

Return to: Dennis W. McNamara Box

BK1941 P0238

2

THIS INSTRUMENT PREPARED BY AND
RECORDED BY: [illegible]

SUTHERLAND, ASH & BRENNAN, L.L.P. 30.00
999 PEACOCK STREET, N.E.
ATLANTA, GEORGIA 30305
ATTN: ELLEN S. SMITH, ESQ.
PRESENTED & RECORDED: 04/02/1997 12:18PM
DICKIE C. WOOD REGISTER OF DEEDS BY: HODDVA

**ASSIGNMENT OF LESSOR'S
INTEREST IN LEASES**

FORSYTH CO., NC 62 FEE: \$ 30.00
PRESENTED & RECORDED: 04/02/1997 12:18PM
DICKIE C. WOOD REGISTER OF DEEDS BY: HODDVA

THIS ASSIGNMENT, made this 31st day of March, 1997, by T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company, having a mailing address c/o Midland Development Group, Inc., 12655 Olive Boulevard, Suite 200, St. Louis, Missouri 63141 (hereinafter called "Assignor"), in favor of TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office at 730 Third Avenue, New York, New York 10017 (hereinafter called "Assignee"),

WITNESSETH:

FOR VALUE RECEIVED, Assignor does hereby SELL, ASSIGN, TRANSFER, SET OVER and DELIVER unto the Assignee, the leases more particularly identified in the Schedule of Leases attached hereto as Exhibit A which said leases cover portions of the premises together with buildings and improvements thereon (hereinafter called "said premises"), situate in the County of Forsyth, State of North Carolina, and more particularly described in the Deed of Trust hereinafter identified;

TOGETHER with any and all extensions and renewals thereof and any and all further leases (including subleases thereof, tenancies following attornment and oil and gas leases) upon all or any part of the said premises (all such leases, subleases and tenancies heretofore mentioned are hereinafter collectively included in the designation "said leases");

TOGETHER with any and all guarantees of lessee's performance under any of said leases; and

TOGETHER with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Assignor may now or shall hereafter (including the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the said leases or from or out of the said premises or any part thereof, including but not by way of limitation:

H:\ESS\ESS18701.44\MIDLAND.KROV\ASNLSE.1

BK1941 P 238 - P 249

BK1941 P0239

NC-169;Mtg#000394900

minimum rents, additional rents, percentage rents, parking maintenance, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents and liquidated damages following default, the premium payable by any lessee upon the exercise of a cancellation privilege originally provided in any said lease, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the said premises together with any and all rights and claims of any kind which Assignor may have against any lessee under such leases or any sub-tenants or occupants of the said premises (all such moneys, rights and claims in this paragraph described being hereinafter called "rents"), EXCEPTING THEREFROM, any sums which by the express provisions of any said lease are payable directly to any governmental authority or to any other person, firm or corporation other than the lessor under the said lease;

SUBJECT, however, to a license hereby granted by Assignee to Assignor, but limited as hereinafter provided, to collect and receive all of the said rents.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns forever, or for such shorter period as hereinafter may be indicated.

FOR THE PURPOSE OF SECURING the payment of the indebtedness evidenced by that certain Deed of Trust Note dated of even date herewith in the principal sum of FIVE MILLION THREE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$5,325,000.00) made by Assignor payable to the order of Assignee and presently held by Assignee, including any extensions and renewals thereof and any supplemental note or notes increasing such indebtedness as well as the payment, observance, performance and discharge of all other obligations, covenants, conditions and warranties contained in the Deed of Trust and Security Agreement of even date herewith from Assignor to James N. Marinello, as Trustee, for the benefit of Assignee, to be recorded in the Forsyth County Public Registry immediately prior in time to the recording hereof, and in any extensions, supplements and consolidations thereof, covering the said premises and securing the said Deed of Trust Note and supplemental notes, if any (hereinafter collectively called "the said Note and Deed of Trust").

