Return to.. Dennis W. McNames Box

BK1941 P0250

This instrument drafted by
~~and after recording return to~~:

FORSYTH CO,NC 63 FEE:$ 64.00
PRESENTED & RECORDED: 04/02/1997 12:28PM
DICKIE C. WOOD REGISTER OF DEEDS BY:HOODVA

Donald J. Shuller
Vorys, Sater Seymour and Pease
221 East Fourth Street, Suite 2100
P.O. Box 0236
Cincinnati, Ohio 45201-0236

DEED OF TRUST
(Kernersville)

THIS DEED OF TRUST (this "Deed of Trust") is made and granted as of the 31st day of March, 1997, by and between **T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C.**, a North Carolina limited liability company, having as a mailing address 12655 Olive Boulevard, Suite 200, St. Louis, Missouri 63141, as Grantor (hereinafter called "Borrower"), to **DAVID L. HUFFSTETLER**, having as a mailing address Two Hanover Square, 434 Fayetteville Mall, Suite 2000, Raleigh, North Carolina 27601, as Grantee (hereinafter called "Trustee"), for the benefit of **STAR BANK, N.A.**, a national banking association created under the laws of the United States of America, having as a mailing address 425 Walnut Street, Cincinnati, Ohio 45202, Attn: Commercial Property Loan Department (hereinafter called "Lender").

WITNESSETH:

That Borrower, for and in consideration of the sum of Ten and no/100 Dollars ($10.00) and other good and valuable consideration in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, convey, and confirm unto Trustee, with the power of sale and right of entry and possession, all that tract or parcel of land lying and being in the State of North Carolina, together with all improvements located thereon, as more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

TOGETHER WITH all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, minerals, royalties, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, including, without limitation, all of Borrower's right, title and interest to any lease of the Property or any part thereof, if any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower and the reversion and reversions, remainder and remainders, the rents, issues, profits and revenues of the Property from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity,

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of Borrower of, in, and to the same; reserving only the right to Borrower to collect the same so long as Borrower is not in default hereunder (all of the foregoing being included within the definition of the Property).

TO HAVE AND TO HOLD the Property unto Trustee, and the successors and assigns of Trustee, in fee simple and forever,

BUT IN TRUST, for the purpose of securing unto Lender:

(a) The full and prompt payment when due, whether by acceleration or otherwise, of the principal sum outstanding from time to time under that certain Promissory Note (the "Note") of even date herewith payable by Borrower to order of Lender in the principal sum of One Million Six Hundred Ninety Thousand and no/100 Dollars ($1,690,000), together with interest, late charges and all other amounts as provided in the Note, which is hereby incorporated by reference into this Deed of Trust, which Note has a maturity date of June 1, 1997;

(b) The full and prompt payment when due of any and all prepayment fees, premiums and/or penalties due pursuant to the Note, as the same may be now or hereafter amended, renewed, extended and/or modified;

(c) The full and punctual payment, performance and observance of, and compliance with, each and every obligation, covenant, warranty, agreement, term, provision and condition contained in the Note, as the same may be now or hereafter amended, renewed, extended and/or modified;

(d) The full and complete performance and observance of, and compliance with, each and every obligation, covenant, warranty, agreement, term, provision and condition contained in this Deed of Trust and any modification, amendment, renewal or extension hereof; and

(e) The payment and performance of any and all other obligations of Borrower to Lender whether now existing or hereafter arising.

PROVIDED ALWAYS, that upon the discharge in full of the indebtedness and all obligations secured hereby, then this conveyance shall be null and void and Trustee, at the sole cost and expense of Borrower, shall cancel this Deed of Trust of record;

It is the intention of this Deed of Trust to secure not only the indebtedness evidenced by the Note hereinabove described, along with any and all renewals, modifications, amendments, replacements, consolidations and extensions thereof, in whole or in part, but also any and all other further indebtedness now owing or that may hereafter be owing, however incurred, to Lender, its successors and assigns, by Borrower and/or Borrower's successors in title, whether directly or indirectly as principal, endorser, guarantor, or otherwise, the indebtedness secured by this Deed of Trust being hereinafter referred to as the "Indebtedness." The Indebtedness shall also include, without limitation: (a) any late charges imposed upon Borrower; (b) any and all prepayment fees, premiums and/or penalties now or hereafter due under the Note; (c) the repayment of future advances disbursed by Lender to Borrower in excess of the principal of the Note; (d) the payment of all other sums, with interest thereon, advanced in accordance with the terms of this Deed of Trust; (e) the performance of all obligations, covenants and agreements herein contained and/or contained in the Note, in accordance with the terms thereof; and (f) any and all other obligations of Borrower to Lender whether now existing or hereafter arising.

NOTWITHSTANDING THE FOREGOING, THE MAXIMUM PRINCIPAL AMOUNT SECURED HEREBY SHALL BE $1,690,000.

If any portion of the Indebtedness or any provision of this Deed of Trust shall be held invalid for any reason, it is the intent of the parties that such portion shall be severable, and such invalidity shall not affect the remainder of this Deed of Trust or the Indebtedness. No release of any part of the Property, or extension of all or any part of the Indebtedness, shall affect the priority of this Deed of Trust.

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Borrower represents, warrants and covenants with and to Lender that it is lawfully seized of the Property in fee simple and has full power to convey the same and to execute this Deed of Trust; that Borrower will make any further assurances of title that Lender may require; that Borrower will keep and observe all of the terms of this Deed of Trust on Borrower's part to be performed; that there are no suits or proceedings pending or, to Borrower's knowledge, threatened against or affecting Borrower and/or the Property; that the Property is free and clear of all encumbrances except for (a) a first deed of trust to Teachers Insurance and Annuity Association of America securing a principal amount of $5,325,000 (the "TIAA Deed of Trust"), (b) real estate taxes not due and payable and (c) easements, covenants, conditions and restrictions of record which do not unreasonably interfere with the intended use of the Property (collectively, the "Permitted Encumbrances"); and that it does warrant and will defend the title to the same against the claims and demands of all persons whomsoever.

ARTICLE II

COVENANTS

Borrower further covenants and agrees with Lender as follows:

2.1 Payments.

(a) To pay the principal of the Note, interest thereon, any and all prepayment fees, premiums and/or penalties and any and all late charges at the times and in the manner therein provided, and to pay all other Indebtedness hereby secured at the times and in the manner herein provided, including any advances or expenses of any kind incurred by Lender pursuant to the provisions of the Note or this Deed of Trust.

