



103
DECLARATION
OF RECIPROCAL EASEMENTS AND RESTRICTIONS

PRESENTED FOR
REGISTRATION
AND RECORDED

BK1868 P3681

THIS DECLARATION OF RECIPROCAL EASEMENTS AND RESTRICTIONS ("Declaration") is made as of the 10th day of August, 1995, by T & M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company ("Declarant").

36
10th
Forsyth Co. N.C.
Register of Deeds

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate situated in the Town of Kernersville, County of Forsyth, and State of North Carolina, which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), and

WHEREAS, Declarant pursuant to and in accordance with the laws, regulations and ordinances of the Town of Kernersville, North Carolina has subdivided the Property into seven (7) individual lots, as follows:

Lot 1	5.73 Acres
Lot 2	0.74 Acres
Lot 3	0.66 Acres
Lot 4	0.67 Acres
Lot 5	0.50 Acres
Lot 6	0.96 Acres
Lot 7	1.52 Acres

as more particularly set forth in that certain subdivision map (the "Plot Plan") recorded with the Register of Deeds for Forsyth County, North Carolina, attached hereto as Exhibit B and made a part hereof (Lots 1, 2, 3, 4, 5, 6 and 7 are sometimes collectively referred to herein as the "Lots" and individually as "Lot"), and

WHEREAS, Declarant desires to enter into this Declaration to provide for the integrated use of the Lots as a shopping center ("Shopping Center") in accordance with the attached Plot Plan,

NOW, THEREFORE, in consideration of the premises, Declarant does hereby grant and declare the following rights, covenants and servitudes over the Lots:

ARTICLE I

DEFINITIONS

SECTION 1. The following terms shall be defined as set forth below:

Building Area: The area(s) of the Shopping Center designated on the Plot Plan for buildings.

Common Area: All areas of the Shopping Center not designated as Building Area or Future Building Area on the Plot Plan, including Lots 4 and 6 in accordance with Section 6.1 herein.

Kroger: The Kroger Co., an Ohio corporation, its successors or assigns.

ARTICLE II**EASEMENTS**

SECTION 2.1 (A) Declarant hereby establishes a non-exclusive easement over the Common Area in favor of each Lot to permit parking and unobstructed pedestrian and vehicular passage by the owner thereof and its agents, contractors, employees, tenants, licensees and invitees, provided that nothing herein shall prevent the Lot 1 owner or its tenants or licensees from storing bascars or selling merchandise on the Common Area portion of Lot 1 and further provided that nothing herein shall prevent the exclusive use of any receiving area situated on a servient Lot by the owner thereof or its tenants or licensees.

(B) The employees and agents of the owners of Lots 2, 3, 4 (subject to the restriction set forth in Section 6.1 herein), 5, 6, and 7 or their respective tenants shall not park on the Common Area of Lot 1. The owners of Lots 2, 3, 4 (subject to the restriction set forth in Section 6.1 herein), 5, 6, and 7 and their respective tenants shall use reasonable efforts to insure that their employees, agents, licensees and invitees park solely on their respective Lots. Each of the owners of Lots 2, 3, 4, 5, 6, and 7, respectively, shall make reasonable efforts to plan the development of each of such Lot, and the flow of traffic thereon, to encourage their licensees and invitees to park on their respective Lot and not on Lot 1. Due to the limited parking that will be available on Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, and Lot 7, once all improvements are constructed, the Lot 1 owner and its respective tenants shall use reasonable efforts to encourage their licensees and invitees to refrain from parking on either Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, and Lot 7 except while shopping or transacting business on said Lots, in which event, they may park wherever they choose on said Lots. All parties subject to or affected by this Agreement agree that construction of the parking lots in accordance with the Plot Plan will be deemed to satisfy the foregoing reasonable effort requirement, subject to each party's adherence to the from time to time rules and regulations imposed on the Shopping Center and its Common Area by the Declarant and Kroger (as a beneficiary hereunder) to promote the general benefit of the Shopping Center as a unified retail development.