TO PROTECT THE SECURITY OF THIS ASSIGNMENT, IT IS COVENANTED AND AGREED AS FOLLOWS:

1. That Assignor represents and warrants: That Assignor is the owner in fee simple absolute of the said premises and has good title to the identified leases and rents hereby assigned and good right to assign the same, and that no other person, firm or corporation has any right, title or interest therein; that Assignor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the identified leases on Assignor's part to be kept, observed and performed; that the identified leases are

valid and unmodified except as indicated herein and in full force and effect; that Assignor has not previously sold, assigned, transferred, mortgaged or pledged the said rents, from said premises, whether now due or hereafter to become due pursuant to an instrument which has not been released; that any of said rents due and issuing from said premises or from any part thereof for any period subsequent to the date hereof have not been collected and that payment of any of same has not otherwise been anticipated, waived, released, discounted, set-off, or otherwise discharged or compromised; that Assignor has not received any funds or deposits from any lessee for which credit has not already been made on account of accrued rents; that Assignor has not received, prior to the date of recording of the said Deed of Trust, any bona fide and acceptable offer to purchase the said premises or any part thereof; and that the lessees under the identified leases are not in default of any of the terms thereof except as disclosed in writing to Assignee.

2. That Assignor covenants and agrees as follows: To observe, perform and discharge, duly and punctually, all and singular the obligations, terms, covenants, conditions and warranties of the said Note and Deed of Trust, of the identified leases and of all future leases affecting the said premises, on the part of the Assignor to be kept, observed and performed, and to give prompt notice to Assignee of any failure on part of Assignor to observe, perform and discharge same; to notify and direct in writing each and every present or future lessee or occupant of the said premises or of any part thereof that any security deposit or other deposits heretofore delivered to Assignor have been retained by Assignor or assigned and delivered to Assignee as the case may be; to enforce or secure in the name of the Assignee the performance of each and every obligation, term, covenant, condition and agreement in said leases by any lessee to be performed; to appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the said leases or the obligations, duties, or liabilities of the Assignor and any lessee thereunder, and, upon request by Assignee, will do so in the name and behalf of the Assignee but at the expense of the Assignor, and to pay all costs and expenses of the Assignee, including reasonable attorney's fees.

3. That Assignor further covenants and agrees as follows: Not to receive or collect any rents from any present or future lessee of said premises or any part thereof for a period of more than one month in advance, (whether in cash or by promissory note), nor pledge, transfer, mortgage or otherwise encumber or assign future payments of said rents; not to waive, excuse, condone, discount, set-off, compromise, or in any manner release or discharge any lessee thereunder, of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay the rents thereunder, in the manner and at the place and time specified therein; not to cancel, terminate or consent to any surrender of any said lease, or commence an action of ejectment or any summary proceedings for dispossession of the lessee under any said lease, or exercise any right of recapture provided in any said lease, nor modify, or in any way alter the terms thereof; not to lease any part of the said premises, nor renew or extend the term of any lease of said premises unless an option therefor was originally so reserved by lessee in said lease

and for a fixed and definite rental; not to relocate any said lessee within said premises, nor consent to any modification of the express purposes for which the premises have been leased, nor consent to any subletting of said premises or any part thereof, or to any assignment of said leases by any lessee thereunder or to any assignment or further subletting of any sublease, without, in each such instance enumerated in this paragraph, the prior written consent of the Assignee. Notwithstanding the foregoing, Assignor's lease with The Kroger Co. with respect to the premises may be modified from time to time without the consent of Assignee; provided, however, (i) that Assignor provides Assignee written notice of such modifications, and (ii) that such modifications do not change the financial terms of such lease, diminish the term of such lease, release the tenant from any obligation or liability under such lease or increase the obligations or liability of the landlord thereunder.

4. That in the event any representation or warranty herein of Assignor shall be found to be untrue when made or Assignor shall default in the observance or performance of any obligation, term, covenant, condition or warranty herein, then, in each such instance after the expiration of any applicable notice and cure or grace period, the same shall constitute and be deemed to be a default under the said Note and Deed of Trust thereby entitling Assignee to declare all sums secured thereby and hereby immediately due and payable and to exercise any and all of the rights and remedies provided thereunder and hereunder as well as by law.

5. That so long as there shall exist no default beyond any applicable notice and cure or grace period by Assignor in the payment of any indebtedness secured hereby and no default by Assignor in the observance and performance of any other obligation, term, covenant or condition or warranty herein or in said Note and Deed of Trust or in said leases contained, Assignor shall have the right under a license granted hereby (but limited as provided in the following paragraph) to collect upon, but not prior to accrual, as aforesaid, all of said rents, arising from or out of the said leases or any renewals or extensions thereof, or from or out of the said premises or any part thereof, and Assignor shall receive such rents, and shall hold same, as well as the right and license to receive same, as a trust fund to be applied, and Assignor hereby covenants to so apply same, first to the payment of taxes and assessments upon said premises before penalty or interest are due thereon, secondly to the cost of such insurance and of such maintenance and repairs as is required by the terms of the said Deed of Trust, and thirdly to satisfaction of all obligations under the said leases, and fourthly to the payment of interest and principal becoming due on the said Note and Deed of Trust, before using any part of the same for any other purposes.

