

Return to: Dennis W. McNamees
Box

BK1949 P0839

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Prepared outside North
Carolina

FORSYTH CO, NC 209 FEE: \$ 92.00
PRESENTED & RECORDED: 05/30/1997 2:40PM
DICKIE C. WOOD REGISTER OF DEEDS BY: WOHLEF

copy for

THIS INSTRUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:
SUTHERLAND ASBILL & BRENNAN, L.L.P.
999 PEACHTREE STREET, N.E.
ATLANTA, GEORGIA 30309
ATTN: ELLEN S. SMITH

STATE OF _____

COUNTY OF _____

AMENDED AND RESTATED DEED OF TRUST AND SECURITY AGREEMENT

(Collateral Includes Fixtures)

THIS AMENDED AND RESTATED DEED OF TRUST AND SECURITY AGREEMENT (this "Deed of Trust"), made and entered into this 23 day of May, 1997, by OTR/MIDLAND REALTY HOLDINGS, LTD., an Ohio limited liability company, having a mailing address c/o Midland Development Group, Inc., 12655 Olive Boulevard, Suite 200, St. Louis, Missouri 63141 (hereinafter with heirs, executors, administrators, successors and assigns called "Trustor") to JAMES N. MARINELLO, an individual, having a mailing address c/o Teachers Insurance and Annuity Association of America, 730 Third Avenue, New York, New York 10017 (hereinafter with its successors and assigns called "Trustee"), for the benefit of TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York corporation with a mailing address at 730 Third Avenue, New York, New York 10017 (hereinafter with its successors and assigns called "Beneficiary");

WITNESSETH:

WHEREAS, Trustor is indebted to Beneficiary in the principal amount of FIVE MILLION THREE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$5,325,000) with interest thereon, default interest, late charges, prepayment premiums and other charges, as evidenced by an Amended and Restated Deed of Trust Note of even date herewith and payable in accordance with its terms but in no event later than April 1, 2007 (as hereafter amended, modified, restated, supplemented, extended or renewed from time to time, the "Kernersville Note"), the terms of which Kernersville Note are incorporated in this Deed of Trust by reference; and

WHEREAS, Trustor is composed of several of the members of the entities executing and delivering the Cross-Collateralized Security Instruments (as hereinafter defined) for the benefit of Beneficiary, and it is of material benefit to Trustor that Beneficiary make the loans

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that are secured by the Cross-Collateralized Security Instruments.

NOW THEREFORE, in consideration of the aforesaid and the sum of TEN (\$10.00) DOLLARS to each in hand paid, the receipt whereof is hereby acknowledged and to secure (i) the payment of the Note with interest thereon, and all other indebtedness owed by Trustor to Beneficiary as evidenced by the Note, (ii) the payment of other sums secured hereby, (iii) the performance and observance by Trustor of all the terms, covenants, conditions and agreements of the Note, and (iv) the performance and observance by Trustor of all the terms, covenants, conditions and agreements of this Deed of Trust and of any other Loan Document, Trustor has bargained, sold, given, granted and conveyed and does by these presents BARGAIN, SELL, GIVE, GRANT AND CONVEY to Trustee, his heirs, successors and assigns, in fee simple, WITH POWER OF SALE, all right, title, estate and interest of Trustor in and to that certain real estate situated and being in the City of Kernersville, County of Forsyth, State of North Carolina, more particularly described in *Exhibit A* attached hereto and by this reference made a part hereof (the "Premises");

TOGETHER with all buildings (the "Buildings") and improvements of every kind and description now or hereinafter located on the Premises (collectively, the "Improvements");

TOGETHER with all right, title and interest of Trustor in and to the following property, rights and interests (the Premises, the Improvements and such property, rights and interests being collectively called the "Property"):

- A. all right, title and interest of the Trustor, including any after-acquired title or reversion, in and to the beds of ways, roads, streets, avenues and alleys adjoining the said Premises;
- B. all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water rights, water courses, riparian rights, air rights, development rights or other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including homestead or any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversion and reversions, remainder and remainders thereof;
- C. the rents, issues, proceeds and profits of the Property;
- D. all of Trustor's right, title and interest in and to (but not Trustor's obligations under) any and all operating agreements; management agreements; covenants, conditions and restrictions; reciprocal easement agreements; and any similar instruments affecting the Property; and
- E. all materials intended for construction, re-construction, alteration and repairs of the Improvements now or hereafter erected thereon, all of which materials shall be deemed to

be included within the Property immediately upon the delivery thereof to the Premises, and all fixtures and articles of personal property now or hereafter owned by Trustor and attached to or contained in and used in connection with Property but excluding that owned by Tenants or other third parties including but not limited to all apparatus, machinery, motors, elevators, fittings, radiators, gas ranges, ice boxes, mechanical refrigerators, awnings, shades, screens, office equipment and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Improvements in any manner; it being mutually agreed that all the aforesaid property owned by Trustor and located on the Premises shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, security for said indebtedness and covered by this Deed of Trust and as of the balance of the property aforesaid, this Deed of Trust is hereby deemed to be as well a deed to secure debt for the purposes of creating a security interest in said property securing the said indebtedness for the benefit of said Beneficiary as Secured Party.

TO HAVE AND TO HOLD the Property hereinbefore described unto Trustee, his heirs, successors and assigns in fee simple forever.

INSOFAR as any of the Property described above does not form a part and parcel of the Premises and Improvements, Trustor hereby grants to Trustee and Beneficiary as Secured Party a security interest in all of Trustor's right, title and interest therein and this Deed of Trust is deemed to be, as well, a Security Agreement under the Uniform Commercial Code of North Carolina for the purpose of creating a security interest in such Property.

AND TRUSTOR COVENANTS AND WARRANTS lawful seisin of an indefeasible estate in fee simple of the Premises; that the same is free from all encumbrances and liens whatsoever; subject only to those matters set forth in *Exhibit B* attached hereto and made a part hereof (the "Permitted Exceptions"); that Trustor has good and legal right, power and authority to so convey the same and that Trustor and successors in interest will forever **WARRANT AND DEFEND** the title of said property and the lien and priority of this Deed of Trust against the lawful claims and demands of all persons whomsoever, except as to the Permitted Exceptions; and that Trustor will execute, acknowledge and deliver all and every such further assurances unto Trustee of the title to all and singular the Premises hereby conveyed and intended so to be, or which Trustor may be or shall become hereinafter bound so to do. All such covenants and warranties shall run with the land.

THIS DEED OF TRUST IS MADE UPON THIS SPECIAL TRUST:

THAT, if Trustor shall pay in full the Note secured hereby in accordance with its terms, together with interest thereon, and any renewals or extensions thereof in whole or in part, and any advances made by Beneficiary for the protection of the Property, and shall

comply with all the covenants, terms and conditions contained in this Deed of Trust and all other documents securing the Note, then this conveyance shall be null and void and may be canceled of record at the request and at the cost of Trustor.

BUT, if there occurs an Event of Default in the payment of any installment of principal, interest, prepayment premium, or other charges when due under the terms of any Note, the Deed of Trust or any other Loan Document, or in the observance or performance of any of the terms, covenants, conditions or warranties in the Note, this Deed of Trust, or in any other Loan Document, THEN the indebtedness secured hereby at Beneficiary's option shall immediately become due and payable and in such event such indebtedness shall bear and accrue interest at the Default Rate as set forth in the Note.

After acceleration of the maturity of the indebtedness secured hereby, Beneficiary may foreclose this Deed of Trust by judicial proceedings, or may direct Trustee to exercise the power of sale set forth below, as to the amount so declared due and payable, and thereupon, the Property shall be sold according to law to satisfy and pay the same together with all costs, expenses and allowances thereof, including, without limitation, reasonable attorneys' fees at all trial and appellate levels. If Beneficiary directs Trustee to exercise the power of sale, Trustee or any successor of Trustee is hereby authorized and empowered to enter and take possession of all or any part of the Property, personally or through his agent, and it shall be lawful for and the duty of Trustee, and he is hereby authorized and empowered, to expose to sale and to sell such Property at public sale for cash, in compliance with the requirements of the General Statutes of North Carolina relating to nonjudicial foreclosure sales in effect on the date foreclosure is commenced; and at the time and place fixed for the sale to sell such Property, personally or through his agent, to the highest bidder for cash, free from any equity of redemption, homestead, dower or curtesy, and all other exemptions, all of which are hereby expressly waived, and Trustee shall execute a conveyance in fee simple to and deliver possession of such Property to the purchaser, and such sale by Trustee or his agent will create the relation of landlord and tenant at will between the purchaser at such sale and Trustor herein, its heirs, representatives, lessees, successors and assigns. Without notice and upon default of such tenant in surrendering possession of such Property, such tenant may be removed by a writ of ejectment at the suit of either the purchaser or Trustee for the use and benefit of the purchaser. The Property may be sold in one parcel, several parcels or groups of parcels, and Beneficiary shall be entitled to bid at the sale, and, if Beneficiary is the highest bidder for the Property or any part or parts thereof, Beneficiary shall be entitled to purchase the same. Beneficiary shall be entitled to a credit against the amount of its bid of the balance of the indebtedness secured hereby. After retaining a reasonable fee not to exceed five percent (5%) of the gross proceeds of the sale as compensation to Trustee, plus all expenses incurred by him including reasonable attorneys' fees, Trustee shall apply the residue of the proceeds first to pay the expense of making, maintaining and executing this trust and protecting the Property, including reasonable attorneys' fees, second to the payment of the Note and all other amounts, including without limitation any prepayment premiums, late payment charges and

attorneys' fees, secured hereby and the balance, if any, shall be paid to Trustor. Trustee may require the successful bidder at any sale to deposit immediately with Trustee cash or a certified check in an amount not to exceed ten percent (10%) of the bid, provided notice of such requirement is contained in the advertisement sale. The bid may be rejected if the deposit is not immediately made, and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price.

The failure or omission on the part of Beneficiary to exercise the option for acceleration of maturity of the Note and foreclosure of this Deed of Trust following any Event of Default or to exercise any other option or remedy granted hereunder to Beneficiary when entitled to do so in any one or more instances, or the acceptance by Beneficiary of partial payment of the indebtedness secured hereby, whether before or subsequent to Trustor's default hereunder, shall not constitute a waiver of any such default or the right to exercise any such option or remedy, but such option or remedy shall remain continuously in force. Acceleration of maturity of the Note, once claimed hereunder by Beneficiary, at the option of Beneficiary, may be rescinded by written acknowledgment to that effect by Beneficiary, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity.