SECTION 2.2 Declarant hereby establishes non-exclusive easements over the Common Area in favor of each Lot to permit the construction, maintenance and use of all apparatus necessary to provide utility services to a Lot, including telephone, electricity, water, natural gas and storm and sanitary sewers, provided that same are constructed underground. Any disruption or demolition of a servient Lot by reason of the use of this easement shall be kept to a minimum which shall not exceed one (1) day in duration except during the period when the Shopping Center is initially constructed, unless such disruption or demolition cannot be reasonably completed within such one (1) day period, in which event the period will be extended to such time period as reasonably is required and such area forthwith shall be restored as quickly as possible by the dominant Lot owner to its original condition at no expense to the servient Lot owner.

SECTION 2.3 Declarant hereby establishes a non-exclusive easement over each Lot in favor of the other Lots to permit the temporary occupation of the servient Lot in order to facilitate the construction or maintenance of the improvements on the dominant Lot, provided that the use of this easement shall be kept to a minimum and shall not unreasonably interfere with the construction or operation of the improvements on the servient Lot, and further provided that this easement shall not permit the storage of materials or equipment on the servient Lot.

SECTION 2.4 Declarant hereby establishes an exclusive easement over Lots 1, 4 and 5 in favor of each Lot to permit the construction, use and maintenance of signs for the Shopping Center adjacent to the right of way of South Main Street (N.C. Hwy 150) the location of such Shopping Center signs to be determined in the sole and absolute discretion of Declarant and Kroger, including any electrical lines required to illuminate such signs, provided that all lines are constructed underground. No sign located on Lot 1, 3, 4, and/or 5 shall be positioned so as to unreasonably obstruct such Shopping Center signs from view from the public rights of way adjacent thereto. All Shopping Center Signs shall be constructed and maintained in compliance with applicable laws and regulations.

SECTION 2.5 Declarant hereby establishes, grants, and conveys a non-exclusive temporary easement over Lots 4, 5 and 6 personal to Kroger and any affiliate of Kroger for the construction of improvements, including, but not limited to, utilities, streets, parking and driveway areas, and all other activities related or incidental to the development and construction of the Shopping Center. This easement shall terminate upon completion of the Shopping Center, but no later than September 1, 1997.

SECTION 2.6 Any owner of a dominant Lot who desires to use the easements set forth in Article II herein, shall provide the owner of the servient Lot with a copy of the plans and specifications for the improvements contemplated to be installed or constructed on such servient Lot, and the owner of the dominant Lot covenants not to commence construction of such improvements without the written consent of the owner of the servient Lot (and Kroger if Lot 1 is the servient Lot), which consent shall not be unreasonably withheld.

SECTION 2.7 The dominant Lot owner shall indemnify and save harmless the other Lot owners and their respective tenants and licensees from all claims, liens, damages and expenses, including reasonable attorneys' fees, arising out of its use of any of the easements established in this Article II.

SECTION 2.8 Nothing herein shall create a gift or dedication of any portion of the Shopping Center to the general public. Notwithstanding any other provision hereof to the contrary, each owner periodically may restrict ingress and egress on its Lot in order to prevent a prescriptive easement from arising by continued public use of same. Any restriction on ingress or egress shall be limited to the minimum time period necessary to prevent the creation of a prescriptive easement and shall occur at such times as to have minimum effect on the construction or operation of the Shopping Center.