6. That upon the sale and conveyance by Assignor and its successors and assigns of the fee title to the said premises, all right, title and interest and powers granted under the license aforesaid shall automatically pass to and may be exercised by each such subsequent owner and upon or at any time after default in the payment of any indebtedness secured hereby beyond any applicable notice and cure or grace period or default in the

observance or performance of any obligation, term, covenant, condition or warranty herein or in the said Note and Deed of Trust or in the said leases contained, Assignee, at its option, shall have the complete right, power and authority hereunder then or thereafter to exercise and enforce any or all of the following rights and remedies: (a) to terminate the license granted to Assignor to collect as aforesaid the said rents, and then and thereafter, without taking possession, in Assignee's own name, to demand, collect, receive, sue for, attach and levy the said rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and proper costs and expenses of operation and collection, as determined by Assignee, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, upon any indebtedness secured hereby and in such order as Assignee may determine; (b) to declare all sums secured hereby immediately due and payable and, at its option, exercise all of the rights and remedies contained in said Note and Deed of Trust; and (c) without regard to the adequacy of the security, with or without any action or proceeding through any person or by agent, or by the Beneficiary under the Deed of Trust, or by a receiver to be appointed by court and irrespective of said Assignor's possession, then or thereafter, to enter upon, take possession of, manage and operate said premises or any part thereof, make, modify, enforce, cancel or accept surrender of any lease now in effect or hereafter in effect on said premises or any part thereof; remove and evict any lessee; increase or decrease rents; decorate, clean and repair; and otherwise do any act or incur any costs or expense as Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession, and in such event to apply the rents so collected to the operation and management of said premises, but in such order as Assignee shall deem proper, and including the payment of reasonable management, brokerage and attorneys' fees, payment of the indebtedness under said Note and Deed of Trust and maintenance, without interest, of a reserve for replacement;

Provided, however, that the acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of possession of said premises by Assignee, be deemed or construed to constitute Assignee a mortgagee in possession nor thereafter or at any time or in any event obligate the Assignee to appear in or defend any action or proceeding relating to the said leases or to the said premises, or to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under said leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any lessee thereunder and not assigned and delivered to Assignee, nor shall Assignee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the said premises;

And provided further that the collection of said rents and application as aforesaid and/or the entry upon and taking possession of the said premises shall not cure or waive any default or waive, modify or affect any notice of default under said Note and Deed of Trust or invalidate any act done pursuant to such notice, and the enforcement of such right

or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect, notwithstanding that the collection and application aforesaid of such rents may have cured for the time the original default. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

7. That Assignor does hereby constitute and appoint Assignee the true and lawful attorney, coupled with an interest, of said Assignor (but not of any members or partners of said Assignor) and in the name, place and stead of Assignor, to demand, sue for, attach, levy, recover and receive any premium or penalty payable upon the exercise, by any lessee under any lease of the said premises, of a privilege of cancellation originally provided in said lease, and to give proper receipts, releases and acquittances therefor and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Assignee, of the indebtedness secured hereby, notwithstanding the fact that the amount owing thereunder may not then be due and payable or that the indebtedness is otherwise adequately secured, and Assignor does hereby authorize and direct any such lessee to deliver such payment to Assignee in accordance with the foregoing, and does hereby ratify and confirm all whatsoever that its said attorney, the Assignee herein shall do or cause to be done by virtue of the powers granted hereby. The within appointment shall be irrevocable and continuing and such rights, powers and privileges shall be exclusive in Assignee, its successors and assigns so long as any part of the indebtedness secured hereby shall remain unpaid.

8. That Assignor does hereby constitute and appoint Assignee the true and lawful attorney, coupled with an interest of said Assignor (but not of any members or partners of Assignor) and in the name, place and stead of said Assignor to subject and subordinate at any time and from time to time, any lease affecting the said premises or any part thereof, to the lien of the said Deed of Trust or any other mortgage or deed of trust on or to any ground lease of said premises or to request or require such subordination, where such reservation, option or authority was reserved under any said lease to the Assignor, or in any case, where the Assignor otherwise would have the right, power or privilege so to do. This appointment is to be irrevocable and continuing and these rights, powers and privileges shall be exclusive in Assignee, its successors and assigns so long as any part of the indebtedness secured hereby shall remain unpaid, and Assignor does hereby warrant that Assignor has not, at any time prior to the date hereof, exercised any such right and covenants not to exercise any such right to so subordinate any such lease to Deed of Trust or to any other security deed, mortgage, deed of trust or ground lease.

