

Maib Nexsen Piret Jacobs & Pollard
212 S. Tryon St Ste 1700
Charlotte NC 28201 107

BK1868 P3716



SUBORDINATION, NON-DISTURBANCE & ATTORNMENMENT AGREEMENT

THIS AGREEMENT, made and entered into this 10th day August 1995, by and between The Kroger Co., an Ohio corporation (hereinafter "Tenant"), T&M Kernersville Development Company, L.L.C., a North Carolina limited liability company (hereinafter "Landlord"), and First Union National Bank of North Carolina (hereinafter "Mortgagee").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a Lease and Lease Agreement, both dated August 10, 1995 (hereinafter collectively referred to as "Lease") whereby Tenant leased from Landlord those certain premises located in the Township of Kernersville, County of Forsyth and State of North Carolina, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "Demised Premises"); and

WHEREAS, Landlord has made, executed and delivered to Mortgagee its Promissory Note and Security Agreement (hereinafter "Note") of even date herewith in the principal amount of Six Million Three Hundred Five Thousand Dollars (\$6,305,000.00) secured by a deed of trust (hereinafter "Mortgage") of and affecting the Demised Premises, of even date with the Note, which Mortgage is filed for record in the Register of Deeds, Forsyth County, North Carolina, in Deed Book 1868 at Page 3702; and

WHEREAS, the Note is additionally secured by an Assignment of Lessor's Interest in Lease (hereinafter "Assignment"), which Assignment is filed for record in the Register of Deeds, Forsyth County, North Carolina, in Deed Book 1868 at Page 3709, whereby the Lease was assigned by Landlord to Mortgagee; and

WHEREAS, Mortgagee is at this date the owner and holder of the Note secured by the Mortgage and Assignment; and

WHEREAS, the parties hereto wish that the Lease be subordinate to the lien of the Mortgage upon the condition that Mortgagee covenants that Tenant's possession of the Demised Premises will not be disturbed upon foreclosure and upon the further condition that Tenant attorn to and recognize as Landlord the Mortgagee.

NOW, THEREFORE, in consideration of the mutual promises contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant, Landlord and Mortgagee, intending to be legally bound, warrant, covenant and agree as follows:

1. Tenant's leasehold interest under the Lease is hereby made subject and subordinate to the lien of the Mortgage and to any renewals, extensions or modifications thereof, regardless of priority of recording, subject to the provisions of this Agreement.

2. Mortgagee covenants that so long as Tenant shall not be in default under the Lease beyond any applicable grace or cure period provided in the Lease:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the Note or other obligation secured thereby; and

(b) Mortgagee will affirmatively recognize the validity of the Lease, all of the Lease terms, including renewal periods; and Tenant's possession of the Demised Premises and Tenant's rights thereto and under the Lease shall not be disturbed, affected or impaired by:

(i) any suit, action or proceeding upon the Mortgage or the note or other obligation secured thereby, or by the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents in the possession of the holder of the Mortgage, or by any judicial sale or execution or other sale of the Demised Premises, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Mortgage or other documents as a matter of law, or

(ii) any default under the Mortgage or the Note or other obligation secured thereby.

3. In the event Mortgagee obtains title to the Demised Premises through foreclosure or deed in lieu of foreclosure under the Mortgage, Tenant and Mortgagee agree to be bound by all of the provisions of the Lease, and Tenant will attorn to Mortgagee, its successors and assigns, to the same extent and with the same effect as if Mortgagee were the original landlord under the Lease, and Mortgagee shall perform all obligations of Landlord under the Lease to the same extent and with the same effect as if Mortgagee were the original Landlord under the Lease; provided, however, that Mortgagee shall not be subject to any liability or obligation under the Lease or otherwise until Mortgagee shall have acquired the interest of Landlord in the Demised Premises, by foreclosure or otherwise, and then only to the extent of liabilities or obligations accruing subsequent to the date that Mortgagee has acquired the interest of the Landlord in the Demised Premises, except for those liabilities and obligations of which Mortgagee had written notice prior to its acquisition of Landlord's interest.

