MAUPIN, TAYLOR, ELLIS & ADAMS, PA
POST OFFICE BOX 19764
RALEIGH, NORTH CAROLINA 27619

FORSYTH CO,NC 48 FEE:$ 32.00
PRESENTED & RECORDED: 02/05/1997 12:16PM
DICKIE C. WOOD REGISTER OF DEEDS BY:HOODVA

Drawn by and mail to:
J. Hayden Harrell
NEXSEN PRUET JACOBS & POLLARD, LLP
212 South Tryon Street, Suite 1700
Charlotte, North Carolina 28212

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

AMENDMENT TO LOAN DOCUMENTS

THIS AMENDMENT TO LOAN DOCUMENTS ("Amendment") is entered into this 19th day of December, 1996, by and between **T & M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company** ("Borrower"), **TRSTE, INC., a Virginia corporation**, ("Substitute Trustee"), **FIRST UNION NATIONAL BANK OF NORTH CAROLINA, N.A.** ("Lender"), **LEE S. WIELANSKY, RODNEY K. JONES, STEPHEN M. NOTESTINE, NED M. BRICKMAN, JOSEPH H. APTER, AND JOHN I. SILVERMAN** ("Midland Guarantors") and **THE KROGER CO., an Ohio corporation** ("Kroger Guarantor").

W I T E S S E T H

THAT WHEREAS, Lender has heretofore agreed to loan to Borrower up to Six Million Three Hundred Five Thousand and ᵐ/100 Dollars ($6,305,000.00) which is evidenced and secured by the following documents:

1. Promissory Note and Security Agreement in favor of Lender dated August 10, 1995 ("Note").

2. Loan Agreement between Borrower and Lender dated August 10, 1995 ("Loan Agreement").

3. Deed of Trust to Richard F. Dunlap, Jr. as Trustee for Lender dated August 10, 1995 recorded in Book 1868 at Page 3702 in the Forsyth County Public Registry ("Forsyth Deed of Trust").

4. Assignment of Lessor's Interest in Lease between Borrower and Lender dated August 10, 1995 recorded in Book 1868 at page 3709 of the Forsyth County Public Registry. ("Assignment of Leases").

5. Assignment of Construction Documents between Borrower and Lender dated n/a, 1995 ("Assignment of Construction Documents").

6. Unconditional Guaranty dated August 10, 1995 from Midland Guarantors ("Midland Guaranty").

7. Guaranty Agreement from The Kroger Co. dated August 10, 1995 ("Kroger Guaranty").

(The Note, Loan Agreement, Deed of Trust, Assignment of Leases, Assignment of Construction Documents, Midland Guaranty, and Kroger Guaranty, are hereafter collectively referred to as "Loan Documents."); and

WHEREAS, All parties herein desire to increase the principal amount of the loan from Six Million Three Hundred Five Thousand and no/100 Dollars ($6,305,000.00) to Six Million Eight Hundred Nineteen Thousand and no/100 Dollars ($6,819,000.00); and

WHEREAS, Midland Guarantors and the Kroger Guarantor were and are liable for the obligations under the Note and other Loan Documents as set forth in their respective Guaranty Agreements (limited as set forth therein with respect to the Kroger Guaranty) and wish to evidence their continuing obligation for the increased amount by consenting to the modifications contained herein.

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, Borrower, Lender, Substitute Trustee, Midland Guarantors and Kroger Guarantor hereby agree as follows:

1. The Note and all other Loan Documents are hereby amended so that the maximum principal amount of the Loan is Six Million Eight Hundred Nineteen Thousand and no/100 Dollars ($6,819,000.00).

2. Notwithstanding the last sentence in paragraph 18 entitled "Transfer of Premises" in the Deed of Trust, Lender agrees to release any of the five (5) out parcels shown on plats entitled "Kernersville Shopping Center" and labeled as Lot 2 in Map Book 39 at Page 46, Lots 4 and 5 in Map Book 39 at Page 55 and Lots 6 and 7 in Map Book 39 at Page 56 all of the Forsyth County Public Registry, upon payment of 100% of the net sales proceeds generated from the sale of the same. As used herein, "net sales proceeds" shall mean the gross sales proceeds derived from an arms length transaction approved by Lender less normal and customary closing costs and normal and customary commissions paid to third parties by Borrower.

3. Borrower hereby ratifies and confirms that the Note and other Loan Documents evidence and secure a valid and subsisting obligation of Borrower and that there are no defenses or offsets against the same, and except as amended herein, are agreed to be in full force and effect by all parties in accordance with their respective terms.