(b) To pay any and all fees, commissions, expenses, costs, reimbursements and/or other amounts now or hereafter due under the Note or this Deed of Trust, with interest thereon, at the time(s) and in the manner(s) therein provided.

2.2 Condition of Property; Compliance with Laws; Waste; Use. To keep the Property in good condition and repair and to make all structural and nonstructural and all ordinary and extraordinary repairs and maintenance as and when the same become necessary, and to cause all repairs and maintenance to be done in a good and workmanlike manner; to repair, replace, rebuild and reconstruct any and all portions of the Property which may be damaged or destroyed by fire, windstorm or any other casualty; to repair, replace, rebuild and reconstruct any portions of the Property which may be lost, altered, damaged or destroyed as the result of a "Taking" (hereinafter defined); to comply in all respects with all present and future statutes, laws, ordinances, and governmental rules, regulations and orders which are applicable to all or any portion of Borrower's business or properties (including, but not limited to, the Americans with Disabilities Act); to perform or cause to be performed any and all environmental studies, audits, and tests as may be required by applicable law; not to commit or permit waste of the Property, or remove or permit the removal of any building, improvement or fixture from the Property; not to perform or permit any act which may in any way impair the value of the Property, or allow changes in the use for which the Property was intended at the time this Deed of Trust was executed; not to remove or demolish, or permit others to remove or demolish, any improvements or portions of the Property or, subject to the provisions of this Section 2.2, cause or permit such improvements to be materially altered or changed without the prior written consent of Lender, as well as Lender's prior written consent to the plans and specifications relating thereto; and to use the Property to operate a retail shopping center and for no other purpose.

2.3 Taxes, Insurance and Other Impositions. To pay all personal property taxes, real estate taxes and assessments, water and sewer charges, and all other governmental charges which may accrue, be levied or assessed upon the Property or any part thereof and which may be or become a lien upon the Property or have priority in payment to the Indebtedness hereby secured when and as the same become due, and before any delinquency occurs or any penalty is assessed thereon.

2.4 Indemnification of Lender and Trustee. Borrower hereby agrees and shall indemnify Lender and Trustee for and hold Lender and Trustee harmless from and against any loss suffered or any liability, cost, or expense including, without limitation, actual attorneys' fees at customary hourly rates, incurred by Lender or Trustee on account of any damage to the person or property of Borrower, Lender, Trustee or any third parties by reason of or in connection with the construction, use, operation, maintenance, repair and/or management of the Property, whether or not such damage is due in whole or in part to the negligence of Lender or Trustee, or their employees, officers or agents. Borrower shall undertake, at its sole expense and through counsel satisfactory to Lender and Trustee, the defense of Lender and Trustee in any lawsuit commenced as the result, or alleged to be the result, of injury or damage occurring by reason of or in connection with the construction, use, operation, maintenance, repair and/or management of the Property unless such injury or damage was the direct result of the gross negligence or willful misconduct of Lender or Trustee or their employees, officers or agents.

2.5 Insurance. To obtain and keep in full force and effect at all times, at the sole cost and expense of Borrower, policies of insurance to:

(a) keep the Property insured against loss or damage by fire and all risks of direct physical loss and such other risks of damage, casualties and/or hazards as Lender may from time to time reasonably require (including, without limitation, coverage for earthquakes, vandalism and malicious mischief) for not less than one hundred percent (100%) of the replacement cost thereof, evidenced by "replacement cost" and "agreed amount" endorsements in the policy. Lender may require periodic appraisals of the Property (at Borrower's expense) by appraisers satisfactory to Lender and the insurance carrier. The amount of direct physical loss insurance shall be adjusted as required by the insurance carrier in order to obtain coverage of 100% of replacement cost and to maintain the appropriate "agreed amount" endorsement coverage;

(b) keep the Property insured with business and rental interruption insurance covering risk of loss due to the occurrence of any hazards insured against under the required fire and extended coverage insurance in the amount of not less than $1,400,000;

(c) maintain comprehensive general public liability insurance covering the legal liability of Borrower against claims for bodily injury, death and/or property damage arising out of the construction, use, operation, repair, maintenance and/or management of the Property and all areas appurtenant thereto and/or the conduct of Borrower's business, in such amounts as Lender may reasonably require, but in no event less than $5,000,000.00;

(d) satisfy all applicable worker's compensation insurance requirements;

(e) maintain broad form boiler and machinery insurance for all pressure fired vessels or apparatus, if any, situated on the Property with full repair and replacement cost coverage;

(f) if the Property is in a flood hazard area, maintain flood insurance in an amount equal to the maximum coverage available; and

(g) obtain and maintain any other insurance concerning the Property or operation of business thereon as Lender may reasonably require, including but not limited to such broad form builder's risk insurance coverage as may be reasonably required by Lender during the period of construction of the improvements to the Property as contemplated in the Loan Agreement (including soft cost coverage in the amount of not less than $1,000,000) and/or in the event that any further construction activity is undertaken on the Property.

Each policy of insurance shall be issued by a company or companies reasonably acceptable to Lender and licensed to do business in the state in which the Property is located. Borrower shall deliver to Lender original policies for such insurance, or certificates of insurance with certified copies of such policies, in form reasonably satisfactory to Lender and first payable in case of loss to Lender. Each policy of insurance required by this Section 2.5 shall contain a noncontributory standard mortgagee clause in favor of Lender and a waiver of insurer's rights of subrogation against funds paid under the standard mortgagee endorsement. Each such policy shall provide that Lender shall receive at least thirty (30) days notice prior to any modification, cancellation or non-renewal of such policy for any reason. Borrower further covenants not to terminate or change any policy of insurance without the prior written consent of Lender (which consent shall not be unreasonably withheld), and at least thirty (30) days prior to the expiration date of a policy, to deliver to Lender a renewal policy in form satisfactory to Lender, and to promptly furnish Lender all receipts of paid premiums and any other evidence of payment of premiums as Lender may require.

If the Property is sold pursuant to this Deed of Trust or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition, and Borrower hereby irrevocably appoints Lender as its agent to effect the foregoing.