In addition to the above described indebtedness, this instrument shall and does secure:

- (a) any and all renewals or extensions thereof, together with any and all other debts and obligations of Trustor to Beneficiary which are now owing or may hereafter become owing;
- (b) any and all advances by Beneficiary or by any holder of this Deed of Trust, whether the Property is still owned by Trustor or owned by a subsequent purchaser of the Property, which advances are made to pay taxes, to pay premiums on insurance on the Property, or to repair, maintain or preserve the Property or to complete improvements on it; (c) all expenses, including, but not limited to, reasonable attorneys' fees, incident to the collection of the aforesaid indebtedness and the foreclosure of this Deed of Trust by action in any court or by exercise of the power of sale contained herein; (d) all amounts owing to Beneficiary under those certain other promissory notes made by Trustor and/or entities composed of certain of the members composing Trustor, in favor of Beneficiary, and more particularly described on *Exhibit C* attached hereto and made a part hereof, as any of the same may hereafter be amended, modified, restated, supplemented, extended or renewed from time to time, the terms and conditions of which are incorporated herein by reference and made a part hereof (the Kernersville Note and any and all such other promissory notes are collectively referred to herein as the "Note"); and (e) the performance and observance by Trustor, and/or entities composed of certain of the members composing Trustor, of all the terms, covenants, conditions and agreements set forth in any of those certain other security instruments made for the benefit of Beneficiary, and more particularly described on *Exhibit D* attached hereto and made a part hereof, as any of the same may hereafter be amended, modified, restated, supplemented, extended or renewed from time to time, the terms and conditions of which are

incorporated herein by reference and made a part hereof (collectively, the "Cross-Collateralized Security Instruments"). The Note, this Deed of Trust, the Cross-Collateralized Security Instruments and all other documents or instruments executed by Trustor or such other entities and evidencing or securing the indebtedness evidenced by the Note are collectively referred to herein as the "Loan Documents".

TRUSTOR FURTHER COVENANTS AND AGREES:

1. To pay promptly the principal of and interest on the indebtedness and contingent interest evidenced by the said Note at the times and in the manner herein and in said Note provided. (All references in this Deed of Trust to "interest" shall be deemed to include both fixed and contingent interest, unless expressly stated otherwise.)

2. To keep the Premises free from statutory liens of every kind (subject to the provisions of Paragraph 8 below); to pay, before delinquency and before any penalty for non-payment attaches thereto, all taxes, assessments, water rates, sewer rentals and other governmental or municipal charges, fines or impositions which are or may be levied against the Premises or any part thereof; to deliver to Beneficiary at least ten (10) days before delinquency, receipted bills evidencing payment therefor; to pay, in full, under protest and in the manner provided by statute, any tax, assessment, rate, rental, charge, fine or imposition aforesaid which Trustor may desire to contest; and in the event of the passage, after the date of this instrument, of any law of the State of North Carolina, deducting from the value of land for the purpose of taxation, any lien thereon or changing in any way the laws for the taxation of Deed of Trusts or debts secured by Deed of Trusts for state or local purposes, or the manner of collection of any such taxes, so as to affect this Deed of Trust, Beneficiary shall have the right, at its option, to give forty-five (45) days written notice to the Trustor requiring the payment of the debt secured hereby and thereupon said debt shall become due, payable and collectible at the expiration of said forty-five (45) days without the Prepayment Premium, provided, however, said option and right shall be unavailing and the Note and Deed of Trust shall remain in effect as though said law had not been enacted, if notwithstanding such law Trustor lawfully may pay any such tax or taxes to or for the Beneficiary and does in fact pay same when payable.

3. That in order to more fully protect the Beneficiary, Trustor will pay to Beneficiary in addition to the monthly payments of principal and interest under the terms of the Note and concurrently therewith monthly until the said Note is fully paid, a sum equal to water rates payable to any local government, sewer rents payable to any local government, taxes and assessments next due upon the Property covered thereby (all as estimated by the Beneficiary) and the premiums that will next become due and payable on policies of fire, earthquake, rental value and other hazard insurance covering the Property and required under the provisions hereof less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such water rates, sewer rents, taxes,

assessments and insurance premiums, respectively, will become due and payable.

Such sums shall be held by Beneficiary, but without interest accruing thereon, to pay each of the said particular items. All payments described above in this Paragraph 3 and all payments to be made under the Note secured hereby shall be added together and the aggregate amount thereof shall be paid by Trustor each month in a single payment to be applied by Beneficiary to the following items in the order set forth:

- (a) Taxes, assessments, water rates payable to any local government, sewer rents payable to any local government and fire, earthquake, rental value and other hazard insurance premiums;
- (b) Interest on the Note; and
- (c) Amortization of the principal of the Note.

Beneficiary shall have the right to make the payment of any amount referred to in subparagraph (a) above notwithstanding that at the time any tax, assessment, charge or imposition referred to in subparagraph (a) above is then being protested or contested by Trustor, unless, not less than forty-five (45) days prior to the due date thereof, Trustor shall have notified Beneficiary in writing, of such protest or contest, in which event, as the case may be, Beneficiary shall make such payment under protest in the manner prescribed by law or shall withhold such payment, provided, however, that such contest shall preclude enforcement of collection and the sale of the subject premises in satisfaction of such tax, assessment, charge or imposition. In the event such protest or contest shall or might result in penalty or other charges, Trustor shall likewise deposit monthly pro-rata the amount of any such penalty or additional charge.

Any deficiency in the payment of any such aggregate monthly payment following the expiration of any applicable notice and cure or grace period as set forth in the Note shall constitute an Event of Default under this Deed of Trust, and the whole of said principal indebtedness, together with accrued interest and all other sums due hereunder or under the Note, shall become immediately due and payable, following any applicable grace period, at the option of Beneficiary.

Any excess funds accumulated under this Paragraph 3 remaining after payment of the items therein mentioned shall be credited to subsequent monthly payments of the same nature required thereunder, but if any such item shall exceed the estimate therefor, Trustor shall upon demand forthwith make good the deficiency. Failure to do so following the expiration of any applicable notice and cure or grace period as set forth in the Note shall be an Event of Default hereunder, and the whole of the indebtedness together with accrued interest and all other sums due hereunder or under the Note, shall immediately become due at the

option of Beneficiary. If the Property is sold under foreclosure or it is otherwise acquired by Beneficiary after default, any remaining balance of the accumulations under this paragraph shall be credited to the outstanding principal of the Note as of the date of commencement of foreclosure proceedings or as of the date the Property is otherwise acquired.

Any sale or assignment by Trustor of the Property shall automatically carry with it an assignment of Trustor's interest in and to all moneys deposited hereunder subject, however, in all event to the provisions of this Paragraph 3.

Notwithstanding anything to the contrary in this Paragraph 3, the amount for taxes, assessments, charges and impositions required to be escrowed by Trustor hereunder may be reduced by an amount equal to the pro rata share of such taxes, assessments, charges and impositions to be paid by The Kroger Co. pursuant to its lease with Trustor, so long as Trustor causes The Kroger Co. to either (i) deposit with Beneficiary or an escrow agent designated by Beneficiary The Kroger Co.'s pro rata share of such amounts at least sixty (60) days prior to the date that the full amount thereof is required to be so deposited, or (ii) deliver to Beneficiary or such escrow agent evidence satisfactory to Beneficiary that such pro rata share has been paid to the appropriate authority within thirty (30) days of the due date thereof.

Notwithstanding anything to the contrary in this Paragraph 3, Beneficiary will waive the requirement for monthly deposits of insurance premiums as long as Trustor provides evidence acceptable to Beneficiary in its sole discretion that all insurance required hereunder is in place and in full force and effect. Beneficiary reserves the right to require the reinstatement of insurance deposits following any default in payment of any sum due hereunder or under the Note or following any nonmonetary default which continues beyond any applicable notice and cure period.

4. To keep the Improvements now existing or hereafter erected on the Premises insured as may be required from time to time by Beneficiary against loss or damage by, or abatement of rental income resulting from fire, earthquake, boiler explosion, extended coverage, vandalism, malicious mischief and sprinkler leakage and such other hazards, casualties and contingencies (including but not limited to war risk insurance, if available) in such amounts and for such periods as may be required by Beneficiary (but in no event in an amount greater than the replacement cost of the Improvements), and will pay promptly when due any premiums on such insurance. All such insurance shall be carried in companies approved by Beneficiary and the certified copies of policies, the original mortgage endorsement and renewals thereof shall be deposited with and held by Beneficiary and have attached thereto a standard non-contributing mortgagee clause (in favor of and entitling Beneficiary to collect any and all proceeds payable under all such insurance), as well as standard waiver of subrogation endorsement, all to be in form acceptable to Beneficiary. Trustor shall not carry separate insurance concurrent in kind or form or contributing in the event of loss, with any insurance required hereunder. In the event of a change in ownership

or of occupancy of the Property immediate notice thereof by mail shall be delivered to all insurers and in the event of loss, Trustor shall give immediate notice thereof to Beneficiary. Trustor hereby authorizes Beneficiary at its option to collect, adjust and compromise any losses under any of the insurance aforesaid and after deducting costs incurred by it in connection with any settlement of claims or collection of proceeds, to apply the balance of such proceeds at its option as follows: (a) as a credit upon any portion, as selected by Beneficiary, of the indebtedness secured hereby without payment of the Prepayment Premium, or (b) to restoring the Property, in which event Beneficiary shall not be obligated to see to the proper application thereof nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby, or (c) to deliver same to the owner of the Property. In the event any insurance company fails to disburse directly and solely to Beneficiary but disburses instead either solely to Trustor or to Trustor and Beneficiary jointly, Trustor agrees immediately to endorse and transfer such proceeds to Beneficiary. Upon the failure of Trustor to endorse and transfer such proceeds as aforesaid, Beneficiary may execute such endorsements or transfers for and in the name of Trustor and Trustor hereby irrevocably appoints Beneficiary as Trustor's agent and attorney-in-fact (but not as agent or attorney in fact for any members or partners of Trustor) so to do.