4. The Midland Guarantors and Kroger Guarantor join in the execution hereof to ratify and confirm that the Midland Guaranty and the Kroger Guaranty are in full force and effect and continue to guarantee the obligations (as may be limited therein) contained in the Note and other Loan Documents as amended herein.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to be duly executed under seal as of day and year first above written.

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

BY: **TOPVALCO, INC.**

By: _____ (SEAL)
President

[CORPORATE SEAL]

ATTEST:

_____
Assistant Secretary

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

By: _____ (SEAL)
Administrative Member

MIDLAND GUARANTORS:

_____ (SEAL)
Lee S. Wielansky

_____ (SEAL)
Rodney K. Jones

_____ (SEAL)
Stephen M. Notestine

3132.3-RD (JHH) 018775-28

_____(SEAL)
Ned M. Brickman

_____(SEAL)
Joseph H. Apter

_____(SEAL)
John I. Silverman

THE KROGER CO.:

By: _____

_____ President

SUBSTITUTE TRUSTEE:

TRSTE, INC.

[CORPORATE SEAL]
ATTEST:
_____
ASSIST. Secretary

By: _____
S.V. President

LENDER:

FIRST UNION NATIONAL BANK OF NORTH CAROLINA

[CORPORATE SEAL]
ATTEST:
_____
ASSIST. Secretary

By: _____
S.V. President

3132.3-RD (JHH) 018775-28

X

_____(SEAL)
Ned M. Brickman

_____(SEAL)
Joseph H. Apter

X

_____(SEAL)
John I. Silverman

THE KROGER CO.:

By: James L. Hodges
VICE President

SUBSTITUTE TRUSTEE:

TRSTE, INC.

By: _____

_____ President

LENDER:

FIRST UNION NATIONAL BANK OF NORTH CAROLINA

By: _____

_____ President

[CORPORATE SEAL]

ATTEST:

_____

_____ Secretary

3132.3-RD (JHH) 018775-28

_____(SEAL)
Ned M. Brickman

_____(SEAL)
Joseph H. Apter

_____(SEAL)
John I. Silverman

THE KROGER CO.:

By: _____

_____ President

SUBSTITUTE TRUSTEE:

TRSTE, INC.

By: _____

_____ President

LENDER:

FIRST UNION NATIONAL BANK OF NORTH CAROLINA

By: _____

_____ President

[CORPORATE SEAL]

ATTEST:

_____

_____ Secretary

STATE OF OHIO

COUNTY OF HAMILTON

I, NANCY WHITE, a Notary Public of the County and State aforesaid, do hereby certify that ROBIN M. OLINGER personally appeared before me this day and acknowledged that ~~he~~/she is Assistant Secretary of **TOPVALCO, INC., an Ohio corporation**, authorized member and/or manager of **T & M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina 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 Vice President, sealed with its corporate seal and attested by him/her as its Secretary, on behalf of the said limited liability company.

WITNESS my hand and official stamp or seal, this 16th day of December, 1996.

[SEAL]

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, Jane E. Kelly, a Notary Public of the County and State aforesaid, do hereby certify that LEE S. WIELANSKY personally appeared before me this day and acknowledged that he/she is an authorized member and/or manager of **MIDLAND KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company** which is an authorized member and/or manager of **T & M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company** and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company as authorized member and/or manager of said limited liability company.

WITNESS my hand and official stamp or seal, this 15th day of October, 1996.

[SEAL]

Jane E. Kelly
Notary Public

My Commission Expires:

NOTARY SEAL
JANE E. KELLY
Notary Public - STATE OF MISSOURI
CITY OF ST. LOUIS
My Commission Expires: Oct 4, 2000

3132.3-RD (JHH) 018775-28

0793

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Lisa Carroll, a Notary Public of the County and State aforesaid, do hereby certify that W. Patton Brugh personally came before me this day and after being duly sworn, says that she/he is Vice President of **TRSTE, INC.**, a Virginia corporation, Substitute Trustee that the seal affixed to this instrument is the corporate seal for the corporation, and that this instrument was signed and sealed by her/him, on behalf of the corporation by its authority duly given, and further acknowledged this instrument to be the act and deed of the corporation.

WITNESS my hand and official stamp or seal, this 17th day of January, 1997.

[SEAL]

Lisa C. Carroll
Notary Public

My Commission Expires: 8-23-98

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Lisa C. Carroll, a Notary Public of the County and State aforesaid, do hereby certify that W. Patton Brugh personally came before me this day and after being duly sworn, says that she/he is Vice President of **FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association**, that the seal affixed to this instrument is the corporate seal for the corporation, and that this instrument was signed and sealed by her/him, on behalf of the corporation by its authority duly given, and further acknowledged this instrument to be the act and deed of the corporation.

