

BK1868 P3702

Mail to NEXSEN PRUET JACOBS & POLLARD, LLP (JHH)
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Charlotte, North Carolina 28281

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DEED OF TRUST

THIS DEED OF TRUST made this 10th day of August, 1995, by and among T & H KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company (hereinafter "Grantor"), and Richard F. Dunlap, Jr. (hereinafter "Trustee") and the owner and holder of a promissory note, FIRST UNION NATIONAL BANK OF NORTH CAROLINA (hereinafter "Beneficiary");

WITNESSETH THAT, WHEREAS T & H KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company, (hereinafter "Borrower") is indebted or is to become indebted in the amount not to exceed Six Million Three Hundred Five Thousand and no/100 (\$6,305,000.00) for money loaned as evidenced by a promissory note ("Note") dated August 10, 1995 and any renewals, modifications, extensions or amendments to said Note, said Note requiring all principal and accrued interest to be paid in full on August 9, 2000. ("Maturity Date").

WHEREAS, Grantor is executing this Deed of Trust to secure the payment of said Note.

[X] AND WHEREAS, This Deed of Trust is given wholly or partly to secure future obligations which may be incurred hereunder. The amount of present obligations secured hereunder is One Million Eight Hundred Fifty-Five Thousand Four Hundred Thirteen and 57/100 Dollars (\$1,855,413.57).

(If none, so state)

Subject to the provisions hereof, the maximum principal amount (including present and future advances) which may be secured hereunder at any one time shall not exceed the face amount of the Note provided such future obligations are incurred not later than fifteen (15) years from the date of this instrument. Provided, all conditions of the Note and Loan Agreement and Commitment Letter, if any, Deed of Trust and other loan documents have been met and there is no default in the Note, Loan Agreement and Commitment Letter, if any, or this Deed of Trust or other loan documents.

[] If checked, this Deed of Trust secures a Line of Credit under which periodic advances and repays will be made from time to time. Re-advances will be secured to the same extent as original obligations hereunder.

AND WHEREAS, to induce the making of said loan, Grantor has agreed to secure said Note and the undertaking prescribed in the Note, Loan Agreement and Commitment Letter, if any, and this Deed of Trust by the conveyance of the property hereinafter described:

NOW, THEREFORE, Grantor hereby grants and conveys to Trustee, their heirs, successors, and assigns the following described property, located in Forsyth County, North Carolina:

See Exhibit A attached hereto and incorporated herein by reference.

COLLATERAL IS OR INCLUDES FIXTURES together with all easements, rights, royalties, mineral, oil, gas rights and profits, water, water rights and water stock, privileges, tenements, hereditaments and appurtenances thereunto belonging, and all buildings, fixtures, and improvements now or hereafter located thereon, all building materials and supplies at any time delivered to or placed thereon, and any and all equipment and property of Grantor of every kind now or hereafter located thereon, hereinafter referred to as "Property" that Grantor further conveys as security for the trust herein and all right, title and interest of Grantor in and to land lying in public streets or roads abutting the above described property.

TO HAVE AND TO HOLD, the Property, with all rights, privileges and appurtenances thereunto, belonging to Trustee, upon the Trusts and for the uses and purposes hereinafter set out. Grantor covenants with Trustee that Grantor is seized of, and has the right to convey, the Property, in fee simple, that the Property is free and clear of all encumbrances except to the extent of the lawful priority of the following:

All those matters set forth on Schedule B, Section 2 of Lawyers Title Insurance Commitment # W94002104-SO.

and except as specifically provided herein Grantor will warrant and defend title to the Property and the priority of the lien of this Deed of Trust against the claims of all persons whomsoever.

GRANTOR COVENANTS with Trustee and Beneficiary (and their respective heirs, successors, substitute and assigns) as follows:

1. **Note Payments.** Grantor shall make timely payments of principal and interest on the above-mentioned Note in the amounts, in the manner, and at the place set forth therein. This Deed of Trust secures payment of said Note according to its terms, which are incorporated herein by reference.