Notwithstanding the foregoing, in the event Beneficiary does not elect or, under applicable law, is not permitted to apply such insurance proceeds as a credit upon the indebtedness secured hereby, then, but only then, Beneficiary shall make any such insurance proceeds available for the restoration of the Property so damaged, subject to the following conditions: (i) that Trustor is not then in default under any of the terms, covenants and conditions of the Note, this Deed of Trust or any other agreement securing the Note and with respect to which default any applicable notice, cure and/or grace period provided for in the Note or this Deed of Trust has expired and at all times while restoration work progresses no such default shall occur and be continuing beyond any such applicable notice, cure and/or grace period; (ii) that, except as provided in (iii) below, Beneficiary shall be satisfied that by the expenditure of such insurance proceeds the Property will be fully restored within a reasonable period of time to its value immediately preceding the loss or damage, free and clear of all liens, except as to the lien of this Deed of Trust, the lien for property taxes, the Permitted Exceptions and such other liens as are specifically approved by Beneficiary in writing under this Deed of Trust; (iii) that in the event such proceeds shall be insufficient to restore or rebuild such Property, Trustor shall deposit promptly with Beneficiary funds which, together with the insurance proceeds, shall be sufficient in Beneficiary's judgment to restore and rebuild the Property; (iv) that Trustor shall obtain a waiver of the right of subrogation from any insurer under such policies of insurance who, at that time, claims that no liability exists as to Trustor or the then owner or the assured under such policies; (v) that the excess of such insurance proceeds above the amount necessary to complete such restoration and compensate Trustor for all other insured losses shall be applied on account of any portion of the indebtedness or obligation hereby secured without payment of any prepayment premium. Any amounts applied by Beneficiary to the Note shall be applied first to interest and then to

principal amounts falling due thereunder; (vi) that Beneficiary shall have reviewed and approved in writing the plans and specifications for the restoration work and the same shall have been approved by all governmental authorities having jurisdiction; (vii) that Trustor shall have furnished to Beneficiary and Beneficiary shall have approved a detailed budget and cost breakdown for said restoration work signed by Trustor and describing the nature and type of expenses and amounts thereof estimated by Trustor for said restoration work including, but not limited to, the cost of material and supplies, architect and designer fees, general contractor's fees, and the anticipated monthly disbursement schedule, and Beneficiary shall have given to Trustor written approval of such budget and cost breakdown (if Trustor determines that its actual expenses differ from its estimated budget, it will so advise Beneficiary promptly); and (viii) that in Beneficiary's reasonable judgment, such restoration work can be completed prior to the maturity of the Note. In the event any of such conditions are not or cannot be satisfied, then such insurance proceeds shall be disposed of as provided in the immediately preceding paragraph of this Paragraph 4. Under no circumstances shall Beneficiary become obligated to take any action to restore the Property.

Notwithstanding the foregoing provisions of this Paragraph 4, in the event of any such loss or damage to the Improvements, it is hereby understood, covenanted and agreed that the Beneficiary shall make the proceeds received under any such insurance policies as therein described available for the restoration of the Improvements so damaged, subject to the following conditions: (a) that Trustor is not then in default under any of the terms, covenants and conditions of this Deed of Trust, the Note or any other instrument evidencing or securing the indebtedness evidenced by the Note; (b) that all then existing leases affected in any way by such damage or destruction shall continue in full force and effect; (c) that Beneficiary shall first be given satisfactory proof that the Improvements have been fully restored or that by the expenditure of such money will be fully restored, free and clear of all liens, except as to the lien of this Deed of Trust and the Permitted Exceptions; (d) that in the event such proceeds shall be insufficient to restore or rebuild the Improvements, Trustor shall deposit promptly with Beneficiary funds which, together with the insurance proceeds, shall be sufficient to restore and rebuild the Improvements; (e) that in the event Trustor shall fail within a reasonable time, subject to delays beyond its control, to restore or rebuild the Improvements, then Beneficiary, at its option, may restore or rebuild the Improvements, for or on behalf of the Trustor and for such purpose may do all necessary acts; (f) that waiver of the right of subrogation shall be obtained from any insurer under such policies of insurance who, at that time, claims that no liability exists as to the Trustor or the then owner of the Property or the insured under such policies; (g) that the excess of said insurance proceeds above the amount necessary to complete such restoration shall be applied as hereinbefore provided as a credit upon any portion as selected by Beneficiary, of the indebtedness evidenced by the Note and secured hereby without payment of the Prepayment Premium; and (h) that the aggregate minimum monthly rental payable thereafter under all leases within the Premises shall not be less than the sum of: 1/12th of the annual ground rental, if any, 1/12th of the annual taxes and assessments thereon, 1/12th of the annual premiums for insurance required hereunder and the

monthly installments of principal and interest required to be repaid upon the indebtedness evidenced by the Note, or otherwise if less than such sum, then so much of the insurance proceeds shall first be applied upon the indebtedness evidenced by the Note, so that upon payment monthly of an amount equal to such aggregate monthly minimum rentals, when applied monthly to pro-rata ground rent, if any, taxes and assessments and insurance proceeds, then to interest and the balance to principal, will completely satisfy and discharge at maturity the indebtedness evidenced by the Note and secured hereby, in which latter event the monthly installments under the Note shall be reduced accordingly. In the event any of the said conditions are not or cannot be satisfied, then the alternate disposition of such insurance proceeds as provided hereinabove, shall again become applicable. Under no circumstances shall Beneficiary become personally liable for the fulfillment of the terms, covenants and conditions contained in any of the said leases nor obligated to take any action to restore the Improvements.

All proceeds to be released or applied by Beneficiary to the restoration of the Property pursuant to the provisions of this Paragraph 4 shall be released and/or applied to the costs of restoration (including within the term "restoration" any repair, reconstruction or alteration) as such restoration progresses, in amounts which shall equal ninety percent (90%) of the amounts from time to time certified by an architect approved by Beneficiary to have been incurred in such restoration of any and all of the Property (i.e., 90% of the total amount expended by the contractor for the project under a contract approved by Beneficiary and billed by the contractor to Trustor) and performed by a contractor reasonably satisfactory to Beneficiary and who shall furnish such corporate surety bond, if any, as may be reasonably required by Beneficiary, in accordance with the plans and specifications therefor approved by Beneficiary and the remaining ten percent (10%) upon completion of such restoration and delivery to Beneficiary of evidence reasonably satisfactory to Beneficiary that no mechanics' lien exists with respect to the work of such restoration, that the restoration work has been completed in accordance with plans and specifications for said work approved by Beneficiary and that all governmental approvals required for the completion of said restoration work have been obtained and the same are in form and substance reasonably satisfactory to Beneficiary.

If within a reasonable period of time after the occurrence of any loss or damage to the Property, Trustor shall not have submitted to Beneficiary and received Beneficiary's approval of plans and specifications for the repair, restoration or rebuilding of such loss or damages or shall not have obtained approval of such plans and specifications from all governmental authorities whose approval is required, or if, after such plans and specifications are approved by Beneficiary and by all such governmental authorities, Trustor shall fail to commence promptly such repair, restoration or rebuilding, or if thereafter Trustor fails to carry out diligently such repair, restoration or rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such work, or if any other condition of this Paragraph 4 is not satisfied within a reasonable period of time after the occurrence of any such loss or damage, then Beneficiary, in addition to all other rights

herein set forth, and, after giving Trustor thirty (30) days' written notice of the nonfulfillment of one or more of the foregoing conditions may, failing Trustor's fulfillment of said conditions within said thirty (30) day period, at Beneficiary's option, (A) declare that an event of default has occurred and/or apply all proceeds to the payment of any indebtedness hereby secured, and/or (B) Beneficiary, or any lawfully appointed receiver of the Property, may at their respective options, perform or cause to be performed such repair, restoration or rebuilding, and may take such other steps as they deem advisable to carry out such repair, restoration or rebuilding, and may enter upon the real property for any of the foregoing purposes, and Trustor hereby waives, for itself and all others holding under it, any claim against Beneficiary and such receiver (other than a claim based upon the alleged gross negligence or intentional misconduct of Beneficiary or any such receiver) arising out of anything done by them or any of them pursuant to this paragraph and Beneficiary may in its discretion apply any insurance or condemnation proceeds held by it to reimburse itself and/or such receiver for all amounts expended or incurred by it in connection with the performance of such work, including attorneys' fees, and any excess costs shall be paid by Trustor to Beneficiary and Trustor's obligation to pay such excess costs shall be secured by the lien of this Deed of Trust and shall bear interest at the Default interest rate set forth in the Note, until paid.

No insurance proceeds at any time held by Beneficiary hereunder shall be deemed to be held in trust, and Beneficiary may commingle such proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property covered hereunder in extinguishment of the indebtedness secured hereby, all right, title and interest of the Trustor, in and to any insurance policies then in force, shall pass to the purchaser or grantee. Beneficiary is hereby irrevocably authorized to assign in Trustor's name to such purchaser or grantee all such policies, which may be amended or rewritten to show the interest of such purchaser.

Notwithstanding anything in this Deed of Trust to the contrary, insurance proceeds will be applied in accordance with the lease between Trustor and The Kroger Co., provided that (i) The Kroger Co., within a time frame acceptable to Beneficiary, affirms its obligations under its lease prior to application of such proceeds by means of an estoppel certificate in form and substance satisfactory to Beneficiary, which estoppel certificate shall be addressed to Trustor and Beneficiary, (ii) The Kroger Co. is not in default under such lease, and (iii) there exists no monetary default under the Loan Documents and there exists no nonmonetary default under the Loan Documents beyond any applicable notice and cure period.

5. To carry and maintain such liability and indemnity insurance (including, but without limitation to water damage and the so-called assumed and contractual liability coverage) as may be required from time to time by Beneficiary, in forms, amounts and with companies satisfactory to Beneficiary. Certificates of such insurance, premiums prepaid, shall be deposited with Beneficiary and shall contain provision for ten (10) days' notice to

Beneficiary prior to any cancellation thereof. Any amount paid or advanced by Beneficiary or Trustee in connection with the foregoing and any other costs, charges and expenses incurred in the protection of the Property and the maintenance of the lien of this Deed of Trust shall be added to the indebtedness secured hereby, shall include interest at the Default Rate (as set forth in the Note), shall be repayable by Trustor upon demand, and shall be a lien upon the Property, prior to any right, title to, interest in or claim thereon attaching or accruing subsequent to the lien of this Deed of Trust.

6. That the Improvements shall not be altered, removed or demolished nor shall any fixtures or appliances on, in or about the Improvements be severed, removed, sold or mortgaged, without the consent of Beneficiary, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality as those replaced, free from any security interest therein or encumbrance thereon or reservation of title thereto; to permit, commit, or suffer no waste, impairment or deterioration of the Property or any part thereof; to keep and maintain the Property and every part thereof with buildings, fixtures, machinery and appurtenances in thorough repair and condition; to effect such repairs as Beneficiary may reasonably require and from time to time make all needful and proper replacements so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Trustor represents and warrants that on the date on which this Deed of Trust is executed and delivered neither Trustor, nor the Property, are in violation of any covenants and restrictions of record, and that any easements of record do not adversely affect in any way the buildings located on the property subject to the Deed of Trust and it will do all things necessary to avoid the violation of any such covenants and restrictions or to prevent such easements from adversely affecting the integrity and structural condition of said buildings. Trustor covenants and warrants that the Improvements are and will be the subject of validly issued building permits and certificates of occupancy and Trustor covenants and agrees to do, or to cause to be done, all things reasonably necessary to keep such permits and certificates valid and in good standing for so long as the indebtedness secured hereby is unpaid. Trustor further covenants that the Property and the contemplated uses thereof are permitted by all zoning, ecological, environmental, pollution, waste product, sewage disposal and other use regulations. Trustor further agrees to comply with all statutes, orders, requirements or decrees relating to the Property by any Federal, State or Municipal authority; to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Property or which have been granted to or contracted for by Trustor in connection with any existing or presently contemplated use of the Property, and to permit Beneficiary or its agents, at all reasonable times, to enter upon and inspect the Property. Trustor shall at all times faithfully and timely perform or cause to be performed all of the terms, covenants and conditions, on Trustor's part

to be performed, contained in any agreements, easements, permits or other instruments which create any covenants, conditions, easements or restrictions affecting the Property or any part thereof, in accordance with the respective terms thereof. Trustor covenants and agrees that it will not waive or modify any of the terms of any of the said agreements, easements, permits and other instruments or the rights or easements created thereby or cancel or surrender same or release or discharge any party thereunder, without, in each instance, the prior express written consent of Beneficiary. Notwithstanding the terms of this Paragraph 6, Beneficiary's consent shall not be required with respect to any alterations or improvements performed pursuant to tenant leases if Beneficiary has previously notified Trustor that such alterations or improvements do not require Beneficiary's consent.

