri, is (are) certified to be correct. This the 22 day of Aug, 1995.

John Holleman
Register of Deeds
Forsyth Co.

By Wanda Green Deputy Assistant

Probate and Filing Fee \$ 20

paid
Kathleen

BK1868 P3713

EXHIBIT A
TO ASSIGNMENT OF LESSOR'S INTEREST IN LEASE
BY T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C. (ASSIGNOR)
TO FIRST UNION NATIONAL BANK OF NORTH CAROLINA (ASSIGNEE)

BEING all of Lots 1, 2, 3, 4, 5, 6 and 7 as shown on that certain map consisting of three pages, entitled "Final Plat Kernersville Shopping Center Century Place Boulevard," dated August 7, 1995, and recorded in Plat Book 38, Pages 119, 120 and 121, Forsyth County Registry.

TOGETHER WITH and including all of the right, title and interest of Grantor in and to the non-exclusive easements appurtenant to any or all of said Lots 1, 2, 3, 4, 5, 6 and 7 created in (1) that certain Declaration of Reciprocal Easements and Restrictions recorded in Book 1868, Page 3681, Forsyth County Registry, (2) that certain Deed of Easement recorded in Book 1868, Page 3663, Forsyth County Registry, or (3) that certain map recorded in Plat Book 38, Pages 119, 120, and 121, Forsyth County Registry.

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BK1868 P3714

SCHEDULE A
TO ASSIGNMENT OF LESSOR'S INTEREST IN LEASE
BY T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C. (ASSIGNOR)
TO FIRST UNION NATIONAL BANK OF NORTH CAROLINA (ASSIGNEE)

That certain Lease from T&M Kernersville Development Company,
L.L.C., as Landlord, to The Kroger Co., as Tenant, dated August
10, 1995.

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SCHEDULE A
TO ASSIGNMENT OF LESSOR'S INTEREST IN LEASE
BY T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C. (ASSIGNOR)
TO FIRST UNION NATIONAL BANK OF NORTH CAROLINA (ASSIGNEE)

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