2. **Taxes and Charges.** Grantor shall pay all taxes, charges and assessments which may become a lien upon the Property hereby conveyed before any penalty or interest accrues thereon (however, Grantor shall have the right to contest said taxes in accordance with applicable law so long as no lien attaches to the Property) and shall promptly deliver to Beneficiary official receipts evidencing payment thereof, in the event of the passage after the date of this Deed of Trust of any law changing in any way the laws now in force for state or local taxation of mortgages, deeds of trust or debts secured thereby, or the manner of the collection of any such taxes, so as to affect this Deed of Trust and Grantor refuses or is not permitted by law to pay said tax, the whole principal sum (together with interest) secured by this Deed of Trust shall at the option of Beneficiary without notice become immediately due and payable. Grantor shall pay all recording fees, filing fees and documentary stamp taxes associated with the recording of this Deed of Trust and any modifications, extensions or amendments thereto.

3. **Insurance.** Grantor shall continually maintain full replacement cost insurance against loss by fire, hazards included in the term "extended coverage" and such other hazards including flood as Beneficiary may require in such a manner and in such companies as Beneficiary may from time to time reasonably require on the improvements now hereafter located on the Property and shall promptly pay all premiums, therefore, when due. All certificates thereof shall be held by Beneficiary and have attached thereto a Mortgagee Loss Payable Clause in favor of and in a form acceptable to Beneficiary, and provide that no such policy can be canceled at least ten days prior written notice to

Beneficiary. In the event of loss Grantor shall give immediately notice by mail to Beneficiary, who may, but shall not be obligated to, make proof of loss. Beneficiary, at its option, is hereby authorized to settle or compromise any claims, awards, damages, rights of action, proceeds, and any other payment or relief under any insurance policy. Each insurance company is hereby directed to make payment for such loss directly to Beneficiary (instead of to Grantor and Beneficiary jointly), and the insurance proceeds or any part thereof may be applied by Beneficiary at its option, after deducting therefrom all expenses including attorney's fee, to the debt hereby secured or for the repair or restoration of the Property. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Beneficiary may desire. In the event of foreclosure of this Deed of Trust or other transfer of title to the Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Beneficiary in any insurance policies then in force shall pass to the grantee.

Notwithstanding the foregoing, in the event of loss or damage to the improvements, Beneficiary shall, upon request of Borrower, apply the insurance proceeds to the restoration of the improvements pursuant to the provisions of the Loan Agreement, extend the Maturity Date or the Conversion Date until such time as the restoration can be substantially completed (not to exceed 120 days) and disburse such proceeds in accordance therewith, upon the following conditions:

- (i) That certain lease between Grantor and The Kroger, Co. dated August 10, 1995 ("Kroger Lease") for a portion of the Property shall not be terminated as a result of the casualty;
- (ii) Grantor shall be able to restore the improvements using one or more contractors as approved by Beneficiary without material deviation from the original plans and specifications other than as approved by Beneficiary in advance (Beneficiary's approval hereunder shall not be unreasonably withheld or denied);
- (iii) The insurance proceeds shall be adequate in amount to complete the restoration of the improvements as determined by Beneficiary or, alternatively, Grantor shall deposit sufficient funds with Beneficiary to cover the cost of such restoration, together with all related expenses (e.g. soft costs) including but not limited to interest reserves;
- (iv) There exists no other default under the Loan Documents; and
- (v) Within sixty (60) days following loss or damage to the improvements Grantor must provide Beneficiary with satisfactory evidence that: (a) the conditions enumerated in subsections (i) through (iv) above can and will be satisfied.