7. That Beneficiary shall have the right, at any time and from time to time to engage an independent realtor to survey the adequacy of the maintenance of the Property. If found inadequate, such realtor shall determine the estimated cost of such repairs and replacements necessary to protect and preserve the rentability and useability of the Property and the Trustor does hereby acknowledge that the security of this Deed of Trust is thereby impaired to the extent of the estimated cost of such repairs and replacements. In such event, at the option of Beneficiary and within sixty (60) days after written demand therefor, a sum equal to the amount of such estimated cost shall thereupon become due and payable by Trustor to be applied upon the indebtedness secured hereby unless within such period Trustor at its own cost and expense, shall have completed or shall have commenced and thereafter, with diligence, completes such repairs and replacements. In such event, Trustor shall also reimburse Beneficiary for the cost of such survey, the same being secured hereby. If the survey determines such maintenance to be adequate, then the cost thereof shall be at the expense of Beneficiary.

8. That Trustor will not voluntarily create or otherwise permit to be created or filed against the Property conveyed hereby, any mortgage lien or other lien or liens inferior or superior to this Deed of Trust, except for the subordinate financing described in Paragraph 53 hereof or except with respect to a leasehold mortgage in accordance with the terms of the Kroger Co. lease, which leasehold mortgage will be subordinate to this Deed of Trust and to the Loan Documents and any subsequent amendments thereto or replacements thereof, or convey the Property by another security deed inferior or superior to this Deed of Trust, and further, that it will keep and maintain the Property from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or which hereafter may be erected on the Premises, notwithstanding by whom such labor or materials may have been contracted, and on the failure of the Trustor to perform these covenants, or any part thereof, thereupon the principal and all arrears of interest shall, at the option of Beneficiary, become due and payable, anything contained herein to the contrary notwithstanding. Notwithstanding the foregoing, with respect to the filing of any mechanics' or materialmens' or similar lien with respect to the Premises, Beneficiary will not be entitled to exercise any of the options described in this paragraph unless Trustor shall fail to remove or

cause removal of such lien within sixty (60) days following the date of filing thereof; further provided, however, Beneficiary will not be obligated to forbear from the exercise of any such option for such time period unless Trustor obtains a bond to discharge the Premises from claim of lien, in an amount equal to one hundred twenty-five percent (125%) of the amount of the lien, promptly after Trustor receives notice of the filing thereof, to the extent applicable laws permit Trustor to bond the lien off the title to the Premises in accordance with law.

9. That if at any time the United States Government or any other governmental subdivision shall require internal revenue or other documentary stamps or any other tax hereon or on the Note secured by this Deed of Trust, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Beneficiary thirty (30) days after the mailing of notice of such election to Trustor; provided, however, said election and the right to elect shall be unavailing and this Deed of Trust and Note shall be and remain in effect, if Trustor lawfully may pay for such stamps or tax, including interest and penalties thereon, to or for Beneficiary and does in fact pay, when payable for all such stamps including interest and penalties thereon.

10. To save the Beneficiary harmless from all costs and expenses, including reasonable attorneys' fees, and costs of a title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body (excepting an action to foreclose or to collect the debt secured hereby), in and to which Beneficiary may be or become a party by reason hereof, including but not limited to condemnation, bankruptcy and administrative proceedings, as well as any other of the foregoing wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms of and the lien created by this Deed of Trust, and all monies paid or expended by Beneficiary in that regard, together with interest thereon from date of such payment at the Default Rate per annum set forth in the Note, shall be so much additional indebtedness secured hereby and shall be immediately and without notice due and payable by Trustor.

11. That should the Property or any part thereof, including any easement or appurtenance thereof, be taken or damaged, permanently or temporarily, by reason of any public improvement or condemnation proceedings, including severance and consequential damage and change in grade of streets, or damage by earthquake or in any other manner, Beneficiary shall be entitled to all compensation award or payment or relief therefor and Trustor does hereby irrevocably appoint the Beneficiary as Trustor's agent and attorney-in-fact (but not as agent or attorney in fact for any members or partners of Trustor), coupled with an interest, and authorizes, directs and empowers such attorney-in-fact, at the option of the attorney-in-fact on behalf of the Trustor, its successors or assigns, to commence, appear in and prosecute, in its own name, any action or proceedings, to adjust or compromise any claim therefor and to collect and receive proceeds thereof, to give proper receipts and acquittances therefor and, after deducting expenses of collection, to apply the net proceeds in the same

manner as provided in Paragraph 4 hereof for the payment of insurance proceeds without the payment of the Prepayment Premium. In the event that the taking by condemnation does not result in physical damage to the property, Trustor agrees that, at the request of Beneficiary, it shall enter into any reasonable agreement requested by Beneficiary for disbursement of condemnation proceeds to Beneficiary upon the receipt of such proceeds.

Notwithstanding the foregoing, in the event of any damage or taking as therein described by eminent domain of less than the entire Premises, it is hereby understood, covenanted and agreed that Beneficiary shall make available the proceeds of any award received in connection with and in compensation for any such damage or taking for the purpose of restoring so much of the Improvements affected thereby, subject to the following conditions: (a) that Trustor is not then in default under any of the terms, covenants and conditions of this Deed of Trust, the Note or any other instrument evidencing or securing the indebtedness evidenced by the Note; (b) that all then existing leases affected in any way by such damage or taking such continue in full force and effect; (c) that Beneficiary shall first be given satisfactory proof that the Improvements have been fully restored or that by the expenditure of such money will be fully restored, free and clear of all liens, except as to the lien of this Deed of Trust and the Permitted Exceptions; (d) that in the event such award shall be insufficient to restore or rebuild the Improvements, Trustor shall deposit promptly with Beneficiary funds which, together with the award proceeds, shall be sufficient to restore and rebuild the Improvements upon the Premises; (e) that in the event Trustor shall fail within a reasonable time, subject to delays beyond its control, to restore or rebuild the Improvements, Beneficiary, at its option, may restore or rebuild the Improvements for or on behalf of the Trustor and for such purpose may do all necessary acts; (f) that the excess of said proceeds above the amount necessary to complete such restoration shall be applied as hereinbefore provided as a credit upon any portion as selected by Beneficiary, of the indebtedness evidenced by the Note and secured hereby; (g) and that the aggregate monthly rental payable thereafter under all leases within the Premises shall not be less than the sum of: 1/12th of the annual ground rent, if any, 1/12th of the annual taxes and assessments, and 1/12th of the annual premiums for insurance required hereunder and the monthly installments of principal and interest required to be repaid upon the indebtedness evidenced by the Note, or otherwise if less than such sum, that so much of the award shall first be applied upon the indebtedness evidenced by the Note, so that upon payment monthly of an amount equal to such aggregate monthly minimum rentals, when applied monthly to pro-rata ground rent, if any, taxes, assessments and insurance premiums, then to interest and the balance to principal will completely amortize the indebtedness evidenced by the Note at maturity, in which latter event the monthly installments under the Note shall be reduced accordingly. In the event any of the said conditions are not or cannot be satisfied, then the alternate disposition of such award as provided herein shall again become applicable. Under no circumstances shall Beneficiary become personally liable for the fulfillment of the terms, covenants and conditions contained in any of the said leases of the Premises not obligated to take any action to restore the Improvements.

Notwithstanding anything in this Deed of Trust to the contrary, condemnation awards will be applied in accordance with the lease between Trustor and The Kroger Co., provided that (i) The Kroger Co., within a time frame acceptable to Beneficiary, affirms its obligations under its lease prior to application of such proceeds by means of an estoppel certificate in form and substance satisfactory to Beneficiary, which estoppel certificate shall be addressed to Trustor and Beneficiary, (ii) The Kroger Co. is not in default under such lease, and (iii) there exists no monetary default under the Loan Documents and there exists no nonmonetary default under the Loan Documents beyond any applicable notice and cure period.

12. That Trustor shall give Beneficiary immediate notice of the actual or threatened commencement of any proceedings under eminent domain and will deliver to Beneficiary copies of any and all papers served in connection therewith. Trustor agrees to execute such further assignments of any compensation, award, damage and rights of action and proceedings as Beneficiary may require, including the assignment of any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof.

13. That Trustor within fifteen (15) days upon request by mail will furnish a written statement duly acknowledged of the amount due under the Note and whether any offsets or defenses exist against the indebtedness secured by this Deed of Trust.

14. That Trustor and all subsequent owners of the Premises shall keep and maintain full and correct books and records showing in detail the earnings and expenses of the Premises and shall permit the Beneficiary or its representatives to examine such books and records and all supporting vouchers and data at any time and from time to time on request, at its offices, hereinbefore identified, or at such other location as may be mutually agreed upon; within ten (10) days after demand therefor and, in any event, within sixty (60) days following the expiration of Trustor's first fiscal year and following the expiration of each fiscal year thereafter during the term of this Deed of Trust, will furnish to the Beneficiary or its representatives a statement showing in detail all such earnings and expenses since the last such statement, verified by the certificate of the Trustor or then owner, or if the same be a corporation, by a certificate of its principal executive officer; and in the event that the owner shall refuse or fail to furnish any statement as above-described, or in the event such statement shall be inaccurate or false, or in the event of the failure of the Trustor or any subsequent owner to permit the Beneficiary or its representative to inspect the Premises or the said books and records on request, Beneficiary may consider such acts of Trustor as a default hereunder and proceed in accordance with the rights and remedies afforded it under the provisions of this Deed of Trust.

15. To give immediate notice, as provided in Paragraph 47, to Beneficiary of any conveyance, transfer or change of ownership or occupancy of the Property.

16. Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary, but without obligation so to do and without further notice to or demand upon Trustor other than as provided in the Note (except that there shall be no extension of time for the cure of a Non-Monetary Default past the initial fifteen (15) day period before Beneficiary may elect to proceed under this paragraph), and without releasing Trustor from any obligation hereunder, may (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon the Premises for such purposes; (b) commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary; (c) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto, and in exercising any such powers, may pay necessary expenses, employ counsel and pay such counsel's reasonable fees.