ARTICLE III

MAINTENANCE & UPKEEP OF COMMON AREA

SECTION 3.1 Each Lot owner shall be responsible for the repair and upkeep of that portion of the Common Area situated on its Lot, as well as its pro-rata share of the expenses set forth in Section 3.3, which repair and upkeep shall be performed in a workmanlike, diligent and efficient manner and shall include:

- (a) Maintenance, repair and replacement of paved surfaces in a level and smooth condition, free of potholes, with the type of material as originally used or a substitute equal in quality;
- (b) Removal of all trash and debris and washing or sweeping as required;
- (c) Removal of snow and ice from paved surfaces and sidewalks;

- (d) Maintenance of appropriate parking area entrance, exit and directional markers, and other traffic control signs as are reasonably required to effect the Plot Plan;
- (e) Cleaning of lighting fixtures and relamping as needed;
- (f) Restriping as required to keep same clearly visible, maintaining the required number of parking spaces per government ordinance or code and this Declaration, and to permit free movement of vehicular traffic among the Lots;
- (g) Maintenance of any electrical and sewer lines, and other utilities, which exclusively provide service to the Common Area;
- (h) Mowing, grooming and irrigation of all seeded, sodded, grass or ground covered areas and maintenance and replacement of all landscaped areas; and
- (i) Maintenance and cleaning of all storm water drainage systems; and
- (j) Maintenance, repair and replacement of enclosures for trash receptacles.

All such maintenance, repair and replacement of the Common Area shall be accomplished in a first class manner in accordance with standards pursuant to which other shopping centers of a similar size are maintained and repaired.

SECTION 3.2 Each Lot owner shall indemnify and save harmless the other Lot owners and their respective tenants and licensees, from all claims, liens, damages and expenses, including reasonable attorneys' fees, arising out of the repair, maintenance and replacement of the Common Area on their respective Lots. Should a Lot owner breach any of its obligations under this Article III, any other Lot owner shall be entitled to enforce the remedies provided in Article VIII.

SECTION 3.3 The Lot 1 owner shall arrange or contract for and each Lot owner shall be obligated to pay its pro-rata share of the from time to time expenses incurred for the maintenance and repair of that certain roadway and easement (collectively the "Roadway") more particularly described in that certain Deed of Easement, dated the 17 day of August, 1995 and recorded at Book 1868 and Page 3663 with the Register of Deeds for Forsyth County, North Carolina and the repair and maintenance of the main Shopping Center drive, identified as "Realigned Century Boulevard" on the Plot Plan ("Century Boulevard"). Upon the public dedication and acceptance by the Town of Kernersville, North Carolina of Century Boulevard the Lot owners shall have no further obligation to pay for the continued repair and maintenance of same. Such pro-rata share shall be based on the ratio that the square footage of Building Area on each Lot bears to the total square footage of Building Area on all Lots; provided, however, that such Lot owner shall have no obligation for such expenses until such time as its Lot is improved with new building improvements. The Lot 1 owner shall bill ("Billing"), on a quarterly basis, each Lot owner for its pro-rata share of all expenses incurred for the Roadway and Century Boulevard maintenance, repair and upkeep ("Expenses"), provided that management fees, insurance, office overhead, equipment depreciation and similar expenses shall be excluded from the Billing. The Billing shall itemize the Expenses and shall state the calculations used to compute the sum assessed to the each Lot. The Lot 1 owner, if requested in writing, shall furnish written evidence of the payment of the Expenses and shall make available to each Lot owner the records relating thereto during normal business hours. Each Lot owner shall pay its pro-rata share of the Expenses within thirty (30) days of receipt of the Billing. In the event a Lot owner disputes a billed expense, it shall notify the Lot 1 owner, in writing, setting forth the

reason for the dispute within the thirty (30) day period for payment, and shall reimburse the Lot 1 owner for its pro-rate share of all other billed expenses. During the pendency of any dispute, the failure to pay a disputed expense shall not constitute a default hereunder and shall not permit the Lot 1 owner to enforce any of the remedies provided for in this Declaration in such event. Any disputed charge for a single expenditure of Five Thousand Dollars (\$5,000.00) or less regarding Expenses shall be referred to arbitration.