4. **Environmental Condition of Property; Indemnification.** (a) Grantor covenants with Beneficiary that while Beneficiary has any interest in or lien on the Property, the Property described herein is and at all times hereafter, will continue to be in full compliance with all applicable federal, state and local environmental laws, standards, ordinances and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et seq., the Emergency Planning and Community Right-To-Know Act, 42 USC § 11001 et seq., the Resource Conservation and Recovery Act, 42 USC § 6901 et seq., the Clean Air Act, 42 USC § 7401 et seq., the Toxic Substances Control Act, 15 USC § 2601 et seq., and the Federal Water Pollution Control Act, 33 USC § 1251 et seq. ("Environmental Laws"); and based solely on the environmental study by *Residuals Management Technology, Inc. dated June 1995, Grantor further warrants and represents to Beneficiary that: (i) as of this date, the Property has not been used to treat, store or dispose of, oil, petroleum products, hazardous substances, extremely hazardous substances, hazardous wastes, regulated substances, toxic substances or hazardous air pollutants as defined or described by the Environmental Laws ("Hazardous Materials"); and that no such Hazardous Materials, (including without limitation, any materials containing asbestos), are located on, in or under the Property or used or emitted in connection therewith; or (ii) Grantor has fully disclosed to Beneficiary in writing the existence, extent and nature of any such Hazardous Materials, on, in, or under the Property or used or emitted in connection therewith. Grantor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals. (b) To the best of Grantor's knowledge and belief, no portion of the Property is a protected wetland, or Grantor has fully disclosed to Beneficiary in writing the existence, extent and nature of such wetlands. (c) Grantor further warrants and represents that it will promptly notify Beneficiary of any change in the nature or extent of (i) any Hazardous Materials, maintained on, in or under the Property or used or emitted in connection therewith and (ii) any wetlands located on the Property. Grantor also has notified and will notify Beneficiary of Grantor's receipt of any citations, orders, notices, consent agreements, lawsuits, claims, or similar communication from a government agency or third party alleging a violation of any Environmental Laws (including allegations of a violation of the common law). (d) Grantor shall indemnify and hold Beneficiary harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants', or experts' fees and expenses) of every kind and nature suffered by or asserted against Beneficiary as a direct or indirect result of any warranty, representation, or portion thereof, made by Grantor in this section, being false or untrue in any respect or as a result of any requirement under any Environmental Law, which requires the elimination, treatment, or removal of any Hazardous Materials. (e) Beneficiary shall have the right at any time and from time to time prior to full payment and satisfaction of the Note secured hereby to arrange for or conduct environmental inspections of the Property (including, but not limited to, sampling of materials for laboratory analysis). The cost of such inspections shall be borne as agreed between Grantor and Beneficiary, except that the cost of any such inspections conducted in contemplation of foreclosure or pursuant to section 9 hereof entitled "Payment by Beneficiary", shall be the obligation of Grantor. (f) Grantor's obligations hereunder to Beneficiary shall not be limited to any extent by the term of the Note secured hereby, and, as to any act or occurrence prior to payment in full and satisfaction of said Note which gives rise to liability hereunder, shall continue, survive and remain in full force and effect notwithstanding payment in full and satisfaction of said Note and this Security Instrument or foreclosure under this Security Instrument, or delivery of a deed in lieu of foreclosure. *Residuals Management Technology, Inc. dated June 1995

5. **Escrow Deposits.** After an Event of Default, Grantor may add to each monthly or other periodic payment required under the Note secured hereby the amount estimated by Beneficiary to be sufficient to enable Beneficiary to pay, as they come due, all taxes, charges, assessments, and insurance premiums which Grantor is required to pay hereunder. Any deficiency occasioned by an insufficiency of such additional payments shall be forthwith deposited by Grantor with Beneficiary upon demand.

6. **Care of Property.** Grantor will keep the Property in good order and repair and will not commit or permit any waste, deterioration, impairment or any other thing whereby the value of the Property might be impaired. Grantor will not remove or demolish any building or materially alter any part or all of the Property without the written consent of Beneficiary.

7. **Compliance with Laws.** Grantor shall promptly comply with any applicable legal requirements of the State of North Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the Property.

8. **Condemnation Award.** Any award for the taking of, or damages to, all or any part of the Property or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Beneficiary who, after deducting its expenses, including attorney's fees, may apply the sums so received to the portion of the Note hereby secured last falling due or in such other manner as Beneficiary may desire. Grantor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Beneficiary may require.