17. To pay, immediately and, upon demand, all sums expended by Beneficiary under permission given under this Deed of Trust, with interest from date of expenditure at the Default Rate as set forth in the Note and to pay for any statement provided for by law in effect at the date hereof regarding the obligations secured hereby any amount demanded by Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded, all such sums to be secured by this Deed of Trust and prior to any right, title to, interest in, or claim on the Property attaching or accruing subsequent to this Deed of Trust.

18. That, subject to the provisions of Paragraph 8 above, Beneficiary, in making any payment herein and hereby authorized, in the place and stead of the Trustor, relating to taxes, assessments, water rates, sewer rentals and other governmental or municipal charges, fines, impositions or liens asserted against the Premises may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim or charge shall be the sole judge of the legality or validity of same; or relating to the expense of repairs or replacement of any buildings, improvements, fixtures, merchandise or appurtenances upon the Premises shall be the sole judge of the state of repairs and the necessity for incurring the expense of any such repairs or replacement; or otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this paragraph, may do so whenever, in its judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and provided further that in connection with any such advance, Beneficiary, at its option, may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the cost and expenses of which shall be re-payable by the Trustor without demand and shall be secured.

19. That as additional security, Trustor hereby grants, gives to and confers upon Beneficiary the right, power and authority, to collect the rents, issues and profits of the Property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, and the passage of any applicable notice and grace period, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice and the enforcement of such right or remedy by Beneficiary, once exercised, shall continue for so long as Beneficiary shall elect, notwithstanding that the collection and application aforesaid of such rents, issues and profits of the Property may have cured for the time the original default. If Beneficiary shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy under this Deed of Trust may be reasserted at any time and from time to time following any subsequent default.

20. The Trustor does hereby acknowledge, confirm and recognize that in making the loan evidenced by the Note and secured by this Deed of Trust, Beneficiary is relying to a material extent upon the business expertise of the parties and principals comprising Trustor and the continued interest of Trustor and such parties and principals in the property described in this Deed of Trust. Accordingly, no sale, transfer, assignment, disposition of or further encumbrance of all or any portion of the Premises or of any interest of such party or principal in Trustor shall be made, nor shall Trustor or any such party or principal enter into any agreement to so sell, transfer, assign, dispose of or further encumber all or any portion of the Premises or any interest of such party or principal in Trustor, without the prior express written consent of the Beneficiary being obtained in each and every instance, and upon the occurrence or happening of any or all of the foregoing without the written consent of Beneficiary then, or at any time thereafter, Beneficiary shall have the right and option, in its sole discretion, to immediately declare the entire outstanding principal indebtedness secured hereby and all accrued interest thereon, immediately due and payable and to exercise, at its option, such rights and remedies as set forth in this Deed of Trust and at law provided with regard thereto. Beneficiary's consent shall be granted or withheld in its sole discretion and may be conditioned upon (i) the payment of a fee of one percent (1%) of the unpaid principal balance of the indebtedness evidenced by the Note, (ii) the financial condition of any such proposed transferee and (iii) the confirmation that the transferee is an experienced and successful owner and manager of strip shopping centers. Upon Beneficiary's request, Trustor

will deliver to Beneficiary Trustor's organizational documents, as the same may have been amended, together with other evidence of organizational composition and control.

Notwithstanding the foregoing, without the consent of, but upon at least twenty (20) days prior written notice to, Beneficiary, and provided that Trustor is not in default under any of the Loan Documents, all or any portion of the membership interest of Midland Realty Holdings, L.L.C., a Missouri limited liability company (the "Limited Liability Company"), in Trustor may be transferred to OTR, an Ohio general partnership ("OTR"), without creating a default under any of the Loan Documents.

Notwithstanding the foregoing, any Permitted Transfer (as hereinafter defined) will be permitted without Beneficiary's prior written consent, provided that (i) Beneficiary receives not less than thirty (30) days prior written notice of the proposed transfer, such notice to provide sufficient detail to enable Beneficiary to determine whether the proposed transfer is a Permitted Transfer, and (ii) Trustor is not in default of any of its obligations under the Loan Documents either when notice of the proposed transfer is received or when the proposed transfer occurs. As used herein, a "Permitted Transfer" means any of the following:

- (a) an assignment, transfer or bequest of the respective interest of Lee S. Wielansky and Renie Wielansky, Joseph H. Apter and Jody Apter, Ned M. Brickman and Gayle Brickman, Rodney K. Jones and Mitzi Jones, Stephen Notestine and Patricia Notestine, and/or John I. Silverman and Nancy G. Silverman (collectively, the "Members") with respect to his/her/their interests in the Limited Liability Company, to one or more Family Members (as hereinafter defined), provided that the Property shall be managed by a party or parties reasonably satisfactory to Lender with expertise in the management of commercial real estate comparable to the Property at least equal to the Members; or
- (b) a sale, assignment or transfer of the Property to one or more trusts organized for the benefit of any of the Members or one or more of the Family Members of any of the Members, provided that the Member creating the trust is the trustee of such trust(s) and retains management and control of such trust assets. As used herein, "Family Member(s)" shall mean a Member's spouse, children (whether natural or adopted, grandchildren (whether natural or adopted), parents, brothers, sisters or children of brothers or sisters (whether natural or adopted); or
- (c) a sale, assignment or transfer of one or more of the Members' interests in the Limited Liability Company, or a sale, assignment

or transfer of portions thereof, to one or more other Member(s), so long as Trustor remains the owner of the Property and no further Members are admitted to the Limited Liability Company; or

- (d) a sale, assignment or transfer of the interest of any Member in the Limited Liability Company, so long as the Members retain not less than 51% of the limited liability company interests in the Limited Liability Company.

Notwithstanding the foregoing, nothing in this Deed of Trust shall prohibit the replacement or substitution, from time to time, of any of the general partners of OTR with a person or persons on the staff of the State Teachers Retirement Board of Ohio, (the "Board"), by unanimous agreement and consent of all the then existing partners of OTR upon the direction of the Board, in accordance with the Amended Partnership Agreement of OTR, dated January 4, 1993, as the same may hereafter be amended.

21. That upon an Event of Default in the payment of any installment of principal and interest, or either, when due under the Note or in any of the payments required to be made hereunder; or upon default in the performance or observance of any of the terms, covenants, conditions or warranties herein contained; or should any proceeding under bankruptcy laws be brought by or against Trustor; or should a receiver be appointed for any properties of Trustor by any court in a proceeding wherein Trustor is charged with fraud or alleged to be insolvent or unable to pay its debts as they mature and such proceeding is not dismissed within sixty (60) days after filing; then in any such event, at the option of Beneficiary, all sums secured hereby together with all accrued interest thereon, shall, without notice, become immediately due and payable and the right of action thereon shall at once exist. In the event of any such default and upon acceleration of the entire indebtedness aforesaid, interest thereon shall accrue thereafter at the Default Rate set forth in the Note, and if any suit or action is instituted to collect the said indebtedness or any part thereof or if it is placed in the hands of an attorney for collection, Trustor agrees to pay, in addition to the costs and expenses thereof, reasonable attorney's fees actually incurred, all of which interest, costs, expenses and fees shall be added to the amount of the debt secured hereby and covered by the security of this Deed of Trust. Time is of the essence in this Deed of Trust, the Note and all other documents delivered in connection with the Note.

22. That upon an Event of Default by Trustor in the performance of any of the terms, covenants, conditions or warranties herein or in the Note, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the adequacy or value of any security for the indebtedness evidenced by the Note or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the

incomes, rents, issues, profits and events thereof. The receiver shall have all of the rights and powers permitted under the laws of the State of North Carolina. Trustor will pay to Beneficiary upon demand all expenses, including receiver's fees, reasonable attorneys' fees actually incurred, costs and agent's compensation, incurred pursuant to the provisions of this paragraph, and any such amounts paid by Beneficiary shall be added to the indebtedness evidenced by the Note and shall be secured by this Deed of Trust.

23. [Intentionally Omitted]

24. [Intentionally Omitted]

25. [Intentionally Omitted]

26. [Intentionally Omitted]

27. [Intentionally Omitted]

28. That the pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

29. That all right, title and interest of the Trustor in and to all leases affecting the Premises together with any and all further leases upon all or any part of the Premises, and together with all of the rents, income, receipts, revenues, issues and profits from or due or arising out of the Premises have been transferred and assigned simultaneously herewith to Beneficiary as further security for the payment of the said indebtedness under provisions of a certain Assignment of Lessor's Interest in Leases of even date herewith executed by Trustor and to be recorded simultaneously herewith, the terms, covenants and conditions of which are hereby expressly incorporated herein by reference and made a part hereof, with the same force and effect as though the same were more particularly set forth herein.

30. That at the option of Beneficiary this Deed of Trust shall become subject and subordinate, in whole or in part (but not in respect to the priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases, of all or any part of the Premises, upon the execution by Beneficiary and recording thereof, at any time hereafter, in the office of the Register of Deeds for Forsyth County, in and for the county wherein the Premises are situate, of a unilateral declaration to that effect.

31. That should the proceeds of the loan made by the Beneficiary to the Trustor, the re-payment of which is hereby secured, or any part thereof, or any amount paid out or advanced by the Beneficiary, be used directly or indirectly to pay off, discharge or

satisfy, in whole or in part, any prior lien or encumbrance upon the Premises above-described, or any part thereof, on the Beneficiary shall be subrogated to any additional security held by the holder of such lien or encumbrance.

32. That the rights and remedies herein provided are cumulative and that the Beneficiary, as holder of said Note and every other obligation secured hereby, may recover judgment thereon, issue execution therefor and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security or any right or remedy afforded by this Deed of Trust, and no enumeration of special rights or powers by any provision of this Deed of Trust shall be construed to limit any grant of general rights or powers, or to take away or limit any and all rights granted to or vested in the Beneficiary by virtue of the laws of the State of North Carolina.

33. That Beneficiary, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release any part of the security described herein or may release any person liable for any indebtedness secured hereby without in any way affecting the priority of the lien of this Deed of Trust, to the full extent of the indebtedness remaining unpaid hereunder, upon any part of the security not expressly released. The Beneficiary may also agree with any party obligated on said indebtedness or having any interest in the security described herein to extend the time for payment of any part or all of the indebtedness secured hereby, and such agreement shall not, in any way, release or impair the lien hereof, but shall extend the lien hereof as against the title of all parties having any interest in said security, which interest is subject to said lien.

34. In the event the Beneficiary (a) releases, as aforesaid, any part of the security described herein or any person liable for any indebtedness secured hereby, or (b) grants an extension of time on any payments of the indebtedness secured hereby, or (c) takes other or additional security for the payment hereof, or (d) waives or fails to exercise any right granted herein or in the Note, said act or omission shall not release the Trustor, subsequent purchasers of the Premises or any part thereof, or makers or sureties of this Deed of Trust or of the Note, under any covenant of this Deed of Trust or of the Note, nor preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or any subsequent default.