WITNESS my hand and official stamp or seal, this 17th day of January, 1997.

[SEAL]

Lisa C. Carroll
Notary Public

My Commission Expires: 8-23-98

3132.3-RD (JHH) 018775-28

0794

STATE OF ~~OHIO~~ Missouri)
) ss
COUNTY OF ~~HAMILTON~~ St. Louis)

I, ~~CHRISTOPHER M. BLANTON~~, a Notary Public of the County and State aforesaid, do hereby certify that ~~JAMES E. HUGE~~ personally came before me this day and after being duly sworn, says that he/she is the Vice President of The Kroger Co., an Ohio corporation, and that the seal affixed to this instrument is the corporate seal for the corporation, and that this instrument was signed and sealed by her/him, on behalf of the corporation by its authority duly given, and further acknowledged this instrument to be the act and deed of the corporation.

WITNESS my hand and official stamp or seal this 18th day of December, 1996.

[SEAL]

Notary Public

My Commission Expires:

CHRISTOPHER M BLANTON
Notary Public - Notary Seal
STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 14,2000

Ret Recorded Doc

STATE OF Missouri

COUNTY OF St Louis

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that Lee S. Wielansky personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 15th day of October, 1996.

✧ NOTARY SEAL ✧
JANE E. KELLY
Notary Public - STATE OF MISSOURI
CITY OF ST. LOUIS
My Commission Expires: Oct 4, 2000

Jane E. Kelly
Notary Public

My Commission Expires:
10-4-2000

(NOTARIAL SEAL OR STAMP)

STATE OF Missouri

COUNTY OF St. Louis

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that Rodney K. Jones personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 15th day of October, 1996.

✧ NOTARY SEAL ✧
JANE E. KELLY
Notary Public - STATE OF MISSOURI
CITY OF ST. LOUIS
My Commission Expires: Oct 4, 2000

Jane E. Kelly
Notary Public

My Commission Expires:
10-4-2000

(NOTARIAL SEAL OR STAMP)

STATE OF Missouri

COUNTY OF St. Louis

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that Stephen M. Notestine personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 15th day of October, 1996.

✧ NOTARY SEAL ✧
JANE E. KELLY
Notary Public - STATE OF MISSOURI
CITY OF ST. LOUIS
My Commission Expires: Oct 4, 2000

Jane E. Kelly
Notary Public

My Commission Expires:
10-4-2000

(NOTARIAL SEAL OR STAMP)

STATE OF Missouri

COUNTY OF St. Louis

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that Ned M. Brickman personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 15th day of October, 1996.

✧ NOTARY SEAL ✧
JANE E. KELLY
Notary Public - STATE OF MISSOURI
CITY OF ST. LOUIS
My Commission Expires: Oct 4, 2000

Jane E. Kelly
Notary Public

My Commission Expires:
10-4-2000

(NOTARIAL SEAL OR STAMP)

STATE OF _____

COUNTY OF _____

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that Joseph H. Apter personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the ___ day of _____, 1996.

_____
Notary Public

My Commission Expires:

_____

(NOTARIAL SEAL OR STAMP)

STATE OF North Carolina

COUNTY OF Wake

X

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that John I. Silverman personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 9th day of October, 1996.

Laura A. Boenker
Notary Public

My Commission Expires:
7-27-2000

(NOTARIAL SEAL OR STAMP)

0798

STATE OF MISSOURI
COUNTY OF ST. LOUIS

I, Jane E. Kelly, Notary Public in and for the said State and County aforesaid, do hereby certify that Joseph H. Apter personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this 15th day of October, 1996.

Jane E. Kelly
Notary Public

My commission expires:
October 4, 2000

NOTARY SEAL
JANE E. KELLY
Notary Public - STATE OF MISSOURI
CITY OF ST. LOUIS
My Commission Expires: Oct 4, 2000

STATE OF NORTH CAROLINA – Forsyth County

The foregoing (or annexed) certificate(s) of Nancy White & Jane E. Kelly & Lisa C Carroll
(here give name and official title of the officer signing the certificate(s) passed upon)
& Christopher M. & Laura A Beaman, Notaries Public

is (are) certified to be correct. This the 5 day of Feb 19 97.

Dickie C. Wood, Register of Deeds

By: Kathy Franks Deputy/Assistant

0799

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