2.6 Damage or Destruction; Condemnation.

(a) Damage or Destruction. In the event that the Property, or any part thereof, is lost, damaged or destroyed by fire, windstorm or any other casualty, Borrower will give immediate notice thereof to Lender, and Lender may thereupon make proof of such loss, damage or destruction; provided, however, that the right of Lender to make proof of such loss, damage or destruction shall not relieve Borrower of the obligation to make proof of such loss, damage or destruction in a timely manner under any policy of insurance covering such loss, damage or destruction. All proceeds of insurance payable by reason of any such loss, damage or destruction shall be payable to Lender, and all affected insurance companies are hereby authorized and directed to make payment thereof directly to Lender. Borrower hereby irrevocably appoints Lender as Borrower's agent (which appointment is coupled with an interest) to, at Lender's option, settle, adjust, compromise and otherwise pursue any claims for loss, damage or destruction under any policy of insurance. Lender shall apply the proceeds of insurance paid to it pursuant to this Section 2.6(a) in accordance with the provisions of Section 2.6(c) hereof. Lender shall not be deemed a trustee with respect to any funds received by Lender pursuant to this Section 2.6(a); however, Lender shall not commingle such funds with its general funds and shall invest such funds in an interest bearing account (in Lender's name) for the benefit of Borrower (Lender shall also have a validly perfected first lien security interest in such account). Within seven (7) days after request by Lender, Borrower agrees to execute and deliver such documents as may be required by Lender to enable Lender to realize upon the rights granted to it under this Section 2.6(a).

(b) Condemnation. In the event that the Property, or any part thereof, is altered, damaged, taken or acquired, either temporarily or permanently, in any condemnation proceedings, or by exercise of the power of eminent domain, or by any acquisition made under threat of the exercise of the power of eminent domain, or by the alteration of the grade of any street affecting the Property (collectively, a "Taking"), the amount of any award or other payment made in consideration thereof is hereby assigned to Lender, and Lender is empowered to collect and receive the same and to give proper receipts therefor in the name of Borrower, and the same shall be paid forthwith to Lender. If Borrower receives notice, written or unwritten, of any actual, intended or threatened Taking, Borrower shall immediately furnish a copy of such notice to Lender if such notice was written, or inform Lender in writing of such notice if such notice was unwritten. Borrower hereby irrevocably appoints Lender as Borrower's agent (which appointment is coupled with an interest) to, at Lender's option, commence, appear in and prosecute, in Borrower's or Lender's name or both, any action or proceeding relating to any Taking. Any award or payment received by Lender in respect to any Taking shall be applied by Lender in accordance with the provisions of Section 2.6(c) hereof. Lender shall not be deemed a trustee with respect to any funds received by Lender pursuant to this Section 2.6(b); however, Lender shall not commingle such funds with its general funds and shall invest such funds in an interest bearing account (in Lender's name) for the benefit of Borrower (Lender shall also have a validly perfected first lien security interest in such account). Within seven (7) days after request by Lender, Borrower agrees to execute and deliver such documents as may be required by Lender to enable Lender to realize upon the rights granted to it under this Section 2.6(b).

(c) Proceeds. Lender may apply the proceeds of insurance paid to Lender pursuant to Section 2.6(a) hereof and the amount of any award or payment received by Lender pursuant to Section 2.6(b) hereof (collectively, the "Proceeds") first, to the payment of all Lender's costs and expenses incurred in obtaining such Proceeds (including, without limitation, legal fees and disbursements), and may, in its absolute discretion and without regard to the adequacy of its security, apply the balance, in whole or in part, in such order and priority as Lender may determine (i) to the reduction of the Indebtedness secured hereby, which application shall not extend or postpone the due dates or amounts of any payments of principal due under the Note, or (ii) to or for the benefit of Borrower, subject and pursuant to disbursement control procedures prescribed by Lender, for the alteration, restoration, repair, replacement or rebuilding of any part of the Property which may have been lost, altered, damaged or destroyed as a result of the casualty or Taking.

2.7 Liens. To pay any debt, claim or other charge for repairs or improvements that may have been made or may hereafter be made on, and which may become a lien against the Property or any part thereof, and not to permit or suffer any lien or encumbrance of any kind to accrue or remain on the Property or any part thereof. If any such lien is filed against the Property, Borrower shall have the right to contest such lien in good faith; provided, however, that Borrower shall, in any event, cause such lien to be insured over in the title insurance policy insuring the Deed of Trust or shall discharge or bond the same of record to Lender's satisfaction within thirty (30) days after the lien is filed, or if not filed, within thirty (30) days after Borrower has notice thereof. In the event that a lien has been insured over in the title insurance policy and an action is brought to foreclose on such lien, Borrower shall be obligated to immediately bond off or otherwise cause such lien to be discharged of record.

2.8 Lender's Rights. That Lender may, at its option, do all things provided or permitted to be done by a lender under the laws of the State in which the Property is located for the protection of Lender's interest in the Property.

2.9 Assignment of Rents, Profits, Income and Leases. That Borrower hereby absolutely and unconditionally assigns and transfers to Lender Borrower's entire right, title and interest in and to all rent, leases, incomes and profits of the Property and all leases of all or any portion of the Property. Lender shall have the right, at any time after an Event of Default, without notice and without regard to the adequacy of any security for the Indebtedness hereby secured and with or without the appointment of a receiver, to enter upon and take possession of the Property and collect such rents, issues and profits, including those amounts past due and unpaid, and amounts due or to become due under any such leases, and apply the same less the cost of operation, maintenance and repair, and reasonable collection, management and attorney fees, in reduction of any Indebtedness hereby secured in such order or proportion as Lender may determine. The collection of such rents, issues and profits, and amounts due or to become due under any such leases, shall not cure or waive any default hereunder. Lender shall not be liable to Borrower, anyone claiming under or through Borrower, or anyone having an interest in the Property by reason of anything done or left undone by Lender and Borrower shall indemnify Lender from any and all liability, loss or damage which it may incur under any leases or by reason of assignment thereof, and from any claims or demands which may be asserted against it by reason of any alleged obligations on its part to perform any of the terms of said leases, unless such liability, loss or damage is the direct result of the gross negligence or willful misconduct of Lender, its officers, employees or agents. Borrower warrants that there are no outstanding assignments or pledges of such rents, leases, income and profits.

Borrower further covenants (a) not to make or suffer to be made any lease of the Property or any part thereof without the prior express written consent of Lender; (b) not to make or suffer to be made any modification, extension, surrender, alteration, termination, amendment or cancellation of any existing or future lease without the prior express written consent of Lender; (c) not to cancel, surrender, terminate, alter, amend or modify any guaranty of any lease nor to release any party liable under any such guaranty without the prior express written consent of Lender; (d) not to reduce the amounts of the rents or other payments under any lease; and (e) not to release the tenants under any lease from the obligations to be performed by said tenants. Borrower further covenants to fully and timely perform Borrower's obligations under all such leases, and not to accept any prepayment of rent for more than one (1) month in advance without Lender's prior written consent. Upon Lender's request from time to time, Borrower shall furnish Lender a statement, in affidavit form and in such reasonable detail as Lender may reasonably require, of all leases on the Property and the status thereof and, on demand, to furnish Lender executed counterparts of any and all such leases.