4. Tenant covenants not to pay any installment of monthly rent or any part thereof more than thirty (30) days prior to the due date of such installment. Nothing contained herein, however, shall be construed as limiting either Tenant's right to make deductions or offsets against rents as provided in the Lease or the amount thereof. Tenant and Landlord agree that they will not, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, enter into any amendment of the Lease that would (i) change the financial terms of the Lease, (ii) diminish the term of the Lease, (iii) release Tenant from any liability or obligation under the Lease, or (iv) increase the obligation of Landlord under the

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Lease. Mortgagee expressly consents to all other amendments to the Lease which consent is hereby self-operative and without further agreement.

5. Tenant agrees to give Mortgagee notice of a Landlord default under the Lease at the same time as Tenant gives notice to the Landlord. Default situations in which there is a reasonable probability of immediate bodily injury or property damage may be corrected by Tenant without notice of Mortgagee. Mortgagee shall be entitled, but shall not be obligated, upon notice of a default by Landlord under the Lease to remedy the default of the Landlord provided that Mortgagee promptly commences action to correct the default within thirty (30) days and Mortgagee proceeds with due diligence and without interruption to complete the action necessary to cure the default.

6. In the event Tenant receives written notice from Mortgagee that rentals due under the Lease are to be paid to Mortgagee, pursuant to the terms of the Assignment, Tenant shall pay to Mortgagee, or in accordance with the directions of Mortgagee, all rentals and other monies due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Mortgagee, or as otherwise directed by Mortgagee, and hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments. The provisions contained herein shall in no way alter, affect or impair Tenant's rights to make deductions from or offsets against rent as provided in the Lease.

7. All condemnation awards and insurance proceeds paid or payable with respect to the Demised Premises shall be applied in accordance with the terms of the Lease.

8. All notices required or permitted to be made under this Agreement shall be deemed properly served if delivered in writing personally or if sent by certified or registered mail, return receipt requested to:

Tenant at: The Kroger Co.
Attn: Real Estate Department
3631 Peters Creek Road
Roanoke, Virginia 24019-4002

with copy to: The Kroger Co.
Attn: General Counsel
1014 Vine Street
Cincinnati, Ohio 45202-1100

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Landlord at: T&M Kernersville Development Company, L.L.C.
% The Midland Group
Westpark I, Suite 200
12655 Olive Boulevard
St. Louis, Missouri 63141

Mortgagee at: First Union National Bank of North Carolina
Attn: Robert Abrams
301 South Tryon Street, Suite 200
Charlotte, North Carolina 28211

or to any subsequent address designated in accordance with this provision. Date of service of a notice shall be the date of personal delivery, or if sent by mail, upon deposit in a post office of the United States Postal Service, or successor governmental agency.

9. This Agreement shall be binding upon and inure to the benefit of Tenant, Landlord and Mortgagee, their respective heirs, personal representatives, successors and assigns.

10. Landlord shall promptly record this Agreement and shall furnish the recording information to Tenant within sixty (60) days of the date hereof.

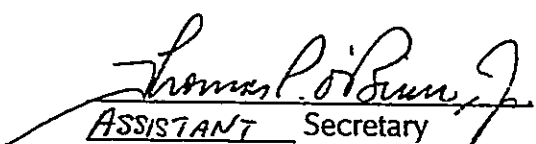
11. This Agreement constitutes the entire understanding of the parties hereto and is intended to be a full, final and complete integration of all prior or contemporaneous agreements regarding the matters set forth herein. No amendment to this Agreement shall be effective unless it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

TENANT

THE KROGER CO.