The party seeking to collect the charge (the "Collecting Party") must submit the matters to arbitration within thirty (30) days of receipt of notice of dispute as set forth above by giving notice to the other party ("Arbitration Notice"). If no Arbitration Notice is given, the disputed claim shall be conclusively and finally resolved in favor of the party disputing the charge. Within thirty (30) days after the Arbitration Notice, Declarant shall appoint an arbitrator. In the event Declarant fails to appoint an arbitrator, either party may apply to the state court of general jurisdiction and first resort in Forsyth County, North Carolina for appointment of an arbitrator. The decision of the arbitrator shall be binding on all parties to the arbitration. A party may appear with or without an attorney and any party shall be entitled to have a record made of the arbitration hearing. The expenses of the arbitrator and hearing shall be equally divided among the parties to the dispute unless (a) the amount in dispute is less than Five Hundred Dollars (\$500.00), in which event the losing party shall pay all of the expenses of the arbitrator, or (b) the arbitrator determines that a party acted in bad faith in the dispute, in which event the prevailing party may be awarded all expenses, including reasonable attorneys' fees incurred by the arbitration. Subpoenas may be used to compel witness attendance at the arbitration hearing.

SECTION 3.4 Should a Lot owner breach any of its obligations set forth in this Article III, Kroger shall have the right to perform or enforce any of the rights set forth in Article VIII herein, in its sole discretion, for so long as Kroger may have a legal or equitable interest in a Lot.

ARTICLE IV

LIABILITY INSURANCE

SECTION 4.1 The owner of each Lot shall maintain comprehensive general liability insurance, including contractual liability coverage, naming the other owners and Kroger as additional insureds and providing coverage with a combined bodily injury, death and property damage limit of Two Million Dollars (\$2,000,000) or more per occurrence. The owner of a Lot shall provide any other owners and Kroger with a certificate of insurance. All policy certificates shall provide for thirty (30) days written notice to each named insured of any modification or cancellation thereof. Any insurance required to be maintained by a tenant of a Lot may be used to satisfy the owner of such Lot's obligations hereunder.

ARTICLE V

DAMAGE OR DESTRUCTION

SECTION 5.1 In the event that any part of the Common Area is destroyed or damaged by fire, casualty or force majeure, the owner of the affected Lot, at its sole expense, forthwith shall clear and restore such area.

SECTION 5.2 In the event that any part of the building improvements on a Lot is damaged by fire, casualty or force majeure, the owner thereof shall not be obligated to restore same, provided that such owner, at its sole expense, forthwith shall raze the damaged structures,

remove all debris, shall pave such area for parking in general conformity with the parking layout shown in the Plot Plan and shall install adequate lighting and storm water drainage. Any area restored in this manner shall be maintained as though it were part of the Common Area until improved with building improvements, and shall be maintained at the sole cost and expense of the owner of such Lot.

SECTION 5.3 In the event that any part of the Common Area is condemned, the owner of the affected Lot, at its sole expense, forthwith shall restore such area as much as practicable to provide the same approximate configuration, size, location and number of all light standards, driveways, walkways, parking spaces and curb cuts to adjacent roadways existing prior to the condemnation. Any award on account of a condemnation of the Common Area first shall be used in the restoration of same, and any claim to the award made by a Lot owner or its tenant or licensee hereunder shall be expressly subject and subordinate to its use in such restoration. The term "condemnation" as used herein shall include all conveyances made in anticipation or lieu of an actual taking.

Nothing herein shall be construed to give any Lot owner an interest in any award or payment made to another Lot owner in connection with any exercise of the power of eminent domain or any transfer in lieu thereof affecting said other Lot owner's Lot or giving the public or any government any rights in said Lot. In the event of any exercise of the power of eminent domain or transfer in lieu thereof of any part of the Common Area, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Area.

All other owners of the Common Area may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner. Nothing in this Section shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between such tenant and such owner for all or a portion of any such award or payment.