2.10 Access to Property; Books and Records; Financial Statements; Managing Agent. Borrower covenants that Lender shall have the right to inspect the books and records of the operation of the Property and make copies thereof at all reasonable times and upon reasonable notice to Borrower. Lender shall also have the right to inspect the Property at all reasonable times. Borrower shall not use or employ any management company or agent, other than Midland Development Group, Inc., without the prior written approval of Lender of said company or agent. Borrower shall not enter into, amend, modify or supplement any management agreement without Lender's prior written approval thereof, which approval shall not be unreasonably withheld. Borrower shall promptly provide to Lender such other financial statements and information with respect to the Property, Borrower, any tenants and/or guarantors as Lender may, from time to time, reasonably request. All expenses in connection with financial statements shall be borne by Borrower.

2.11 Advances and Actions by Lender. That upon failure of Borrower to comply with any of the provisions of this Deed of Trust (including, but not limited to Sections 2.2, 2.3, 2.4, 2.5 or 2.7 hereof), Lender may, but without any obligation so to do, upon ten (10) days' notice (or sooner if Lender, in Lender's reasonable business judgment deems it necessary to act to preserve, protect or maintain the value of the Property and/or Lender's rights under this Deed of Trust), enter upon the Property and make repairs, procure and pay for insurance, pay taxes and assessments, cause environmental studies, audits, and tests to be performed, and pay any expense, debt, claim or other charge which Borrower should have made, procured or paid (the receipt of the creditor or proper tax official being conclusive evidence of the amount, validity and the fact of payment thereof), and pay such amounts and take such actions (and incur expenses in so doing) as Lender may deem to be necessary or appropriate to cure any default or alleged default by Borrower under any lease, and all sums so paid shall be immediately due and payable, shall bear interest at the "Default Rate" (as defined in the Note), and shall, together with such interest, be added to the Indebtedness hereby secured. Upon receipt by Lender of any notice of any default by Borrower under any lease, Lender may rely thereon and take any action to cure such default even though the existence of such default or the nature thereof is questioned or denied by Borrower or by any person on behalf of Borrower. Borrower hereby expressly grants to Lender, and agrees that Lender shall have, the absolute and immediate right to enter in and upon the Property or any part thereof to such extent and as often as Lender, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default or alleged default by Borrower under any lease. Nothing contained in this Section 2.11 shall require Lender to incur any expense or take any action hereunder.

2.12 Reimbursements to Lender. That Borrower shall pay all sums, including costs and actual attorneys' fees at customary hourly rates, which Lender may incur prior to or as a result of any proceedings to prevent the commission of waste, or to establish or preserve the lien of this Deed of Trust or its priority, or in connection with any suit or potential suit in any court, including without limitation bankruptcy proceedings, probate proceedings, condemnation proceedings or foreclosure proceedings, to enforce this Deed of Trust or recover all or any portion of the Indebtedness hereby secured, or to protect the security of this Deed of Trust, pursuant to Section 2.11 hereof or otherwise in protecting or enforcing its rights under the Note or this Deed of Trust. All such sums shall be immediately due and payable, shall bear interest at the Default Rate, and shall, together with such interest, be added to the Indebtedness hereby secured.

2.13 Application of Funds. That unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Deed of Trust shall be applied by Lender to: (a) the payment of advances and expenditures made by Lender in accordance with the terms of this Deed of Trust, including, without limitation, advancements for taxes, insurance, assessments, and the like; (b) the payment of interest and late charges payable on the Note; (c) the payment of principal of the Note; (d) the payment of any prepayment fee, premium and/or penalty due under the Note and (e) the payment of any other amounts which may become due to Lender pursuant to the Note or this Deed of Trust and/or other amounts of the Indebtedness, all in such order and such manner as Lender may determine, in its discretion, from time to time.

2.14 Restrictions on Sale, Transfer, Conveyance, Easements, Restrictions, Covenants, Security Interests, Mortgages, Deeds of Trust, Encumbrance and Assignment.

(a) Except as provided in Sections 2.14(b) and 2.14(c) hereof, and except for the TIAA Deed of Trust, not to directly or indirectly grant, make, create or suffer to be made or created any sale, transfer, conveyance, easement, restriction, covenant, security interest, mortgage, deed of trust, encumbrance or assignment of the Property, or any part thereof or interest therein, including an assignment of the rents and leases thereof, or any transfer or assignment of legal or beneficial interests in Borrower or in the Property, or any contract or agreement to do any of the same, without Lender's prior written consent, which may be withheld in Lender's absolute discretion; otherwise Lender may, at its option, declare all of the Indebtedness hereby secured to be immediately due and payable.

(b) Lender's consent shall not be unreasonably withheld with respect to easements which are required by utility companies and/or governmental authorities in connection with the development and use of the Property.

(c) Notwithstanding the provisions of Section 2.14(a) hereof: (i) Topvalco, Inc. ("Topvalco") may transfer its interest in Borrower to The Kroger Co. ("Kroger") or any other entity wholly owned by Kroger; and (ii) transfers of the interest of Midland Kernersville Development Company, L.L.C. in Borrower, and transfers of beneficial interests in Midland Kernersville

Development Company, L.L.C. shall not require Lender's approval unless such transfer is in violation of Borrower's articles of organization or operating agreement.

2.15 Zoning Changes, Subdivision, Etc. Borrower shall not participate in any proceedings for, or acquiesce in any change or proposed change of, zoning laws or regulations governing the Property, the creation of a subdivision of or cut-up involving the Property, consolidation of the Property with any other property, nor subject the Property to any declaration of condominium or other provisions for subdivided or common ownership, without the prior written consent and participation of Lender which consent shall not to be unreasonably withheld or delayed. Borrower agrees to promptly notify Lender of any proposed change in the zoning of the Property or any portion thereof.