Notwithstanding the foregoing, if any improvement is damaged, destroyed or otherwise taken as a result of condemnation proceeding, or the granting of a deed in lieu of condemnation, Beneficiary shall, apply the award or proceeds therefrom to the restoration of such improvement pursuant to provisions of the Loan Agreement, extend the Maturity Date or Conversion Date until such time as the restoration can be substantially completed (not to exceed 120 days), and disburse such award in accordance therewith upon the conditions:

- (i) The Kroger Lease shall not be terminated as a result of condemnation or taking;
- (ii) Grantor provides Beneficiary with satisfactory evidence that Grantor shall be able to complete the improvements using one or more contractors as approved by Beneficiary without material deviation from the original plans and specifications (except as approved by Beneficiary in advance, which approval shall not be unreasonably withheld or

denied)

(iii) The award or proceeds shall be adequate in amount to complete the restoration or replacement of the improvements as determined by Beneficiary or, alternatively, Grantor shall deposit sufficient funds with Beneficiary to cover the cost of such restoration, together with all related expenses (e.g. soft costs) including but not limited to interest reserves;

(iv) There exists no other default under the Loan Documents, and

(v) Within sixty (60) days following the condemnation or delivery of a deed in lieu of condemnation, Grantor must provide Beneficiary with satisfactory evidence that: (a) the conditions enumerated in subsections (i) through (iv) above can and will be satisfied.

9. **Payments by Beneficiary.** If Grantor shall be in default in the timely payment or performance of any obligation under this Deed of Trust or the Note hereby secured, Beneficiary, at its option and without any obligation on its part to determine the validity or necessity thereof, may pay the sums for which Grantor is obligated. Further, Beneficiary, at its option, may advance, pay, or expend such sums as may be proper and necessary for the protection of the Property and the maintenance of this trust including but not limited to sums to satisfy taxes or other levies, and assessments, liens, and/or encumbrances to maintain insurance (including title insurance), to make repairs and to provide security guards to intervene in any condemnation proceedings or foreclosures or other proceedings or disputes affecting the Property. Any amounts so advanced, paid or expended shall be deemed principal advances secured by this Deed of Trust (even though when added to other advances the sum thereof may exceed the face amount of the Note), shall bear interest from time to time advanced, paid or expended at the rate prescribed in the Note hereby and be secured by this Deed of Trust and its payment enforced as if it were part of the original debt. Any sum expended, paid or advanced under this paragraph shall be a Beneficiary's sole option and not constitute a waiver of any default or right arising from the breach by Grantor of any covenant or agreement contained herein or in the Note.

10. **Rents and Profits.** Grantor hereby assigns to Beneficiary all leases, income, rents, issues and profits, including tenant security deposits (whether held by Grantor or others or in a trust account), from the Property as additional security for the payment of the indebtedness hereby secured and full performance of the undertakings of the Grantor hereunder. Beneficiary is given a prior and continuing lien thereon, and Grantor (not its members or any Guarantor) hereby appoints Beneficiary as its attorney-in-fact to collect such rents and profits with or without suit and apply the same (less expenses of collection) to said indebtedness and the performance of said undertakings in such manner as Beneficiary may desire. However, until default hereunder or under the Note secured hereby, Grantor may continue to collect and enjoy such rents and profits without accountability to Beneficiary. This assignment shall be irrevocable and shall be in addition to other remedies herein provided for in event of default and may be put into effect by Beneficiary independently of or concurrently with any kind of said remedies.

11. **Grantor's Continuing Obligation.** The Grantor shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation and subject to any non recourse provision contained therein,) secured hereby, notwithstanding any of the following: (a) the sale of all or a part of the Property, (b) the assumption by another party of the Grantor's obligations hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Grantor or a subsequent owner of the property, and (d) the release of all or any part of the Property securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Deed of Trust or impair Beneficiary's right to a deficiency judgment (in the event of foreclosure) against Grantor or any party assuming the obligations hereunder.