9. That Assignor hereby agrees to indemnify and hold the Assignee harmless of and from any and all liability, loss, damage or expense which it may or might incur under or by reason of this Assignment, or for any action taken by the Assignee hereunder (other than the gross negligence or wilful misconduct of Assignee), or by reason or in defense of any and all claims and demands whatsoever which may be asserted against

Assignee arising out of said leases, including, but without limitation thereto, any claim by any lessee of credit for rental paid to and received by Assignor, but not delivered to Assignee, for any period under any said lease more than one month in advance of the due date thereof; should the Assignee incur any such liability, loss, damage or expense, the amount thereof (including reasonable attorney's fees) with interest thereon at the default rate set forth in said Note and Deed of Trust shall be payable by Assignor immediately without demand, and shall be secured hereby and by said Deed of Trust.

10. That until the indebtedness secured hereby shall have been paid in full, Assignor will deliver to the Assignee executed copies of any and all other and future leases upon all or any part of the said premises and will transfer and assign such other and future leases upon the same terms and conditions as herein contained and Assignor hereby covenants and agrees to make, execute and deliver unto Assignee upon demand and at any time or times, any and all assignments and other instruments sufficient for the purpose or that the Assignee may deem to be advisable for carrying out the true purposes and intent of this Assignment (including assignment of the rent under any lease with the United States Government after allowance of the rental claim, ascertainment of the amount due and issuance of the warrant for payment thereof).

11. That the failure of the Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time or at any time or times, shall not be construed or deemed to be a waiver of any such right, and nothing herein contained, nor anything done or omitted to be done by Assignee pursuant hereto shall be deemed a waiver by Assignee of any of its rights and remedies under said Note and Deed of Trust, or under the laws of the state in which the said premises are situate. The right of the Assignee to collect the said indebtedness and to enforce any other security therefor may be exercised by Assignee, either prior to, simultaneously with, or subsequent to any action taken hereunder.

12. That so long as any of the indebtedness secured hereby and by the said Note and Deed of Trust shall remain unpaid, unless the Assignee shall otherwise consent in writing, the fee title and the leasehold estates on said premises as hereinbefore described shall not merge, but shall always be kept separate and distinct, notwithstanding the union of said estates either in the Assignor or in any lessee or in a third party by purchase or otherwise.

13. That upon payment in full of all of the indebtedness secured by said Note and Deed of Trust and of all sums payable hereunder, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any member of Assignee showing any part of said indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person, firm or corporation, may and is hereby authorized to rely thereon. A demand on any lessee made by Assignee for payment of rents by reason of any default claimed by

Assignee shall be sufficient warrant to said lessee to make future payments of rents to Assignee without the necessity for further consent by the said Assignor.

14. All notices, demands or requests provided for or permitted to be given pursuant to this Assignment must be in writing and shall be deemed to have been properly given when served by personal delivery, by depositing the same in the United States mail, postage prepaid and registered or certified, return receipt requested, or sent by reputable, national overnight delivery service, for delivery on the next business day, charges prepaid, at the address set forth below. The effective date of such notice, demand or request shall be the earlier of (i) actual receipt; or (ii) three (3) days after the date of mailing, if mailed or the next business day after delivery to the overnight service, if sent by overnight delivery service. For the purpose of this Assignment:

The address of Assignee is:

Teachers Insurance and Annuity
Association of America
730 Third Avenue
New York, NY 10017
Attn: Managing Director South/Southeast
Region Mortgage and Real Estate Division

with a copy to:

Teachers Insurance and Annuity
Association of America
730 Third Avenue
New York, NY 10017
Attn: Vice-President and Chief Counsel in Charge of
Mortgage and Real Estate Law Mortgage and Real
Estate Division

The address of Assignor is:

c/o Midland Development Group, Inc.
12655 Olive Boulevard
Suite 200
St. Louis, Missouri 63141
Attn: Lee S. Wielansky

with a copy to:

BK1941 P0246

NC-169;Mtg#000394900

The Kroger Co.
Real Estate Department
1014 Vine Street
Cincinnati, Ohio 45202
Attn: Vice President-KFS Real Estate

Either party hereto may, from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address or a different person to which all such notices or demands are thereafter to be addressed.