If there shall be any building improvements located on the condemned area, the owner of said condemned area shall, at its sole cost, risk and expense, and at its option, either restore the remainder of said building as much as practicable out of the same materials used for the original structure or shall raze the remainder of the condemned structure, shall remove all debris, shall pave the remaining area so razed for parking in general conformity with the parking layout shown on the Plot Plan and shall install adequate lighting and storm water drainage. Any area restored in this manner shall be maintained as though it were part of the Common Area, and shall be maintained at the sole cost and expense of the owner of such Lot.

ARTICLE VI RESTRICTIONS

SECTION 6.1 Lots 4 and 6 shall not be improved with any buildings without the prior written consent of Kroger, in its sole and absolute discretion. Lots 4 and 6 shall be deemed Common Area until such time as Kroger, in its sole discretion, consents to its improvement by the construction of buildings thereon. Upon fifteen (15) days written notice from Kroger, Declarant shall obtain all necessary approvals from the Town of Kernersville and promptly proceed to pave and stripe Lot 4, in accordance with the plans therefor as approved by Kroger, as additional parking for the Shopping Center. Kroger shall pay 73.28% and the owner of Lot 1 shall pay 26.72% of the

total of all costs associated with the paving and striping of Lot 4. Upon completion of the paving and striping of Lot 4, Kroger and the owner of Lot 1 shall reimburse Declarant for their respective pro rata share within thirty (30) days after receipt of an invoice from Declarant of copies of paid bills to confirm the cost to pave and stripe Lot 4.

SECTION 6.2 No part of the Shopping Center, except Lot 1 shall be used as a drug store or a business principally devoted to the sale of health and beauty aids, or for a pharmacy requiring the services of a registered pharmacist, provided that this restriction shall cease to be in force and effect if the occupant of the storeroom situated on Lot 1 fails to operate a drug store, or a pharmacy department, for a period of three hundred sixty-five (365) consecutive days or longer subsequent to the opening for business of such storeroom on Lot 1 except when such failure is caused by labor disputes, force majeure (including reconstruction as a result of fire or other casualty) or conditions beyond the control of the occupant.

SECTION 6.3 No part of the Shopping Center, except Lot 1 shall be used as a food store or food department, or for the sale of groceries, meats, fish, produce, dairy products, bakery products, or any of them, for off-premises consumption, provided that nothing herein shall prevent (i) any occupant of the Shopping Center from selling such products as an incidental part of its principal business so long as the total number of square feet devoted to the display for the sale of such products does not exceed five percent (5%) of the total number of square feet of building area occupied by same or five hundred (500) square feet, including, in either case, one-half (1/2) of the aisle space adjacent to any such display area, whichever is smaller, (ii) the operation of a restaurant which permits customers to "take out" orders, the location of which shall be subject to the prior written approval of Kroger, or (iii) the operation of a retail operation which derives at least seventy-five percent (75%) of its gross revenues from the sale of ice cream and similar related dairy products, and further provided that this restriction shall cease to be in force and effect if the occupant of the storeroom situated on Lot 1 fails to conduct a business for the sale of groceries, meats, fish, produce, dairy products, bakery products, or any of them, for off-premises consumption, for three hundred sixty-five (365) consecutive days or longer subsequent to the opening for business of such storeroom on Lot 1, except when such failure is caused by labor disputes, force majeure (including reconstruction as a result of a fire or other casualty) or conditions beyond the control of the occupant.

SECTION 6.4 No portion of the Shopping Center or any Lot, including Lot 1, shall be used as a (i) bowling alley, health club, fitness center or other similar activity, night club, theater, disco, skating rink or any other non-retail business (except a restaurant), which requires extensive use of the parking areas, or (ii) business which principally features sexually explicit products or drug related paraphernalia. Further, no portion of the Building Area located within one hundred (100) feet of the storeroom located on Lot 1 shall be used as a restaurant.

SECTION 6.5 (a) With the exception of the storeroom located on Lot 1 no portion of the Building Area on any Lot shall exceed twenty-five (25) feet in height from ground level or one (1) story, without the prior written consent of Kroger and the Lot 1 owner.