12. **Substitute Trustees.** Beneficiary shall have the unqualified right to remove the Trustee and to appoint one or more substitute or successor Trustees by instruments filed for registration in the Office of the Register of Deeds where this Deed of Trust is recorded. Any such removal or appointment may be made any time without notice without specifying any reason therefor and without any court approval. Any such appointee shall become vested with title to the Property and with all rights, powers and duties conferred upon the Trustee herein the same manner and to the same effect as though he were named herein as the original Trustee. The necessity of the Trustee herein named, or any successor in trust, making oath or giving bond is expressly waived.

13. **Attorneys' Fees.** In the event that Grantor shall default in its obligations hereunder and in the opinion of Trustee becomes necessary or proper to employ an attorney to enforce compliance by Grantor with any of the provisions herein contained, or in the event the Trustee voluntarily or otherwise shall become a party to any suit or legal proceeding (including a proceeding conducted under the Bankruptcy Code) to protect the Property herein conveyed, to protect the lien of this Deed of Trust, Grantor agrees to pay a reasonable attorneys' fees as defined in the Loan Agreement and all of the costs that may reasonably be incurred and such fees and costs shall be secured by this Deed of Trust and its payment enforced as if it were a part of the Note. Grantor shall be liable for such reasonable attorney's fees and costs of Trustee whether or not any suit or proceeding is commenced.

14. **Anti-Marshalling Provision.** The right is hereby given by Grantor to Trustee and Beneficiary to make a partial release or releases of security hereunder, provided Grantor is not in default under the Note or other loan documents, (whether or not such releases are required by agreement among the parties) agreeable to Trustee and Beneficiary without notice to, or the consent, approval or agreement of other parties and interest, including junior lienors and purchasers subject to this lien, which partial release or releases shall not impair in any manner the validity or priority of this Deed of Trust on the Property remaining hereunder, or release Grantor from personal liability for the indebtedness hereby secured. Notwithstanding the existence of any other security interests in the Property held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Grantor, any party who consents to this or who has actual or constructive notice hereof, hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

15. **Notice to Grantor.** All notices required to be given to Grantor shall be mailed or delivered to Grantor at the address stated herein or such other address as given in writing to Beneficiary.

16. **Notice to Beneficiary.** All notices required to be given to Beneficiary by Grantor or an intervening lienor or encumbrancer shall be mailed or delivered to First Union National Bank of North Carolina, at the address stated herein or at such other address given to Grantor in writing.

17. **Secondary Financing Prohibited.** Grantor may not pledge or encumber the Property herein conveyed without first obtaining Beneficiary's prior written consent.

Except as provided in the Note

18. **Transfer of Premises.** If all or any part of the Property or any interest therein is sold, leased or otherwise transferred by deed, land sales contract or any other means including the executing or enforcement of any lien, security interest or other right whether subordinate, superior or equal to this Deed of Trust, without Beneficiary's prior written consent, Beneficiary may, at Beneficiary's option, declare all sums secured by this Deed of Trust to be immediately due and payable. However, Beneficiary agrees to release any one of the five outparcels shown as Lots 3, 4, 5, 6, and 7 on preliminary site plan by Envirotek, Inc. dated May 15, 1995 last revised May 23, 1995 containing acreage of approximately .66, .67, .50, .96, and 1.52 acres respectively, upon payment by Grantor of seventy-five percent (75%) of the gross proceeds generated from an arms length sale.

19. **Uniform Commercial Code Security Agreement.** This Deed of Trust constitutes a security agreement with respect to property referred to herein which may be subject to a security interest pursuant to the Uniform Commercial Code, and Grantor hereby grants Beneficiary a security interest in said property (and the proceeds thereof included in the Property which might be deemed "personal property". If there is any conflict between this security agreement and another security agreement to Beneficiary, this security agreement will control as to fixtures and the other security agreement(s) will control as to non-fixtures. Grantor agrees that this Deed of Trust is a financing statement filed as a fixture filing for the goods described herein which are or are to become fixtures. At Beneficiary's request,

Grantor agrees to execute such other financing statements, extensions or amendments or other security agreements as Beneficiary may require to perfect a security interest with respect to other Property. In the event of default, Beneficiary shall have, in addition to its other remedies, all rights and remedies provided for in the Uniform Commercial Code as enacted in North Carolina.