15. That the terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all lessees, sub-tenants and assigns of same, and all subsequent owners of the said premises, and all subsequent holders of the said Note and Deed of Trust. In this Assignment, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. All obligations of each Assignor hereunder shall be joint and several.

16. Assignor agrees that during the term of this Assignment it will not further assign or otherwise transfer or encumber its interests in the leases or the rents without Assignee's prior written consent which may be withheld in Assignee's sole discretion. If Assignee consents to any further assignment, transfer or encumbrance of the leases or rents, it will only do so provided (i) the subordinate assignment restricts the subordinate assignee from subordinating the leases to any security deed, mortgage or deed of trust held by the subordinate assignee; (ii) the subordinate assignment prohibits the subordinate assignee from taking any action that would terminate, modify or amend or could result in the termination, modification or amendment of any lease; and (iii) the subordinate assignee agrees that if it exercises its remedies under its assignment and either it or any party acting on its behalf collects any rents from said premises, such rents will be deemed collected for the benefit of Assignee and held in trust for Assignee and upon written demand, the party holding the rents collected will immediately pay them to Assignee. If any subordinate assignment does not contain the foregoing provisions, to the extent permitted by law, the subordinate assignee will be deemed bound by such provisions as if set forth in the subordinate assignment.

03/20/97 THU 13:03 FAX 314 438 8400

STOLAR PARTNERSHIP

→→→ MIDLAND 12:23pm P. 2 015
OF 8

BK1941 P0247

NC-169;Mtg#000394900

IN WITNESS WHEREOF, Assignor has executed this Assignment under seal,
through its duly authorized members, as of the day and year first above written.

ASSIGNOR:

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

ATTEST:

By: Robert M. Oly
Assistant Secretary

By: TOPVALCO, INC., an Ohio corporation,
Member

By: James A. Fudge
Its: President

[CORPORATE SEAL]

By: MIDLAND KERNERSVILLE
DEVELOPMENT COMPANY, a North
Carolina limited liability company
Member

By: Leo S. Wielansky (SEAL)
Leo S. Wielansky, Member

BK1941 P0248

NC-169;Mtg#000394900

STATE OF Ohio
COUNTY OF Hamilton

This 25th day of March, 1997, personally came before me JAMES E. HODGE, who, being by me duly sworn, says that he is the President of Topvalco, Inc., an Ohio corporation, a member of T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company, that the seal affixed to the foregoing instrument in writing is the corporate seal of the company, and that said writing was signed and sealed by him, in behalf of said corporation, by its authority duly given. And the said _____ President acknowledged the said writing to be the act and deed of said corporation as a member of T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C.

WITNESS my hand and official seal, this the 25th day of March, 1997.

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

Nancy White
Notary Public

[NOTARIAL SEAL]

STATE OF Missouri
COUNTY OF St. Louis

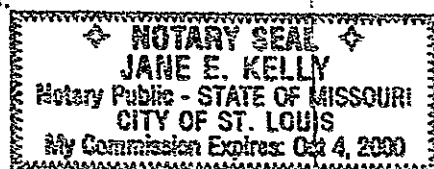
This 21st day of March, 1997, personally came before me Lee S. Wislansky, being by me duly sworn, says that he is a member of Midland Kernersville Development Company, a North Carolina limited liability company, and acknowledged the due execution of the foregoing instrument on behalf of Midland Kernersville Development Company as a member of T&M Kernersville Development Company, L.L.C.

WITNESS my hand and official seal, this the 21st day of March, 1997.

My commission expires:

Notary Public

[NOTARIAL SEAL]



STATE OF NC - FORSYTH CO

The foregoing certificate of Nancy White
Jane E. Kelly NP(s)
is certified to be correct this 2 day of Apr, 1997
Doris C. Wood, Register of Deeds by: [Signature] Ass/Deputy

RECORDER'S MEMO

Record of Poor Quality Due
to Condition of Original

BK1941 P0249

EXHIBIT A

TELETYPE

DELOER

GOLEBY'S

COMMERCIAL CREDIT CORPORATION

YES SOLID ROCK

LITTLE CRESSIES

PAUL BONES ETC.

CHART CLIPS

STYLING OPTIMUM

CPC

E & S NEWS