35. Notwithstanding any provisions in this Deed of Trust or the Note to the contrary (except as provided in subparagraphs (b) and (c)):

(a) It is expressly understood and agreed that if Beneficiary at any time takes action to enforce the collection of the indebtedness, Beneficiary will proceed to foreclose this Deed of Trust instead of instituting suit upon the Note. If a lesser sum is realized from the foreclosure of this Deed of Trust and sale of the Premises than the amount

then due and owing under the Note, Beneficiary will never (except as provided in subparagraphs (b) and (c)) institute any action, suit, claim or demand in law or in equity against Trustor for or on account of the deficiency.

(b) Nothing contained in subparagraph (a) will in any way affect or impair (i) the lien of this Deed of Trust or any representation or warranty of title made in this Deed of Trust which will remain in full force and inure to the benefit of Beneficiary and to the benefit of any insurer of title to the Premises; (ii) Beneficiary's rights under any master lease, indemnity or guarantee given in connection with the indebtedness evidenced by the Note; (iii) Beneficiary's right to present and collect on any letter of credit given in connection with the indebtedness evidenced by the Note; or (iv) Trustor's personal liability for the indebtedness evidenced by the Note if at the time of acceleration of the indebtedness or foreclosure of this Deed of Trust, and sale of the Premises Trustor is in default under any of the provisions of Paragraph 50 of this Deed of Trust (being the paragraph relating to Environmental Laws as defined therein) and such default has an adverse effect on the value of the Premises;

(c) Further, the following are excluded and excepted from the provisions of subparagraph (a) and Beneficiary may recover personally against Trustor for the following:

(i) all losses, damages or liabilities suffered by Beneficiary arising out of any fraud or wilful or intentional misrepresentation by Trustor or any of Trustor's members, partners or principals in connection (i) with Trustor's performance or fulfillment of any of Beneficiary's conditions to or requirements in advancing the indebtedness evidenced by the Note or otherwise with Trustor's inducements to Beneficiary to advance such indebtedness; (ii) with the execution and delivery of any of the documents evidencing or securing the indebtedness evidenced by the Note; (iii) with the making of any representations or warranties which are in addition to the representations and warranties of title in this Deed of Trust (covered under subparagraph (b)) contained in such documents; or (iv) with Trustor's performance of any of its obligations under such documents;

(ii) all rents and other revenues, payments or reimbursements of any kind whatsoever (including all payments and contributions from tenants for taxes, insurance, operating expenses and common area maintenance charges) derived from the Premises after a default by Trustor (whether or not notice of such default has been given) under any of the documents evidencing or securing the indebtedness evidenced by the Note or on deposit on the date such default occurs in one or more accounts used by or Trustor or Trustor's agents, representatives or property manager in connection with the operation of the Premises, except to the extent properly applied (as documented by evidence reasonably satisfactory to Beneficiary) to the normal and customary expenses and operations of the Premises;

(iii) all security deposits collected by Trustor (or any of Beneficiary's predecessors) and not properly refunded to tenants and all advance rents collected by Trustor (or any of Trustor's predecessors) and not properly applied in due course; proper refunding or application must be documented by evidence reasonably satisfactory to Beneficiary;

(iv) the replacement cost of any items of personalty or any fixtures removed from the Premises by Trustor or its agents or representatives after Trustor defaults under any of the documents evidencing and securing the indebtedness evidenced by the Note;

(v) all losses, damages or liabilities suffered by Beneficiary arising from any acts of commission or omission by Trustor that result in waste upon the Premises;

(vi) all payments Beneficiary makes to protect its security pursuant to express provisions of this Deed of Trust to the extent such payments were necessitated by Trustor's failure to operate the Premises in accordance with the requirements of the loan documents or with law;

(vii) all mechanic's liens, materialmen's liens or any other liens arising from work performed on or materials delivered to the Premises prior to foreclosure of this Deed of Trust and sale of the Premises but only to the extent Beneficiary had advanced funds to pay for such work or materials;

(viii) any insurance or condemnation proceeds attributable to the Premises that are not applied in accordance with the terms of this Deed of Trust and any insurance or condemnation proceeds attributable to the Premises that were not paid to Beneficiary when required under the terms of this Deed of Trust; and

(ix) all losses or liabilities (including any diminution in value of the Premises) suffered by Beneficiary arising from Trustor's default under any of the provisions of Paragraph 50 of this Deed of Trust.

36. Upon an Event of Default and following the acceleration of maturity, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale, (including sale under power of sale hereunder), or during any redemption period after foreclosure, shall constitute an evasion of the prepayment privilege contained in the Note and shall be deemed to be a voluntary prepayment of the Note and such prepayment, to the extent permitted by law, will therefore include the premium required under the prepayment privilege contained in the Note or if at that time there be no such prepayment privilege, then such payment, to the extent permitted by law, will include a

premium for such prepayment which is the greater of: (a) an amount equal to 1% times the principal indebtedness evidenced by the Note outstanding on the date of prepayment (the "Prepayment Date Principal"), or (b) the amount by which the sum of the Discounted Value of Note Payments, calculated at the Default Discount Rate, exceeds the Prepayment Date Principal.

As used herein, the following definitions shall apply:

- (i) "Default Discount Rate" means the yield on a U.S. Treasury issue selected by Beneficiary, as published in the Wall Street Journal, two weeks prior to the date of prepayment, having a maturity date corresponding (or most closely corresponding, if not identical) to the Maturity Date (as defined in the Note), and a coupon rate corresponding (or most closely corresponding, if not identical) to the Coupon Interest Rate (as defined in the Note), less 300 basis points.

- (ii) "Discounted Value" means the discounted value of a Note Payment based on the following formula:

$$\frac{NP}{(1 + R/12)^n} = \text{Discounted Value}$$

NP = Amount of Note Payment

R = Default Discount Rate.

n = The number of months between the date of prepayment and the scheduled date of the Note Payment in question rounded to the nearest integer.

- (iii) "Note Payments" means the scheduled payments of monthly debt service on the loan evidenced by the Note for the period between the date of prepayment and the Maturity Date, including the scheduled repayment of principal at the Maturity Date.

37. That nothing herein contained nor any transaction related thereto shall be construed or so operate as to require the Trustor to pay interest at a rate greater than it is now lawful in such case to contract for, or to make any payment or to do any act contrary to law, and if from any circumstances whatsoever, fulfillment of any provisions of this Deed of Trust or of the Note, at the time performance shall be due, shall involve transcending the limit of

validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount then, *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed of Trust or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. In no event shall Trustor be bound to pay for the use, forbearance or detention of the money loaned pursuant to the Note, interest of more than the current legal limits. The right to demand any such excess is hereby expressly waived by Beneficiary. The provisions of this paragraph shall control every other provision of this Deed of Trust and of the Note. If any clauses or provisions herein contained operate or would prospectively operate to invalidate this Deed of Trust in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder of this Deed of Trust shall remain operative and in full force and effect and shall be enforced to the greatest extent permitted by law.

38. That to the extent permitted by law with respect to the debt secured hereby or any renewals or extensions thereof, Trustor jointly and severally waives and renounces, each for himself and family, any and all homestead and exemption rights, as well as the benefit of all valuation and appraisal privileges under or by virtue of the constitution and laws of the State of North Carolina, of any other state or of the United States now existing or hereafter enacted.

39. That, if the Trustor or any subsequent owner is a corporation, to preserve, maintain and keep in full force and effect its corporate existence, its right to carry on its business and all franchises, rights or privileges heretofore or hereafter granted to or conferred upon Trustor.

40. That as a special inducement to Beneficiary making the loan secured hereby to Trustor, from and after the date hereof until the date on which the principal indebtedness evidenced by the Note shall be fully repaid and this Deed of Trust shall be fully satisfied of record, Trustor covenants and agrees as follows:

(a) Trustor will prepare annually a commercially reasonable leasing plan (the "Leasing Plan") appropriate for a property of the type and character of the Property, including a marketing plan and projections for rollovers, vacancies, leasing commission costs, tenant improvement costs and other capital costs and Trustor will set aside appropriate reserves in a segregated property account to provide for anticipated costs, except to the extent set aside in reserve accounts established as specifically required by this Deed of Trust.

(b) Trustor will lease the Property in its reasonable discretion in accordance with the Leasing Plan and, subject to the following conditions, may enter into new leases and may amend, renew or extend leases without Beneficiary's prior written consent:

(i) there is no Event of Default at the time the new lease, amendment, renewal or extension is executed;

(ii) the fixed minimum rent and other economic terms (including free rent periods and other tenant concessions) of the new lease, amendment, renewal or extension are, in Trustor's reasonable business judgment, at prevailing market terms for similar space in properties comparable to the Property in the same geographic location;

(iii) each new lease is written on a Beneficiary-approved form of lease without material deviation, each renewal or extensions of a lease written on a Beneficiary-approved form of lease without material deviation and each amendment does not represent a material deviation from a Beneficiary-approved form of lease or, if not the case, then the new lease, amendment, renewal or extension, as the case may be, is submitted to Beneficiary together with Beneficiary's form of Subordination, Non-Disturbance and Attornment Agreement executed by each tenant;

(iv) the new lease represents less than 50% of the net rentable area of the building or buildings affected by the new lease, represents less than 50% of the gross revenues from the building or buildings and is not to a major department store tenant or other anchor tenant in a shopping center;

(v) Beneficiary has not revoked Trustor's privilege of entering into new leases and amending, renewing or extending leases without Beneficiary's consent as provided below;

(vi) the lease amendment does not reduce the initial term of the lease or any renewal term of the lease after the renewal has been exercised; and

(viii) the lease amendment does not reduce the rent except in connection with an extension or renewal of the lease that complies with the provisions of this Deed of Trust.

Trustor may not enter into any new lease or any amendment, renewal or extension of a lease that does not meet the preceding conditions except with Beneficiary's prior consent.

(c) Upon the occurrence of any of the following and 60 days prior notice to Trustor, Beneficiary may revoke Trustor's privilege to enter into new leases and to amend, renew and extend leases without Beneficiary's prior consent:

(i) if Beneficiary sells or otherwise transfers the Loan Documents;

(ii) if annual gross revenues from the Property are less than the aggregate of annual debt service payments, impositions, insurance premiums and operating expenses for the Property; and

(iii) at any time in Beneficiary's sole discretion.

(d) Trustor's privilege to enter into new leases and to amend, renew or extend leases without Beneficiary's prior consent automatically terminates upon the occurrence of an Event of Default.

(e) Not more than 30 days after execution of each new lease and each amendment, renewal or extension of any lease by Trustor and any tenant, Trustor will deliver to Beneficiary or Beneficiary's designated servicer, an original or a copy certified by Trustor, together with a reasonably detailed lease abstract prepared by Trustor.