20. **Appointment of Receiver.** Beneficiary may immediately, after any default, under the terms and conditions of the Deed of Trust, apply for the appointment of a Receiver of the rents, income and profits from said premises, without notice, and Beneficiary shall be entitled to the appointment of such Receiver as a matter of right, without consideration to the value of the mortgage premises as security for the amounts due or the solvency of any person or persons liable for the payment of such amounts.

21. **Use of Property.** Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Grantor shall not allow changes in the designated use of the Property as disclosed to Beneficiary at the time of the loan. Grantor shall not initiate or acquiesce in a change in the zoning classification of the Property without Beneficiary's prior written consent.

22. **Books and Records.** Grantor and Borrower, other than those described in paragraph 24, shall keep and maintain at all times at their respective addresses, or such other place as Beneficiary may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly their respective financial condition and copies of all the written contracts, leases, rent schedules and other instruments, which may affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Beneficiary. Upon Beneficiary's request, Grantor and Borrower, other than those described in paragraph 24, shall furnish to Beneficiary within 120 days after the end of each of their respective fiscal years, a balance sheet, a statement of income and expenses, and a statement of changes in financial position, each in reasonable detail and certified by themselves respectively. If Grantor and/or Borrower, other than those described in paragraph 24, is an individual, (s)he shall furnish such financial information as Beneficiary may request in a form satisfactory to Beneficiary.

23. **Inspection.** Beneficiary may make or cause to be made reasonable entries upon and inspection of the Property and Grantor agrees to pay all reasonable costs incurred by Beneficiary in said inspection. The cost of routine monthly inspections shall not exceed \$300.00, however, Beneficiary may order additional inspections if it deems them necessary in its reasonable discretion.

24. **Third Party Grantors.** Any Grantor who executes this Deed of Trust, but does not execute a promissory note or guaranty, in regards hereto: (a) is executing this Deed of Trust to mortgage, grant, and convey that Grantor's interest in the property under the terms of this Deed of Trust; (b) is not personally obligated to pay the sums secured by this Deed of Trust; and (c) agrees that Beneficiary and any other Grantor may agree to extend, amend, modify, forbear or make any accommodations with regard to the terms of this Deed of Trust and that Beneficiary and Borrower may agree to extend, amend, modify, forbear or make any accommodations with regard to the terms of the Note, without that Grantor's consent.

25. **Definitions.** The term "Grantor", as used herein, shall include all parties hereinabove named as Grantor, his heirs, legal representatives, successors and assigns, and subsequent owners of the Property hereby conveyed; the term "Beneficiary", as used herein, shall include any lawful owner or holder of the indebtedness secured hereby; the term "Trustee" shall include any subsequent or successor trustee or trustees hereunder; and the singular as used herein shall include the plural; and the use of one gender shall include all genders.

26. **Remedies.** All remedies provided in this Deed of Trust to Beneficiary are cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively and any costs, expenses or monetary rights (including rights of the Beneficiary to attorneys' fees) associated with the exercise of such remedy or remedies shall be secured by this Deed of Trust in addition to all other obligations herein provided for.

27. **Notice and Right Cure Periods.** Notwithstanding any term or provision to the contrary in this Deed of Trust or in any of the loan documents evidencing, securing, or relating to the Loan, the Borrower shall have the following time after the giving of written notice by Lender of a default or an Event of Default under the Promissory Note or other Loan Document in which to cure any such default or Event of Default before Lender may exercise any remedies for such default or Event of Default:

- (a) Five (5) days following written notice from Lender to Borrower of default in the payment of any principal, interest or other monetary payments due under the Note or any other Loan Documents;
- (b) Thirty (30) days following written notice from Lender to Borrower of default by Borrower relative to any non-monetary default by Borrower under the Note or the other Loan Documents or of any non-monetary default by the Borrower; provided, however, if such default condition cannot reasonably be cured within such thirty (30) day period but is curable and if Borrower commences the cure of such condition during such thirty (30) day period and thereafter diligently prosecutes such cure to completion, Borrower shall be allowed a total cure period of ninety (90) days following the receipt of written notice by Borrower of such default.