2.16 Changes in Laws. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a lender the payment of the whole or any part of the obligations herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or deeds of trust or debts secured by mortgages or deeds of trust or a lender's interest in mortgaged, pledged or secured premises, so as to impose such obligation on Lender or on the interest of Lender in the Property, then, in any such event, Borrower shall bear and pay the full amount of such obligation, provided that if for any reason payment by Borrower of any such obligation would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness secured hereby wholly or partially usurious, Lender, at its option, may declare the Indebtedness secured hereby with interest thereon to be immediately due and payable, or Lender, at its option, may pay that amount or portion of such obligation as renders the Indebtedness secured hereby unlawful or usurious, in which event Borrower shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said obligation.

ARTICLE III

EVENTS OF DEFAULT

Each of the following shall be deemed to be an Event of Default:

3.1 Default in the payment when due of principal, interest or any other amounts due under the Note beyond any applicable notice or grace period contained in the Note;

3.2 The failure to obtain and keep in force at all times all insurance coverages in accordance with the terms of this Deed of Trust;

3.3 Default in the payment or performance of the obligations of Borrower under the TIAA Deed of Trust;

3.4 Default in the performance of any of the other terms, covenants or conditions of this Deed of Trust which is not cured within ten (10) days after notice is sent by Lender, provided, however, that Borrower shall be entitled to a reasonable period of time, not to extend beyond June 1, 1997, to cure such default in the event that (a) such default is not reasonably susceptible to being cured within said ten (10) day period, (b) Lender reasonably determines that the existence of such default does not have a material adverse effect on Lender, the Property or Lender's rights under the Note or this Deed of Trust and (c) Borrower promptly commences to cure such default within said ten (10) day period and diligently pursues such cure to completion;

3.5 Upon the filing of any lien or charge against the Property or any part thereof which is not insured over, removed or bonded to the satisfaction of Lender within a period of thirty (30) days thereafter;

3.6 Upon the institution of any proceeding to enforce a lien or charge upon the Property or any part thereof which is not dismissed or bonded to the satisfaction of Lender within thirty (30) days after filing;

3.7 Upon the filing of any proceeding by or against Borrower, Kroger or Topvalco in bankruptcy, assignment by Borrower, Kroger or Topvalco of any of its property for the benefit of creditors, or the placing of Borrower's, Kroger's or Topvalco's property in receivership, trusteeship or conservatorship with or without action or suit in any court;

3.8 The abandonment by Borrower of all or any part of the Property;

3.9 The dissolution or other cessation of existence as a legal entity of Borrower;

3.10 The occurrence of any event which is a default by Borrower under (or with the passage of time, the giving of notice, or both would constitute a default by Borrower under) any lease with respect to the Property; or

3.11 Any certification, representation or warranty of Borrower under this Deed of Trust or any other document given in connection with this Deed of Trust, or any other information provided to Lender by Borrower in connection with the Property is determined to have been untrue or misleading in any material respect when made.

ARTICLE IV

REMEDIES

4.1 Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, then the entire Indebtedness secured hereby shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Deed of Trust; and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

4.2 Lender's Right to Enter and Take Possession, Operate, and Apply Revenues.

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Property; and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Property without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers, and accounts of Borrower.

(b) If Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Property to Lender; Borrower hereby specifically consents to the entry of such judgment. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender and Lender's actual attorneys' fees at customary hourly rates; and all such expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage, and control the Property and conduct the business thereof, and from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon, and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Property insured; (iii) manage and operate the Property and exercise all the rights and powers of Borrower to the same extent as Borrower could do in its own name or otherwise with respect to the same; and/or (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender; all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Property, including those past due as well as those accruing thereafter; and, after deducting (A) all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes), (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (C) the cost of such insurance, (D) such payments on any taxes, assessments, and other similar charges as Lender may at its option pay, (E) other proper charges upon the Property of any part thereof, and (F) the actual fees of the attorneys and agents of Lender at customary hourly rates and the actual disbursements of such attorneys and agents, Lender shall apply the remainder of the monies and proceeds so received by Lender in accordance with Section 2.13 hereof.

(d) Whenever all of the Indebtedness secured hereby shall have been paid and all Events of Default cured, Lender shall surrender possession of the Property to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

(e) Upon the occurrence of an Event of Default, Lender may cause to be performed, at Borrower's expense, such environmental assessments and such other studies and investigations of the Property as Lender may determine, in its sole discretion, to be necessary or appropriate.

4.3 Receiver. If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, as a matter of strict right without notice and without regard to the occupancy or value of any security for the Indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the State of North Carolina. Borrower will pay to Lender upon demand all expenses, including receiver's fees, actual attorneys' fees at customary hourly rates, costs and agents' compensation, incurred pursuant to the provisions of this Section 4.3; and all such expenses shall be secured by this Deed of Trust.

4.4 Enforcement of Deed of Trust. If an Event of Default shall have occurred and be continuing, Lender, at its option, may request Trustee to sell the Property or any part of the Property pursuant to Trustee's power of sale as hereinafter provided, commence an action to foreclose this Deed of Trust, and/or specifically enforce any of the covenants hereof.

4.5 Purchases by Lender. Upon any sale pursuant to Trustee's power of sale or by foreclosure, Lender may bid for and purchase the Property and shall be entitled to apply all or part of the Indebtedness secured hereby as a credit to the purchase price.

4.6 Application of Proceeds of Sale. In the event of a sale of the Property pursuant to Trustee's power of sale or by foreclosure, the proceeds of said sale shall be applied in accordance with the provisions of applicable law.

4.7 Borrower as Tenant Holding Over. In the event of any sale pursuant to Trustee's power of sale or by foreclosure, Borrower shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to the provisions of law applicable to tenants holding over.

4.8 Waiver of Appraisement, Valuation, Stay, Extension, and Redemption Laws. Borrower agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption, or redemption laws now or hereafter in force in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat; and Borrower, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws and any and all right to have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof. Borrower also hereby waives any rights or remedies on account of any extensions of time, releases granted or other dealings between Lender and any subsequent owner of the Property as said activities are contemplated or otherwise addressed in N.C. Gen. Stat. Sec. 45-45.1 or any similar or subsequent law.

4.9 Leases. Lender, at its option, is authorized to enforce this Deed of Trust subject to the rights of any tenants of the Property, and the failure to make any such tenants parties to any foreclosure proceedings and to foreclose their rights will not be, and will not be asserted by Borrower to be, a defense to any proceedings instituted by Lender to collect any or all of the Indebtedness secured hereby.

4.10 Discontinuance of Proceedings and Restoration of the Parties. In case Lender shall have proceeded to enforce any right, power or remedy under this Deed of Trust and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder; and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken.