41. That in the event Trustor shall hereinafter transfer and lease back all or any part of the Property and whether or not the lien of the within Deed of Trust shall be or shall hereafter have been made subordinate to any occupancy leases or subleases of the Property and whether or not the holder of this Deed of Trust shall have granted or shall at any time grant non-disturbance to such leases or subleases, then the said leaseback and any deed of trust, mortgage or security deed affecting said leaseback either (a) shall be made or shall become subordinate to said occupancy leases and subleases or (b) shall provide for nondisturbance of said leases and subleases, and all said leases and subleases shall provide for attornment to the entity that shall take over its landlord's interest.

42. Except as provided herein, no financing statement covering the personal property or any portion thereof is on file in any public office. Trustor will not remove or permit the removal of the collateral or any part thereof without the prior written permission of Beneficiary, provided that obsolete and worn-out articles may be removed concurrently with the replacement or renewal thereof with property of at least equal value in usefulness in the operation of the Property. Upon an Event of Default in the payment of any installment of principal and interest, or either, when due under the Note or in any of the payments required to be made hereunder, or upon a default in the performance or observance of any of the terms, covenants conditions or warranties herein contained, Beneficiary may exercise any and all remedies available to Beneficiary as a secured party under the Uniform Commercial Code as enacted in North Carolina.

43. That Trustor within ten (10) days upon request by mail shall execute, acknowledge and deliver to Beneficiary a chattel mortgage, security agreement or other similar security instrument, in form satisfactory to Beneficiary covering all property, of any kind whatsoever owned by Trustor, which, in the sole opinion of Beneficiary is essential to the operation of the Property and concerning which there may be any doubt whether the title to

same has been conveyed by and included within this Deed of Trust under the laws of the State of North Carolina and will further execute, acknowledge and deliver any financing statement, affidavit, continuation statement or certificate or other document as Beneficiary may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of such chattel mortgage or other security instrument. Trustor further agrees to pay to Beneficiary on demand all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording and filing and refiling of any such document.

44. That Trustor, at any time upon request of Beneficiary, will execute, acknowledge and deliver all such additional papers and instruments and all such further assurances of title and will do or cause to be done all further acts and things as may, subject to the conditions contained in this Deed of Trust, be proper or reasonably necessary for carrying out the intent of this Deed of Trust.

45. Trustor shall cause the Premises to be a separate tax lot or lots so that the Premises are assessed separate and apart from any other property owned by Trustor or any other person or entity.

46. Trustor represents, warrants and covenants as follows:

- (a) Trustor is not and will continue not to be an "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") that is subject to Title I of ERISA or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code")), that is subject to Section 4975 of the Code; therefore, Trustor's assets do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Code.
- (b) Trustor is not and will continue not to be a "governmental plan" within the meaning of Section 3(3) of ERISA; therefore, the transactions by or with Trustor contemplated by the Loan Documents do not and will not be subject to any laws regulating investments of and fiduciary obligations with respect to governmental plans.

47. All notices, demands or requests provided for or permitted to be given pursuant to this Deed of Trust 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

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business day after delivery to the overnight service, if sent by overnight delivery service. For the purpose of this Deed of Trust:

The address of Beneficiary 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 Trustor is:

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

with a copy to:

OTR
275 East Broad Street
Columbus, Ohio 43215
Attn: Director of Real Estate

The address of Trustee is:

James N. Marinello
Teachers Insurance and Annuity Association of America

730 Third Avenue
New York, New York 10017

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.

48. That all the covenants and warranties herein shall run with the land.
49. The Trustor shall provide, improve, pave, grade, surface, and thereafter maintain, clean, repair, police and adequately light all surface parking areas and structures (the "Parking Area") upon the Premises, together with any sidewalks, aisles, streets, driveways and sidewalk cuts therein. It is also covenanted and agreed and a non-exclusive easement to that effect is hereby declared, created and granted that this Parking Area shall be reserved and used solely and exclusively for the purposes of providing ingress, egress and parking facilities for automobiles and other passenger vehicles of the owners and tenants, and of the employees, licensees, invitees and customers of the owners and tenants, and further that as part of the Parking Area there shall be provided sufficient paved areas for ingress and egress and right of way to and from the adjacent public thoroughfares. Trustor covenants that the Parking Area shall not be (a) reduced so as to cause the parking area to be unable to accommodate the number of automobiles required to be maintained hereby, (b) built upon, (c) obstructed (other than temporary obstructions for street repairs and repairs to Parking Area), (d) redesignated or (e) leased or granted to any person except customers, licensees, invitees or employees of approved tenants, without the prior written consent of the Beneficiary and that the Parking Area shall always be of sufficient size to accommodate not less than 370 spaces of size and configuration complying with applicable governmental regulations, unless a greater number of spaces shall be required by any governmental agency or local zoning laws, rules and regulations having jurisdiction over the Premises, in which case the Trustor covenants and agrees to at all times maintain such greater number of spaces. The Trustor further covenants that no lease or other arrangement shall be made affecting the parking areas which will cause a default under any lease to any approved tenants. The easements hereby created and covenants, restrictions and reservations hereinabove set forth shall run with the land and shall continue in full force and effect so long as any part of the debt shall remain unpaid. The refusal or failure of the Trustor, its successors or assigns, or any subsequent owner of the Premises beyond any applicable notice and cure or grace period as set forth in the Note, to comply with the foregoing shall constitute an Event of Default hereunder and the entire indebtedness together with accrued interest and all other sums due hereunder or under the Note, shall at the option of the Beneficiary become immediately due and payable.

50. The following provisions shall apply with respect to Environmental Laws:

(a) Trustor hereby represents and warrants that:

(i) the Premises and the operations presently conducted thereon are not in violation of any zoning ordinances, building codes or Environmental Laws;

(ii) to the actual knowledge of Trustor after due inquiry and in reliance on the environmental audit of the Premises, a copy of which Trustor has provided to Beneficiary, during the period that Trustor has owned the Premises, the Premises were not used for the generation, treatment, storage or disposal of any hazardous substance, except that all hazardous substances generated at and located upon the Premises have been transported, treated and disposed of in accordance with Environmental Laws;

(iii) to the actual knowledge of Trustor after due inquiry and in reliance on the environmental audit of the Premises, a copy of which Trustor has provided to Beneficiary, the Premises and the operations presently conducted thereon are not the subject of any pending or threatened investigation, inquiry or proceeding under any Environmental Law;

(iv) to the actual knowledge of Trustor after due inquiry and in reliance on the environmental audit of the Premises, a copy of which Trustor has provided to Beneficiary, Trustor has no knowledge of any prior uses of the Premises by any prior owner or any prior owners which violate any applicable Environmental Laws; and

(v) Trustor has duly obtained or filed all necessary permits, licenses, and other governmental authorizations.

(b) Trustor hereby covenants and agrees that:

(i) the Premises will at all times be in compliance with all Environmental Laws;

(ii) Trustor will not generate, handle, use, store or treat any hazardous substance or solid waste on the Premises, except in compliance with Environmental Laws;

(iii) the use of the Premises will not result in the unlawful or other release of any hazardous substance or solid waste in, on or under the Premises;

(iv) Trustor shall immediately notify Beneficiary of the

occurrence of any violation or receipt of any notice or complaint of any violation or alleged violation of any Environmental Laws;

(v) Beneficiary may perform an assessment of the environmental condition of the Premises at Trustor's expense in connection with any modification of the Loan Documents, at any time for reasonable cause after a default under that certain Environmental Indemnity of even date herewith given for the benefit of Beneficiary with respect to the Premises, after an Event of Default under the Loan Documents, after Beneficiary receives any notice from a governmental or quasi-governmental agency of the existence or possible existence of an environmental problem with respect to the Premises, or after Beneficiary discovers an action or potential action relating to a known or potential environmental problem with respect to the Premises in which Beneficiary may be named a party or which could affect the priority of this Deed of Trust; and

(vi) Trustor shall use its best efforts to cause any and all tenants or other operators of the Premises to conduct their respective businesses so as to comply in all respects with Environmental Laws.

For purposes of this section the term "Environmental Laws" shall mean and include any and all laws, statutes, ordinances, rules, regulations, orders, or determinations of any governmental authority pertaining to health or to the environment, and relating to the Property, including without limitation, the Clean Water Act, the Clean Air Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, ("SARA"), and as may be further amended, (all together herein called "CERCLA"), the Federal Water Pollution Control Act Amendments, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976, as amended, ("RCRA"), the Hazardous Materials Transportation Act of 1975, as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, and the rules, regulations and ordinances of the County of Forsyth, the City of Kernersville, the State of North Carolina Department of Environment Health and Natural Resources and all applicable federal, state and local agencies and bureaus. Likewise, the terms "hazardous substance", "release" and "threatened release" shall have the meanings specified in CERCLA and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, however, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment, and provided further that, to the extent the laws of the state in which the Property is located establish a meaning for "hazardous substance", "release", "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply with regard to the Property.

ALL OF THE COVENANTS herein contained are joint and several and shall

also bind, and the benefits and advantages thereof shall also inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

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

52. Trustor hereby grants to Beneficiary the right and power to appoint, in its sole discretion, a substitute trustee or trustees hereunder in the event of the resignation, death, incapacity, disability, removal or absence from North Carolina of Trustee, or for any reason whatsoever. Such appointment shall be made by an instrument to that effect duly executed and acknowledged and recorded in all offices in which this Deed of Trust is recorded. Upon the execution of such instrument, the substitute trustee or trustees named therein shall be vested with all powers, rights authority and duties vested in Trustee by this Deed of Trust.

53. Beneficiary recognizes that subordinate financing from Star Bank in the original principal amount of \$1,690,000 encumbers the Property. In the event such loan is not satisfied of record on or before May 30, 1997 or in the event of a default by Trustor under the documents evidencing or securing such subordinate financing, such failure to satisfy or such default, as the case may be, will be a default under the Loan Documents for which no notice or opportunity to cure will be made available to Trustor.

54. This Deed of Trust supersedes and replaces that certain Deed of Trust and Security Agreement, dated March 31, 1997, from T&M Kernersville Development Company, L.L.C. to Trustee for the benefit of Beneficiary, recorded in the Forsyth County, North Carolina Registry.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust under seal, as of the day and year first above written.