(b) (i) All Lot owners (excluding the Lot 1 owner) shall submit to the Lot 1 owner and Kroger for its respective Lot, exterior elevation, architectural and signage plans for all improvements to be constructed on its respective Lot for review and approval by the Lot 1 owner and Kroger. Any approval by the Lot 1 owner or Kroger concerning architectural compatibility shall not be deemed to constitute a warranty or representation by the Lot 1 owner or Kroger in respect of the materials, design, location, construction or workmanship of any

improvements on such Lot. Each Lot owner shall obtain the foregoing approvals before commencing any construction on its respective Lot, before implementing any changes in plans theretofore approved by the Lot 1 owner and Kroger, and before commencing any construction to repair, replace or restore the improvements on its respective Lot following a condemnation, or a fire or casualty thereon.

(ii) Each Lot owner shall perform construction on its Lot so as not to cause any unreasonable increase in the cost of construction of the remainder of the Shopping Center or any part thereof, unreasonably interfere with any other construction being performed on any of the other Lots; or unreasonably interfere with the operations conducted on any other Lot.

(iii) Each Lot owner agrees that in the event any mechanic's lien or other statutory liens shall be filed against its Lot or any other Lot by reason of work, labor, services or materials supplied to or at the request of it pursuant to any construction on its Lot, or supplied to or at the request of its tenant pursuant to any construction by said tenant, it shall pay and discharge the same of record within thirty (30) days after the filing thereof, subject to the provisions of the following sentence. Each Lot owner shall have the right to contest the validity, amount or applicability of any such liens by appropriate legal proceedings, and, so long as it shall furnish bond or indemnify as hereinafter provided and be prosecuting such contest in good faith, the requirement that it pay and discharge such liens within said thirty (30) days shall not be applicable; provided, however, that in any event such Lot owner shall, within thirty (30) days after the filing thereof, bond or indemnify against such liens in amount and in form satisfactory to induce the title insurance company which insured title to the respective Lots to each of the Lot owners, to insure over such liens or to reissue and update its existing policy, binder or commitment without showing title exception by reason of such liens, and shall indemnify and save harmless the other Lot owners from all loss, damage, liability, expense or claim whatsoever (including reasonable attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such liens. In the event such legal proceeding shall be finally concluded (so that no further appeal may be taken) adversely to the Lot owner contesting such liens, such Lot owner shall, within five (5) days thereafter, cause the liens to be discharged of record.

SECTION 6.6 All electrical and telephone wires and all other utility lines serving the Shopping Center (and each Lot) shall be buried below grade such that the same shall not be visible.

SECTION 6.7 No fence, structure, landscaping or other structure of any kind shall be placed, kept, permitted or maintained upon the Common Areas of Lot 2, 3, 4, 5, 6 or 7 without the prior written consent of the Lot 1 owner and Kroger.

SECTION 6.8 All lighting structures and standards erected in the Common Area of any Lot shall be erected by and at the expense of the respective Lot owner, shall be erected prior to commencement of business on each such Lot; and shall be located in such areas and in accordance with such plans and specifications as shall be approved by the Lot 1 owner and Kroger.

SECTION 6.9 All improvements situated on a Lot shall have self-sufficient parking. The dimensions of each parking space shall conform to the requirements set forth in the Plot Plan.

SECTION 6.10 Except as contemplated by the Plot Plan, the Common Area shall not be altered or improved with additional building improvements without the prior written consent of the Lot 1 owner and Kroger, provided that nothing herein shall prevent a minor alteration of the Common Area by the servient Lot owner so long as such improvement or alteration does not materially interfere with parking on or pedestrian or vehicular passage across the Common Area. Improvements constructed on Lots 2, 3, 4, 5, 6 and 7 shall be architecturally compatible with the then existing improvements in the remainder of the Shopping Center. No portion of the Common Area shall be encumbered by any easement, right-of-way, license or other servitude for the purpose of parking on or vehicular passage across the Common Area benefitting property outside of the Shopping Center without the prior written consent of the Lot 1 owner and Kroger, which consent shall be in their sole discretion.