4.11 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to Lender by this Deed of Trust or the Note is intended to be exclusive of any other right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

4.12 Suits to Protect the Property. Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Deed of Trust, (b) to preserve or protect its interest in the Property and in the rents, issues, profits and revenues arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

4.13 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Deed of Trust at the date of the institution of such proceedings, and for any additional amount which may become due and payable by Borrower hereunder after such date.

ARTICLE V

CONCERNING THE TRUSTEE

5.1 Duty; Compensation. Trustee, by acceptance of the trust hereby created, covenants faithfully to perform and fulfill the trust herein created, being liable, however, only for willful negligence or misconduct. Trustee shall not be required to see that this Deed of Trust is recorded nor be liable for its validity or its priority as a first deed of trust or otherwise, nor shall Trustee be answerable for the default or misconduct of any agent or attorney appointed by Trustee in good faith in pursuance hereof. Trustee may act upon any instrument believed by Trustee in good faith to be genuine and to be signed by the proper party or parties and shall be fully protected for any action taken or suffered by Trustee in reliance thereon. Trustee shall be entitled to reasonable compensation for all services rendered in the execution of the trust hereby created. Trustee, at any time, may consult counsel for the purposes of this trust and shall be protected in any action taken or suffered by Trustee in accordance with the opinion of said counsel.

5.2 Oath; Bond. Trustee, or any successor in trust, shall not be required to give bond or make oath for the faithful performance of the duties of Trustee hereunder unless required by Lender.

5.3 Trustee's Recitals. Borrower hereby agrees, for itself, its successors and assigns, that the recitals contained in any deed duly executed by Trustee, acting under the provisions of this Deed of Trust or any applicable law, shall be prima facie evidence of the facts recited, and it shall be unnecessary to prove in any court the existence of the facts essential to authorize the execution and delivery of such deed and the passage of title thereby other than by such recitals.

5.4 Trustee's Right to Appear, Defend and Prosecute. If any action or proceeding be commenced by or against Trustee affecting the Real Property or the security of this Deed of Trust (including an action to sell the Property or to foreclose), Trustee may appear, defend, prosecute, retain counsel and take such action as Trustee shall deem advisable, and the costs thereof (including actual attorneys' fees at customary hourly rates and all applicable statutory costs, allowances and disbursements) shall be immediately due and payable by Borrower to Trustee on demand.

5.5 Trustee's Power of Sale. Upon the occurrence of an Event of Default, Lender may notify Trustee to exercise the power of sale granted hereunder and upon such notification it shall be lawful for and the duty of Trustee, and Trustee is hereby authorized and empowered to expose to sale and to sell the Property or any part thereof at public sale to the highest bidder for cash, in compliance with all applicable requirements of North Carolina law governing the exercise of powers of sale contained in deeds of trust and upon such sale, Trustee shall collect the purchase proceeds and convey title to the portion of the Property so sold to the purchaser in fee simple. In the event of a sale of the Property or any part thereof, the proceeds of sale shall be applied in the following order of priority: (i) to the payment of all costs and expenses for and in connection with the effecting of such sale and all proceedings for such sale, including a commission for Trustee's services as herein provided and including actual attorney's fees at customary hourly rates incurred by Trustee for legal services actually performed; (ii) to the reimbursement of Lender for all sums expended or incurred by Lender under the terms of this Deed of Trust or to establish, preserve or enforce this Deed of Trust or to collect the indebtedness secured hereby (including, without limitation, actual attorneys' fees at customary hourly rates as provided herein or in the Note secured hereby); (iii) to the payment of the Note secured hereby and interest thereon and all other indebtedness hereby secured; and (iv) the balance, if any, shall be paid to the parties lawfully entitled thereto. Borrower agrees that in the event of a sale hereunder, Lender shall have the right to bid at such sale and shall have the right to credit all or any portion of the indebtedness secured hereby against the purchase price. Trustee shall have the right to designate the place of sale in compliance with applicable law and the sale shall be held at the place designated by the notice of sale. Trustee may require the successful bidder at any sale to deposit immediately with Trustee cash or certified check or cashier's check in an amount up to ten percent (10%) of the bid provided notice of such deposit requirement is published as required by law. The bid may be rejected if the deposit is not immediately made. Such deposit shall be refunded in case of a resale because of an upset bid or if Trustee is unable to convey the portion of the Property so sold to the bidder because the power of sale has been terminated in accordance with applicable law. If the purchaser fails to comply with its bid, the deposit shall be applied to the expenses of the sale and the residue, if any, shall be applied to the indebtedness secured hereby. In all other cases, the deposit shall be applied to the purchase price. The Property may be sold in such parcels or lots as Trustee may determine without regard to principles of marshaling and the Property may be sold at one sale or in multiple sales as determined by Trustee. The exercise of the power of sale hereunder by Trustee on one or more occasions shall not be deemed to extinguish the power of sale which power of sale shall continue in full force and effect until all of the Property shall have been finally sold and properly conveyed to the purchasers at the sales. Reasonable fees and commissions and all such expenses and costs shall be paid by Borrower, its heirs, successors, or assigns, in the event that the mortgage debt shall be paid after any advertisement of said property, but before sale thereof. Trustee may act hereunder and may sell and convey the Property under the power granted above although Trustee may have been, may now be, or may hereafter be, an employee, attorney, or agent of Lender.

5.6 Substitution of Trustee. Lender shall at any time have the irrevocable right to remove Trustee without notice or cause and to appoint a successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in the State of North Carolina, and in the event of the death or resignation of the Trustee herein named (or Trustee's successor), Lender shall have the right to appoint a successor by such written instrument. Any trustee so appointed shall be vested with the title to the Property and shall possess all the powers, duties and obligations herein conferred on Trustee in the same manner and to the same extent as though named herein as Trustee.

ARTICLE VI

MISCELLANEOUS

6.1 Successors and Assigns. This Deed of Trust shall inure to the benefit of and be binding upon Borrower, Lender, Trustee and their respective heirs, executors, legal representatives, successors, and assigns. Whenever a reference is made in this Deed of Trust to Borrower, Lender or Trustee, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, and assigns of Borrower, Lender or Trustee.

6.2 Terminology. All personal pronouns used in this Deed of Trust, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Deed of Trust itself; and all references herein to Articles, Sections, Paragraphs or Subparagraphs shall refer to the corresponding Articles, Sections, Paragraphs, or Subparagraphs of this Deed of Trust unless specific reference is made to articles, sections, paragraphs or subparagraphs of another document or instrument.