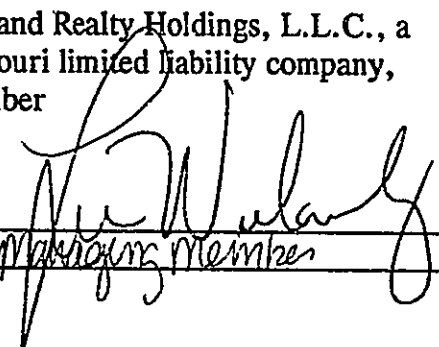
TRUSTOR:

OTR/MIDLAND REALTY HOLDINGS, LTD.,
an Ohio limited liability company

By: Midland Realty Holdings, L.L.C., a
Missouri limited liability company,
Member

By:

Its:

 (Seal)
Managing Member

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NC-169;Mtg#000394900

STATE OF Ohio

COUNTY OF Cuyahoga

This 14th day of May, 1997, personally came before me
Lee Cotelensky, who, being by me duly sworn, says that he is the Managing
of Midland Realty Holdings, L.L.C., a Missouri limited liability company and a member of member
OTR/Midland Realty Holdings, Ltd., an Ohio limited liability company, and acknowledged
the said writing to be the act and deed of said limited liability company as a member of
OTR/Midland Realty Holdings, Ltd.

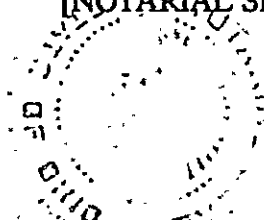
WITNESS my hand and official seal, this the 14th day of May,
1997.

[Signature]
Notary Public

My commission expires:

RAPHAEL J. OMERZA, Attorney at Law
Notary Public, State of Ohio
My commission has no expiration date.
Section 147.03 O.R.C.

[NOTARIAL SEAL]



STATE OF NC - FORSYTH CO
The foregoing certificate of Raphael J. Omerza
NP(s)
is certified to be correct this the 30 day of May, 1997
Dickie C. Wood, Register of Deeds by: [Signature]

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EXHIBIT "A"

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 Registry, map recorded in Plat Book 39, page 55, Forsyth County Registry and map recorded in Plat Book 39, page 136, Forsyth County Registry.

Together with and including all of the right, title and interest of Grantor in and to the non-exclusive easements appurtenant to any or all of said Lots 1 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, or (6) that certain map recorded in Plat Book 39, page 136, Forsyth County Registry.

EXHIBIT "B"

List of Permitted Exceptions

1. Taxes for the year 1997 and thereafter which are not yet due and payable.
2. Restrictions, reservations of easements and conditions contained in instrument recorded in Book 1868, page 3681 and Book 1915, page 2085, Forsyth County Registry, but this policy insures that a violation thereof will not cause a forfeiture or reversion of title.
NOTE: This exception omits and covenant, condition or restriction based on race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that the restriction is not in violation of state or federal law, or relates to a handicap, but does not discriminate against handicapped people.
3. Terms and conditions of Declaration of Reciprocal Easements and Restrictions recorded in Book 1868, page 3681, Forsyth County Registry. (Affects appurtenant easements appearing in Item No. 5 of Schedule A of the within Policy.)
4. Terms and conditions of Deed of Easement recorded in Book 1868, Page 3663, Forsyth County Registry. (Affects appurtenant easements appearing in Item No. 5 of Schedule A of the within Policy.)
5. The following matters that are shown by survey dated March 13, 1997 by Homer S. Wade, Registered Land Surveyor, and plat recorded in Plat Book 39, page 55, Forsyth County Registry:
 - a) building setback lines which have not been violated; and
 - b) drainage line on Lot 2;
6. Plat recorded in Plat Book 38, Page 119, Forsyth County Registry, reveals the following:
 - a) negative access, slope and utility easements along northern line of Lot 1;
 - b) private Access Easements crossing Lots 1 & 2 and adjoining southern property line of Lot 2;
 - c) maximum watershed impervious areas;
 - d) future plans may constitute a realignment of Century Boulevard. Sections could be renamed at a later date;
 - e) sanitary sewer easements (public) crossing eastern portion of Lot 1; and
 - f) sight distance easements at southeastern corner of lot 2.
7. Title to that portion of the property within the bounds of right-of-way of Boulevard Dedicated on plat recorded in Plat Book 38, Page 119, Forsyth County Registry.
8. Right(s)-of-way to Department of Transportation, recorded in Book 1725, page 260, Forsyth County Registry.

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9. Easement(s) to Duke Power Company recorded in Book 392, Page 86, Book 617, Page 235, book 859, Page 24, Book 859, Page 304; Book 478, Page 5; and Book 793, Page 301, Forsyth County Registry.
10. Terms and conditions of Slope Easement Agreement recorded in Book 1667, Page 820, Forsyth County Registry.
11. Sanitary Sewer Easements to Town of Kernersville recorded in Book 1820, Page 3111, and Book 1820, Page 3115, Forsyth County Registry.
12. Title to that portion of the property within the bounds of existing and proposed right-of-way of South Main Street, Highway 150, see Plat Book 38, Page 119, Forsyth County Registry.
13. Lease to the Kroger Co., recorded in Book 1868, Page 3696, Forsyth County Registry.
14. Rights of tenants as set forth on the attached rent roll (see Exhibit "A") as tenants only under lease in effect and that none of such leases contain a right of first refusal or option to purchase.
15. Plat recorded in Plat Book 139, Page 136, Forsyth County Registry.

EXHIBIT C

1. That certain Amended and Restated Mortgage Note, dated April 30, 1996, in the original principal amount of \$6,100,000.00, made by T&M West Chester Development Limited Liability Company, an Ohio limited liability company, payable to the order of Teachers Insurance and Annuity Association of America, in accordance with its terms but in no event later than September 1, 2005, as amended by that certain First Amendment to Amended and Restated Mortgage Note, dated March 31, 1997, as assigned by T&M West Chester Development Limited Liability Company to OTR/Midland Realty Holdings, Ltd. by assignment and assumption dated May 23, 1997, as amended by that certain Second Amendment to Amended and Restated Mortgage Note, dated May 23, 1997.
2. That certain Amended and Restated Deed of Trust Note, dated May 23 1997, in the original principal amount of \$5,900,000.00, made by OTR/Midland Realty Holdings, Ltd., an Ohio limited liability company, payable to the order of Teachers Insurance and Annuity Association of America, in accordance with its terms but in no event later than January 1, 2002.
3. That certain Amended and Restated Deed of Trust Note, dated May 23, 1997, in the original principal amount of \$11,950,000.00, made by OTR/Midland Realty Holdings, Ltd., an Ohio limited liability company, payable to the order of Teachers Insurance and Annuity Association of America, in accordance with the terms thereof but in no event later than April 1, 2007.
4. That certain Amended and Restated Security Deed Note, dated May 23, 1997, in the original principal amount of \$4,900,000.00, made by OTR/Midland Realty Holdings, Ltd., an Ohio limited liability company, payable to the order of Teachers Insurance and Annuity Association of America, in accordance with its terms but in no event later than January 1, 2002.
5. That certain Deed of Trust Note, dated April 30, 1996, in the original principal amount of \$5,715,000.00, made by T&M Staunton Development Company, L.C., a Virginia limited liability company, payable to the order of Teachers Insurance and Annuity Association of America, in accordance with its terms but in no event later than May 1, 2006, as amended by that certain First Amendment to Deed of Trust Note, dated March 31, 1997, as assigned by T&M Staunton Development Company, L.C. to OTR/Midland Realty Holdings, Ltd. by assignment and assumption dated May 23, 1997, as amended by that certain Second Amendment to Deed of Trust Note, dated May 23, 1997.

EXHIBIT D

1. That certain Open End Mortgage and Security Agreement, dated August 18, 1995, from T&M West Chester Development Limited Liability Company, an Ohio limited liability company, to Teachers Insurance and Annuity Association of America, recorded in Book 5421, Page 387, Butler County, Ohio Records; as amended by that certain First Amendment to Open End Mortgage and Security Agreement, dated April 30, 1996, recorded in Book 6016, Page 227, Butler County, Ohio records (as re-recorded in Book 6050, Page 1127, Butler County, Ohio Records); as amended by that certain Second Amendment to Open End Mortgage and Security Agreement, dated March 31, 1997, recorded in the Butler County, Ohio Records; as assigned by T&M West Chester Development Limited Liability Company to OTR/Midland Realty Holdings, Ltd. by assignment and assumption dated May 23, 1997, to be recorded in the Butler County, Ohio records; as amended by that certain Third Amendment to Open End Mortgage and Security Agreement, dated May 23, 1997, to be recorded in the Butler County, Ohio records.
2. That certain Deed of Trust and Security Agreement, dated December 29, 1994, by T&M Realty No. 1, L.L.C., a North Carolina limited liability company, to James N. Marinello, as Trustee, for the benefit of Teachers Insurance and Annuity Association of America, recorded in Book 6392, Page 786, Wake County, North Carolina Registry; as assigned by T&M Realty No. 1, L.L.C. to OTR/Midland Realty Holdings, Ltd. by assignment and assumption dated May 23, 1997, to be recorded in the Wake County, North Carolina Registry; as amended by that certain First Amendment to Deed of Trust and Security Agreement, dated May 23, 1997, to be recorded in the Wake County, North Carolina Registry.
3. That certain Amended and Restated Deed of Trust and Security Agreement, dated May 23, 1997, by OTR/Midland Realty Holdings, Ltd., an Ohio limited liability company, to James N. Marinello, as Trustee, for the benefit of Teachers Insurance and Annuity Association of America, to be recorded in the Wake County, North Carolina Registry.
4. That certain Deed to Secure Debt, dated December 29, 1994, by T&M Realty No. 1, L.L.C., a North Carolina limited liability company, to Teachers Insurance and Annuity Association of America, recorded in Book 1509, Page 15, Records of the Clerk of Superior Court of Columbia County, Georgia, as amended by that certain First Amendment to Security Deed, dated August 26, 1996, recorded in Book 1748, Page 277, Records of the Clerk of Superior Court of Columbia County, Georgia, as assigned by T&M Realty No. 1, L.L.C. to OTR/Midland Realty Holdings, Ltd. by assignment and assumption dated May 23, 1997, to be recorded in the Records of the Clerk of Superior Court of Columbia County, Georgia, as amended by that certain

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Second Amendment to Security Deed, dated May 23, 1997, to be recorded in the Records of the Clerk of Superior Court of Columbia County, Georgia.

5. That certain Deed of Trust and Security Agreement, dated April 30, 1996, by T&M Staunton Development Company, L.C., a Virginia limited liability company, to Christopher J. Hart, as Trustee, for the benefit of Teachers Insurance and Annuity Association of America, recorded in Book 371, Page 713, of the Clerk's Office of the Circuit Court of the City of Staunton, Virginia, as amended by that certain First Amendment to Deed of Trust and Security Agreement, dated March 31, 1997, recorded in the Clerk's Office of the Circuit Court of the City of Staunton, Virginia, as assigned by T&M Staunton Development Company, L.C. to OTR/Midland Realty Holdings, Ltd. by assignment and assumption dated May 23, 1997, to be recorded in the Clerk's Office of the Circuit Court of the City of Staunton, Virginia, as amended by that certain Second Amendment to Deed of Trust and Security Agreement, dated May 23, 1997, to be recorded in the Clerk's Office of the Circuit Court of the City of Staunton, Virginia.