SECTION 6.11 Nothing herein shall require the owner of any Lot to improve any portion thereof with building improvements or Common Area, or to occupy its Lot or to conduct a business in same.

SECTION 6.12 In the event that a commercial property contiguous to the Shopping Center is now or at any time developed or owned, directly or indirectly, by a Lot owner, the foregoing restrictions shall extend to such property.

SECTION 6.13 The remedies for breach of any of the restrictions set forth in this Article shall be cumulative, not exclusive, and shall include injunctive relief.

ARTICLE VII

TAXES

SECTION 7.1 Each Lot owner shall pay (or cause to be paid) before delinquency all real estate taxes and assessments (herein collectively "Taxes") levied on its Lot and the improvements situated thereon.

SECTION 7.2 Each Lot owner may, at its own cost and expense by appropriate proceeding, contest the validity, applicability and/or the amount of any Taxes. Nothing in this Article shall require a Lot owner to pay any Taxes so long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the affected Lot to be forfeited to the imposer of such Taxes as a result of its nonpayment.

SECTION 7.3 If a Lot owner fails to comply with this Article, either the Lot 1 owner or Kroger may pay the Taxes in question and shall be entitled to prompt reimbursement from the defaulting Lot owner for the sums so expended with interest thereon at the rate provided in Section 8.2 hereof.

ARTICLE VIII

DEFAULT

SECTION 8.1 Should a Lot owner breach any of its obligations hereunder and such breach continue for a period of thirty (30) days after its receipt of notice, the Lot 1 owner and Kroger, for so long as Kroger has a legal or equitable interest in a Lot, shall be entitled, but not obligated, to cure such breach in addition to all remedies at law or in equity, provided that such Lot 1 owner and Kroger, for so long as Kroger has a legal or equitable interest in a Lot, shall furnish at least fourteen (14) days prior written notice to the other Lot owners, and further provided that no notice is required should the breach create an emergency or interfere with use

of a Lot. All expenses required to cure the breach shall be paid by the defaulting Lot owner within thirty (30) days after its receipt of written evidence confirming the payment of such expenses. Notwithstanding the foregoing, if any nonfinancial default hereunder cannot be remedied within thirty (30) days after notice of default, then the defaulting party shall have such additional time as shall be reasonably necessary to remedy such default, provided that the cure of such default is commenced within said period of thirty (30) days and thereafter diligently prosecuted to completion without interruption.

SECTION 8.2 Any sum required to be paid under this Declaration and which remains unpaid beyond its due date shall bear interest at a rate equal to four percent (4%) in excess of the prime rate charged then by The Chase Manhattan Bank, N.A., New York, New York, or any successor thereto, or at the highest annual interest rate allowed by law, whichever is less, from the due date thereof until paid, and may be secured by a lien on the Lot of the owner in default and may be perfected in the same manner as a lien pursuant to § 44A of the North Carolina General Statutes, provided that such lien shall be subordinate to any mortgage or other financial encumbrance on the Lot of the owner in default.

SECTION 8.3 In the event of litigation by reason of this Declaration, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees in addition to all other expenses incurred in such litigation.

SECTION 8.4 Kroger shall be a beneficiary of all of the rights and easements set forth herein and shall be entitled to enforce same for so long as Kroger, any affiliate of Kroger, or its successors, or assigns, may have any legal or equitable interest in a Lot.

ARTICLE IX

MISCELLANEOUS PROVISIONS

SECTION 9.1 No part of this Declaration may be terminated or modified without the prior consent of the owner of Lot 1 and Kroger.

SECTION 9.2 This Declaration shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Lots or their tenants or licensees.