6.3 Severability. If any provision of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law.

6.4 Applicable Law. This Deed of Trust shall be interpreted, construed, and enforced according to the laws of the State of North Carolina.

6.5 Parties Not to Benefit. This Deed of Trust is made solely for the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors and assigns; no other party shall have standing to bring any action against Borrower, Lender or Trustee as a result of this Deed of Trust, nor shall any other party under any circumstances be deemed to be a beneficiary of any provision of this Deed of Trust.

6.6 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Deed of Trust to the Note shall be deemed to refer to such replacement Note.

6.7 Assignment. This Deed of Trust is assignable by Lender, and any assignment hereof by Lender shall operate to vest in the assignee all rights and power herein conferred upon and granted to Lender. This Deed of Trust is not assignable by Borrower.

6.8 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Deed of Trust and the Note.

6.9 Expenses. Borrower will pay or reimburse Lender, upon demand therefor, for all actual attorneys' fees, reasonable costs, and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a part or appears as party plaintiff or defendant, affecting any or all of the Indebtedness secured hereby, this Deed of Trust or the interest created herein, or the Property, including, but not limited to, the exercise of the power of sale contained in this Deed of Trust, any condemnation action involving the Property or any action to protect the security hereof; and any such amounts paid by Lender shall be added to the Indebtedness secured by the lien of this Deed of Trust.

6.10 Further Assurances, After-Acquired Property. At any time and from time to time, upon request by Lender, Borrower will make, execute, and deliver, or cause to be made, executed, and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect or to continue to preserve (a) the obligations of Borrower under the Note and under this Deed of Trust and (b) the lien of this Deed of Trust as a lien upon and security title in and to all of the Property, subject only to those matters set forth on Exhibit B hereto, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do after request, Lender may make, execute, record, file, rerecord, and/or refile any and all such deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien hereof will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Property or any part thereof.

6.11 Subrogation. To the full extent of the Indebtedness, Lender is hereby subrogated to the liens, claims, and demands, and to the rights of the owners and holders of each and every lien, claim, demand, and other encumbrance on the Property which is paid or satisfied, in whole or in part, out of the proceeds of the Indebtedness, and the respective liens, claims, demands, and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Lender as additional collateral and further security for the Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Lender had they been duly and legally assigned, transferred, set over, and delivered unto Lender by assignment, notwithstanding the fact that any instrument providing public notice of the same may be satisfied and cancelled of record.

6.12 Compliance with Terms of Permitted Encumbrances. Borrower agrees to comply with each of the terms, conditions and covenants of the agreements and easements listed as Permitted Encumbrances. Without limiting the generality of the immediately preceding sentence, Borrower shall duly and punctually pay and perform the indebtedness and obligations of Borrower under, or secured by, the TIAA Deed of Trust.

6.13 No Waivers. Neither the exercise by Lender of any right or remedy herein given or reserved, nor delay or failure by Lender to exercise any such right or remedy, in case of one or more defaults, shall constitute a waiver thereof, or estop Lender thereafter from exercising the same or any other right or remedy at any time in respect to the same or any subsequent default or defaults. All such rights and remedies shall be cumulative and none shall be exclusive of the other or others or of any right or remedy now or hereafter given or allowed by law.

6.14 Estoppel Certificate. Borrower shall, within ten (10) business days of a written request from Lender, furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and such other information as Lender may reasonably request.

6.15 Lender's Rights. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower's successors or assigns or of any junior lienholder or guarantor, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, extend the time for payment of the Indebtedness secured hereby or any part thereof, reduce the payments thereon, release anyone liable on any of said Indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said Indebtedness, release from the lien of this Deed of Trust any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, agree in writing with Borrower to modify the rate of interest, maturity, amortization, or other terms of the Note, or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this section shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Deed of Trust and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness secured hereby, and shall not affect the security title or lien or priority of the lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and actual attorneys' fees at customary hourly rates as may be incurred at Lender's option for any such action.

6.16 Amendments in Writing. No change, amendment, or modification hereof, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

6.17 Notices. Borrower shall notify Lender promptly of the occurrence of any of the following:

(a) a fire or other casualty causing damage to the Property;

(b) receipt of notice of condemnation of the Property or any part thereof;

(c) receipt of notice from any governmental authority relating to the structure, use or occupancy of the Property;

(d) receipt of any notice of alleged default from the holder of any other lien or security interest in the Property;

(e) the commencement of any litigation affecting the Property;

(f) receipt of any notice of the filing of any lien affecting the Property;

(g) receipt of any notice of any change or proposed change in the zoning affecting the Property; and

(h) any default by Borrower under the terms of the Note or this Deed of Trust.

All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing and shall be deemed to have been properly given if actually received or if hand delivered or sent by U.S. registered or certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:

To Borrower: T&M Kernersville Development Company, L.L.C.
12655 Olive Road
Suite 200
St. Louis, MO 63141

With A Copy To: Topvalco, Inc.
c/o The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202
Attn: Law Department

To Trustee: David L. Huffstetler
Two Hanover Square
434 Fayetteville Mall, Suite 2000
Raleigh, North Carolina 27601

To Lender: Star Bank, N.A.
425 Walnut Street
Cincinnati, Ohio 45202
Attn: Commercial Real Estate
Loan Department

Borrower, Lender or Trustee may change its notice address by notice to the other party hereto provided that such notice address is within the United States and is not a post office box. In no event shall any party have more than two (2) notice addresses at any time.

6.18 Obligations Unconditional. The obligations of Borrower to make payments of any and all amounts due hereunder shall be absolute and unconditional without defense or set-off by reason of any default whatsoever, including, without limitation a default by any tenant of the Property under any lease with Borrower or under any other agreement or instrument between Lender and Borrower, and such payments to Lender shall not be decreased, abated, postponed or delayed for any reason whatsoever, including without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Property, the taking of any part of the Property, commercial frustration of purpose, failure of any person to perform or observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Deed of Trust or the Note, or failure of any tenant of the Property to pay the fees, rentals or other charges owed to Borrower, and irrespective of whether or not any such tenant of the Property receives either partial or total reimbursement as a credit against such payment, it being the intention of the parties that the payments required of Borrower hereunder will be paid in full when due without any delay or diminution whatsoever.