ATTEST:


ASSISTANT Secretary

By:

 (SEAL)
Vice President



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LANDLORD

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

By: Midland Kernersville Development
Company, L.L.C., Administrative
Member (SEAL)
By: Lee S. Wielansky (SEAL)
Administrative Member

MORTGAGEE

FIRST UNION NATIONAL BANK OF NORTH
CAROLINA

By: Richard Abrams (SEAL)
Name: Richard Abrams
Title: Vice President



STATE OF MISSOURI)
COUNTY OF ST. LOUIS) SS:

I, CHRISTOPHER M. BLANTON, a Notary Public, of St. Louis County, Missouri, do hereby certify that Lee S. Wielansky, Member of Midland Kernersville Development Company, L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as his act and deed and as the act and deed of Midland Kernersville Development Company, L.L.C., and as the act and deed of T&M Kernersville Development Company, L.L.C., in which Midland Kernersville Development Company, L.L.C. is an Administrative ~~Manager~~ MEMBER.

Witness my hand and official seal, this 10th day of August, 1995.

Commission Expires:

Christopher M. Blanton
Notary Public

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

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STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

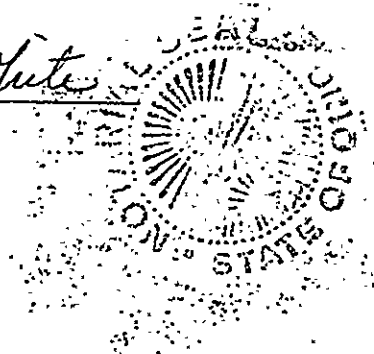
I, Nancy White, a Notary Public, of Hamilton County, Ohio, do hereby certify that Thomas P. O'Brien, Jr. personally appeared before me this day and acknowledged that he is the assistant secretary of The Kroger Co., an Ohio corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its vice president, sealed with its corporate seal and attested by himself as its assistant secretary.

Witness my hand and official seal this 4th day of August, 1995.

My commission expires:

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

Nancy White
Notary Public

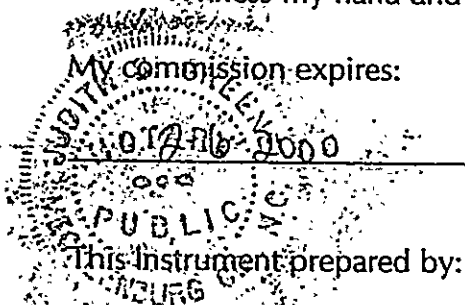


STATE OF NC)
) SS:
COUNTY OF Mecklenburg)

I, Judith S. Greene a Notary Public of Mecklenburg Co., NC do hereby certify that T.P. Pinchak personally came before me this day and acknowledged that he/she is Asst. Secretary of First Union National Bank of North Carolina, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by himself/herself as its Asst. Secretary.

Witness my hand and official seal this 15th day of August, 1995.

My commission expires:



Judith S. Greene
Notary Public

This instrument prepared by:

Robin M. Olinger, Esq.
The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202-1100

PRESENTED FOR
REGISTRATION
AND RECORDED

55 AUG 22 AM 11:58

STATE OF NORTH CAROLINA—Forsyth County

The foregoing (or annexed) certificate of Christopher M. Blanton NP, St. Lawrence
(here give name and official title of the officer signing the certificate passed upon)

County, MO; Nancy White, NP, Hamilton County, OH & Judith S. Greene
is (are) certified to be correct. This the 22 day of Aug 1995 NP, Mecklenburg
County NC

John Holloman Register of Deeds

By Hilda J. Green Deputy Assistant

Probate and Filing Fee \$_____ paid.

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EXHIBIT A
TO SUBORDINATION, NON-DISTURBANCE & ATTORNMENT AGREEMENT
BY AND BETWEEN THE KROGER CO. (TENANT)
T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C. (LANDLORD)
AND FIRST UNION NATIONAL BANK OF NORTH CAROLINA (MORTGAGEE)

BEING all of Lots 1, 2, 4, and 6 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, 4, and 6 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.