28. **Nonrecourse.** Except as provided below, in seeking payment of the indebtedness hereby secured, the Lender agrees to look solely to the Property, to the Assignment of Lessor's Interest in Lease and to any other security now or hereafter given in respect to the indebtedness and to such rents, income and other proceeds as may be derived from the security. The Lender further agrees that it will neither seek nor accept any deficiency or other monetary judgment hereunder against the Borrower, or its individual members, as the case may be. Nothing in this Deed of Trust shall be construed, however, to limit in any the obligations of the Borrower in respect to the Property or the obligation of the Borrower to pay over the Lender on demand all rents and income produced by or arising from the Property nor shall anything in this Deed of Trust be construed to affect, limit or impair any other right or remedy of the Lender against the Property under this Deed of Trust or under any other instrument given to Lender to secure payment of the Note, including but not limited to any guaranties provided to Lender in connection with the Loan. This provision shall not prevent the joining of the Borrower or its members, or their agents or authorized representatives in a request for injunctive or similar relief nor shall this provision impede or prejudice the rights of the Lender with respect to the following Non-Recourse Exceptions:

- (a) to recover from persons, including the Borrower, the members of the Borrower, or their respective agents or authorized representatives, who commit any fraud or who make any misrepresentation, all funds, damages or costs and expenses, lost or incurred by Lender as a result of such fraud or misrepresentation (any breach of the warranty of title will be deemed a material misrepresentation);
- (b) to recover any condemnation or insurance proceeds or other receipts attributable to the Property (or, if they are no longer in their original form, the amount thereof) which come under Borrower's control (or the control of any of the members of Borrower), their agents or representatives, and which are not applied as required by this Deed of Trust;
- (c) to recover any security deposits, advances or rebates which are not applied in accordance with the leases under which such amounts are received by Borrower or the members of the Borrower, their agents or representatives; to recover rents, issues, profits, income or other similar sums paid to or for the account of Borrower in connection with the operation of the Property after the occurrence of a default or event of default under this Deed of Trust or any other Loan Document and which default remains uncured after the expiration of any applicable grace or cure periods, except such sums as are properly expended by Borrower in payment of expenses of the Property prior to the exercise by the Lender of any of its remedies with respect to such rents or other sums under any of the Loan Documents; together with any costs and expenses incurred in connection with subparagraph (c);
- (d) to recover the value of any Collateral (as defined in the Note) removed or permitted to be removed from the Property contrary to the terms of the Deed of Trust by the Borrower or any of the members of the Borrower, their agents or representatives, after the occurrence of a default or event of a default which remains uncured after the expiration of any grace or cure periods;
- (e) to recover any losses, costs and expenses incurred in connection with any willful or intentional damage caused or permitted by Borrower or its agents or representatives with respect to the Property, or any demolition or removal of any improvements on the Property by Borrower or its agents or representatives without the Lender's consent (other than the exercise by any proper authority of the right of eminent domain);

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(f) to recover any losses, costs and expenses due to the failure of Borrower to maintain insurance coverage or pay any taxes and assessments required under this Deed of Trust;

(g) to recover any losses or other amounts, costs and expenses which the Borrower is obligated to pay to Lender pursuant to the provisions of this Deed of Trust relating to the presence of Hazardous Materials;