6.19 Lender's Non-Responsibility. Borrower hereby acknowledges and agrees that the undertaking of Lender under this Deed of Trust is limited as follows:

Lender does not intend to act in any way for or on behalf of Borrower with respect to disbursement of the proceeds of the Indebtedness secured hereby. Its purpose in making the requirements set forth herein is that of a lender protecting the priority of its Deed of Trust and the value of its security. Lender assumes no responsibility for the completion of any improvements erected or to be erected upon the Property, the payment of bills or any other details in connection with the Property, any plans and specifications in connection with the Property, or Borrower's relations with any contractors. This Deed of Trust is not to be construed by Borrower or anyone furnishing labor, materials, or any other work or product for improving the Property as an agreement upon the part of Lender to assure anyone that he will be paid for furnishing such labor, materials or any other work or product; any such person must look entirely to Borrower for such payment. Lender assumes no responsibility for the architectural or structural soundness of any improvements on or to be erected upon the Property or for the approval of any plans and specifications in connection therewith or for any improvements as finally completed.

6.20 Future Advances. This Deed of Trust is executed to secure present and future obligations of Borrower to Lender. The period in which future obligations may be incurred and secured by this Deed of Trust is the period between the date hereof and June 1, 1997; provided, however, that said period may be extended by Lender up to but not more than fifteen (15) years from the date hereof. The amount of present obligations secured by this Deed of Trust is Zero Dollars ($-0-), and the maximum principal amount, including present and future obligations, which may be secured by this Deed of Trust at any one time is One Million Six Hundred Ninety Thousand and 00/100 Dollars ($1,690,000.00). Each future advance need not be evidenced by a written instrument or notation signed by Borrower stipulating that such advance is secured by this Deed of Trust. All future obligations shall be considered to be made pursuant to the requirements of North Carolina Statutes Section 45-67, et seq., or any amendments thereto.

6.21 Governing Law. This Deed of Trust shall be governed by and construed in accordance with North Carolina Law.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed under seal by its duly authorized officers and representatives as of the date first written above.

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

Attest:

By: Topvalco, Inc., an Ohio corporation, Member

Robert W. Olig
Assistant Secretary

(Corporate Seal)

By: James E. Hodge
Name: JAMES E. HODGE
Title: PRESIDENT

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

By:________________
Name:________________
Title:________________

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

6.20 Future Advances. This Deed of Trust is executed to secure present and future obligations of Borrower to Lender. The period in which future obligations may be incurred and secured by this Deed of Trust is the period between the date hereof and June 1, 1997; provided, however, that said period may be extended by Lender up to but not more than fifteen (15) years from the date hereof. The amount of present obligations secured by this Deed of Trust is Zero Dollars ($-0-), and the maximum principal amount, including present and future obligations, which may be secured by this Deed of Trust at any one time is One Million Six Hundred Ninety Thousand and 00/100 Dollars ($1,690,000.00). Each future advance need not be evidenced by a written instrument or notation signed by Borrower stipulating that such advance is secured by this Deed of Trust. All future obligations shall be considered to be made pursuant to the requirements of North Carolina Statutes Section 45-67, et seq., or any amendments thereto.

6.21 Governing Law. This Deed of Trust shall be governed by and construed in accordance with North Carolina Law.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed under seal by its duly authorized officers and representatives as of the date first written above.

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

Attest:

By: Topvalco, Inc., an Ohio corporation, Member

____
________________ Secretary

By:________________
Name:________________
Title:________________

(Corporate Seal)

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

By: [signature]
Name: Lee S. Wielansky
Title: Admin. Member

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

STATE OF OHIO
COUNTY OF HAMILTON, SS:

I, Brenda R. Andes, a Notary Public, of Hamilton County, Ohio, do hereby certify that Robin M Olinger personally came before me this day and acknowledged that he/she is Assistant Secretary of Topvalco, Inc., a corporation, and that, by authority duly given and as the act of the corporation acting as the Member/Manager of T&M Kernersville Development Company, L.L.C., a North Carolina limited liability company, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as its Assistant Secretary.

Witness may hand and official seal this the 27th day of March, 1997.

Brenda R. Andes
Notary Public

BRENDA R. ANDES
Notary ...

Commission Expires: My Commission Expires June 23, 1998

STATE OF __________
COUNTY OF __________, SS:

I, __________________, a Notary Public, of _________ County, __________, do hereby certify that __________________, a Member/Manager 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/her 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 a Member/Manager.

Witness my hand and official seal, this the ____ day of ________, 1997.

____
Notary Public

Commission Expires:__________

03/26/97 - 0161917.01

BK1941 P0275

STATE OF OHIO
COUNTY OF HAMILTON, SS:

I, __________________, a Notary Public, of Hamilton County, Ohio, do hereby certify that __________________ personally came before me this day and acknowledged that he/she is _________ Secretary of Topvalco, Inc., a corporation, and that, by authority duly given and as the act of the corporation acting as the Member/Manager of T&M Kernersville Development Company, L.L.C., a North Carolina limited liability company, the foregoing instrument was signed in its name by its ______________, sealed with its corporate seal, and attested by himself/herself as its _________ Secretary.

Witness may hand and official seal this the ____ day of _______, 1997.

____
Notary Public

Commission Expires:__________

STATE OF Missouri
COUNTY OF St. Louis, SS:

I, Christopher M. Blanton, a Notary Public, of St. Louis County, Missouri, do hereby certify that Lees Wielansky, a Member/Manager 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/her 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 a Member/Manager.

Witness my hand and official seal, this the 29th day of March, 1997.

[signature]
Notary Public

Commission Expires:

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

03/26/97 - 0161917.01

STATE OF NC – FORSYTH CO
The Foregoing certificate of Brenda R. Arnold
Christopher M. Blanton NP(s)
is certified to be correct this the 2 day of Apr. 1997
Dickie C. Wood, Register of Deeds by: [signature] Asst/Deputy

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EXHIBIT A
(Kernersville)

Being all of Lot 1 and 2 as shown on that certain map entitled "Final Plat of Kernersville Shopping Center Century Place Boulevard", dated August 7, 1995, and recorded in Plat Book 38, page 119, Forsyth County and map recorded in Plat Book 39, page 55, Forsyth County Registry.

Together with and including all of the right, title and interest of T&M Kernersville Development Company, L.L.C. in and to the non-exclusive easements appurtenant to any or all of said Lots 1 and 2 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, (3) that certain Slope Easement Agreement recorded in Book 1667, page 820, Forsyth County Registry, (4) that certain map recorded in Plat Book 38, pages 119, 120 and 121, Forsyth County Registry, or (5) that certain map recorded in Plat Book 39, page 55, Forsyth County Registry.