SECTION 9.3 No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

SECTION 9.4 To the extent the invalidity of any provision does not affect the basic intent of this Declaration, should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

SECTION 9.5 All notices and approvals required or permitted under this Declaration shall be served by certified mail, return receipt requested, to a party at the last known address of its principal place of business. Date of service of notice or approval shall be the date on which such notice or approval is deposited in a Post Office of the United States Postal Service or any successor governmental agency. Should a Lot be subdivided by separate ownership, the party who owns the largest portion thereof is irrevocably appointed attorney-in-fact for all parties who may own an interest in the Lot to receive all notices and to render all approvals hereunder, which receipt of notices and delivery of approvals shall be binding on such parties.

SECTION 9.6 All of the provisions hereof shall run with the land in perpetuity.

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SECTION 9.7 This Declaration contains the entire undertaking of Declarant and there are no other terms, express or implied, except as contained herein.

SECTION 9.8 Each Lot owner shall be excused from performing any covenant or obligation under this Declaration while and for so long as the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, floods, explosion, actions of the elements, war, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lock-outs, actions of labor unions, condemnation, court orders, laws, ordinances, governmental regulations, or orders of governmental or military authorities or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Lot owner which has the obligation to perform (other than lack of or inability to procure monies to fulfill its commitments and obligations under this Declaration or inability to procure and supply evidence of insurance).

SECTION 8.9 No default under this Declaration shall entitle any of the Lot owners to cancel or otherwise rescind this Declaration, provided, however, that this limitation shall not affect any of the rights or remedies that such Lot owner may have by reason of any default hereunder.

SECTION 8.10 In the event of any violation or threatened violation of any of the provisions of this Declaration by any Lot owner, any other Lot owner shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation.

Section 8.11 The right of Kroger to grant or withhold its consent to any matter as provided herein shall be operative only so long as Kroger, any affiliate of Kroger, or its successors or assigns, has a legal or equitable interest in a Lot.

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IN WITNESS WHEREOF, Declarant has executed this Declaration as a sealed instrument in five (5) counterparts, each of which constitutes an original instrument.

DECLARANT:

T & M KERNERSVILLE DEVELOPMENT COMPANY,
L.L.C., a North Carolina limited liability company
(SEAL)

By: Midland Kernersville Development Company, L.L.C. a
North Carolina limited liability company, Administrative
Member (SEAL)

By: [Signature] (SEAL)
Member, Administrative

THE KROGER CO., an Ohio corporation, as Beneficiary

[CORPORATE SEAL]

By: [Signature]
(Vice President)

ATTEST:

By: [Signature]
(Asst.) Secretary

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

I, the undersigned, a Notary Public, of St. Louis County, Missouri, do hereby certify that Lee S. Wielansky, an Administrative 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 Member.

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

Christopher M. Blanton
Notary Public

My Commission Expires:

[NOTARIAL SEAL OR STAMP]

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

STATE OF OHIO)
) SS.
COUNTY OF HAMILTON)

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that THOMAS P. O'BRIEN, JR. personally appeared before me this day and acknowledged that he is ASSISTANT Secretary of THE KROGER CO., a 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 and its ASSISTANT Secretary.

WITNESS my hand and notarial 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

[NOTARIAL SEAL OR STAMP]

STATE OF NORTH CAROLINA—Forsyth County

The foregoing (or annexed) certificate of Christopher M. Blanton, NP, St. Louis Co, Missouri & Nancy White, NP, Hamilton Co, Ohio
(here give name and official title of the officer signing the certificate, passed upon)
is (are) certified to be correct. This the 23 day of August, 1995

John Holleman Register of Deeds

By [Signature] Deputy Assistant

Probate and Filing Fee \$_____ paid.

BK1868 P3694

EXHIBIT A
TO DECLARATION
OF RECIPROCAL EASEMENTS AND RESTRICTIONS
BY T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C.

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.

kmh/081895i
13564.004

BK1868 P3695

EXHIBIT B
TO DECLARATION
OF RECIPROCAL EASEMENTS AND RESTRICTIONS
BY T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C.

That certain subdivision 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.

kmh/081895d
13564.004