(h) and the Borrower, shall be personally liable for all amounts recoverable under the foregoing Non-Recourse Exceptions, which shall include, without limitation, attorneys' fees and other costs incurred by the Lender in regard to exercising its remedies under this Deed of Trust or under any of the Loan Documents. The Borrower and its members shall be jointly and severally liable for any deficiency which may exist after an action for foreclosure, sale under power of sale, deed in lieu of foreclosure or other action taken hereunder and the Lender may seek and enforce a judgement for such deficiency, provided the deficiency involves liability of the Borrower or its members under one or more of the Non-Recourse Exceptions listed above, and except for recovery under the Non-Recourse Exceptions, the lien of any judgement entered against the Borrower and its members shall be restricted to the Property and the Lender shall have the judgement index so noted. In addition, nothing contained herein shall (i) be, or be deemed to be, a release, waiver or impairment of any of indebtedness or any liens now or hereafter created by the Loan Documents or otherwise or (ii) waive, release, limit or otherwise prejudice or affect the rights of Lender to enforce any of its rights or remedies with respect to any collateral given to secure such indebtedness, including but not limited to any guaranties provided Lender in connection with the Loan.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST: If the total amount of the debt, interest, advances and other sums secured hereby are paid in full in accordance with the terms of the above mentioned Note and this Deed of Trust, this conveyance shall be null and void and may be canceled of record at the request and cost of the Grantor and title shall revert as provided by law. If, however, there shall be a default in any of the terms and conditions of this Deed of Trust, the Note, any loan agreement, guaranty, any other instrument securing the Note or any advance secured hereby, all sums owing to Beneficiary thereunder regardless of maturity and without notice shall immediately become due and payable at the option of Beneficiary, and, on application of Beneficiary, Trustee shall foreclose this Deed of Trust by Judicial Proceedings or at Beneficiary's election Trustee shall sell (and is hereby empowered to sell) the Property at public sale to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, curtesy or other exemption, all of which are expressly waived by Grantor) after compliance with applicable North Carolina laws relating to foreclosure sales under power of sale and shall execute a conveyance to the successful purchaser at said sale. Pursuant to the provisions of North Carolina General Statute 45-21.8, the Trustee or Trustees are hereby empowered to sell any parcel of the Property, whether or not, in the judgment of the Trustee or Trustees, the proceeds of the parcel sold will be sufficient to satisfy the Note secured hereby, and this provision shall govern the sale or sales of the parcels of Property. The proceeds of any such sale shall be applied in the manner and in the order prescribed by applicable North Carolina laws it being agreed that the expenses of any such sale shall include a reasonable fee to the Trustee for making such sale and for all services performed by him hereunder based on Trustee's standard hourly rate for time actually expended. Beneficiary may bid and become the purchaser at any sale under this Deed of Trust. At any such sale Trustee may at its election require the successful bidder immediately to deposit with Trustee cash or certified check in an amount equal to all or any part of the successful bid and, notice of any such requirement need not be included in the advertisement of the notice of such sale.

IN WITNESS WHEREOF, Grantor (if an individual or partnership) has hereunto set this hand and seal, or (if a corporation) has caused this Deed of Trust to be executed in its corporate name by its duly authorized officers and its seal to be hereunto affixed, the day and year first above written.

[CORPORATE SEAL]

ATTEST:

Assistant Secretary

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

By: TOPVALCO, INC.

By:

President

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

By:

Administrative Member

Address of Grantor:

BK1868 P3707
Address of Beneficiary:

STATE OF OHIO

COUNTY OF HAMILTON

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 ~~and manager~~ 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.L.C., a limited liability company which is an authorized member ~~and manager~~ 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

PRESENTED FOR
REGISTRATION
AND RECORDED

STATE OF NORTH CAROLINA—Forsyth County

The foregoing (or annexed) certificate of Nancy White, NP, Hamilton Co, Ohio
Christopher M Blanton, NP, St. Louis Co, Missouri
is (are) certified to be correct. This the 22 day of August, 1995

John Holleman Register of Deeds

By [Signature] Deputy-Assistant

BK1868 P3708

EXHIBIT A
TO DEED OF TRUST FROM
T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C.
TO RICHARD F. DUNLAP, JR., TRUSTEE FOR
FIRST UNION NATIONAL BANK OF NORTH CAROLINA

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.