

McNamee Boy ✓ 003
FORSYTH CO. NC 224 FEE: \$ 16.00
PRESENTED & RECORDED: 03/31/1997 2:08PM
DICKIE C. WOOD REGISTER OF DEEDS BY: NELSON
NO TAXABLE CONSIDERATION
BPN

Prepared by and Return to: Maupin, Taylor & Ellis, P.A.
Post Office Drawer 19764
Raleigh, North Carolina 27619

NORTH CAROLINA

DEED OF EASEMENT

FORSYTH COUNTY

This Deed of Easement is entered into this 27th day of March, 1997, by and between T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company (hereinafter "T&M"), and BV ASSOCIATES I LIMITED PARTNERSHIP, a North Carolina limited partnership (hereinafter "Grantee").

WITNESSETH:

Whereas, T&M is the owner of certain real property located in the Town of Kernersville, Forsyth County, North Carolina more particularly described as Lot 1 as shown on that certain map recorded in Map Book 39, Page 136, Forsyth County Registry (said real property being hereinafter referred to as "Lot 1"); and

Whereas, T&M has concurrently with the execution of this Deed of Easement conveyed to Grantee that certain parcel of real property located in the Town of Kernersville, Forsyth County, North Carolina more particularly described as Lot 5 as shown on that certain map recorded in Map Book 39, Page 136, Forsyth County Registry (said real property being hereinafter referred to as "Lot 5"); and

Whereas, Lot 1 and Lot 5 are both located in the Kernersville Marketplace Shopping Center (the "Center") and adjoin each other; and

Whereas, Grantee intends to develop Lot 5 as a restaurant; and

Whereas, Grantee desires certain easements burdening Lot 1 for the use and enjoyment of Lot 5 and T&M desires to provide such easements upon the terms and conditions subsequent contained herein; and

Whereas, a retaining wall (the "Retaining Wall") exists along the Eastern property lines of Lot 1 and Lot 5 and Grantor and Grantee desire to grant reciprocal easements to each other for the purpose of performing repairs and maintenance to the retaining wall on the other party's lot under certain circumstances.

NOW, THEREFORE, in consideration of the mutual benefits to be realized, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, on behalf of themselves and their respective heirs, successors and assigns, do hereby covenant and agree as follows:

RAL/MS/1/1

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BK1940 P2088 - P2092

1. T&M does hereby establish, give, grant and convey to Grantee and its heirs, successors and assigns (and the employees of such parties) a non-exclusive perpetual easement appurtenant to Lot 5 to park not more than ten (10) personal vehicles in the ten (10) striped parking spaces on Lot 1 which are not otherwise occupied and are closest in distance at any time to Lot 5 not more than (the "Offsite Parking Easement"). This easement is limited to the employees of the restaurant business located on Lot 5, and specifically prohibits the right to park overnight or the use of such spaces for commercial vehicles..

2. Grantee and each of its heirs, successors and assigns shall not cause material damage to the Offsite Parking Easement. Grantee and each of its heirs, successors and assigns shall keep the Offsite Parking Easement free of all trash, litter and debris. All maintenance shall be done in a good workmanlike manner and in a manner which minimizes interference with access and other parking at the Center.

3. Nothing contained herein shall be construed to give the Grantee or its heirs, successors or assigns a right to erect a gate, fence or other obstruction on the Offsite Parking Easement.

4. Grantee and each of its heirs, successors and assigns shall indemnify T&M and each of its heirs, successors and assigns for all costs, fees and expenses (including reasonable attorney's fees) relating to or arising out of any claims, actions, injury or damage to third parties or other property relating to Grantee's or its heirs', successors' and assigns' use of the Offsite Parking Easement.

5. This Deed of Easement is not intended to, and shall not be construed to dedicate the Offsite Parking Easement to the general public, nor shall this Deed of Easement be construed to restrict the use and development of the Offsite Parking Easement, except as stated herein.

6. T & M hereby establishes, gives, grants and conveys to Grantee and Grantee's heirs, successors and assigns a non-exclusive easement across Lot 1 for the purpose of performing maintenance and repairs to the Retaining Wall located on Lot 1, but only in the event that failure to make such repairs and maintenance would pose a material danger to improvements, property or individuals on Lot 5. Grantee hereby establishes, gives, grants and conveys to T & M and T & M's heirs, successors and assigns a non-exclusive easement across Lot 5 for the purpose of performing maintenance and repairs to the Retaining Wall located on Lot 5, but only in the event that failure to make such repairs and maintenance would pose a material danger to improvements, property or individuals on Lot 1. T & M and Grantee agree to use their commercially reasonable best efforts to minimally interfere with the businesses being operated on Lot 1 and Lot 5 in the course of exercising their respective rights under these easements.

7. All agreements and covenants contained herein shall constitute covenants running with the land. All the terms, conditions and provisions of this Deed of Easement shall inure to the benefit of and be binding upon T&M and Grantee and their respective heirs, successors and

assigns, and upon any person or persons coming into ownership or possession of any interest in Lot 1, Lot 5 or the Offsite Parking Easement.

8. Any breach by Grantee or its heirs, successors or assigns of any of its/their obligations contained herein shall be cause for termination of the Offsite Parking Easement granted in this Deed of Easement.

9. This Deed of Easement contains the entire agreement and understanding of the undersigned concerning the subject matter hereof, and there are no representations or statements, verbal or written, which have been made which modify, add to or change the terms and conditions of this Deed of Easement.

10. This Deed of Easement shall not be modified except in writing by T&M and Grantee.

11. This Deed of Easement and the terms and conditions set forth herein shall be construed and interpreted under the laws of North Carolina.

12. The undersigned intend this Deed of Easement to be a sealed instrument and adopt the word "seal" appearing next to their respective signatures.

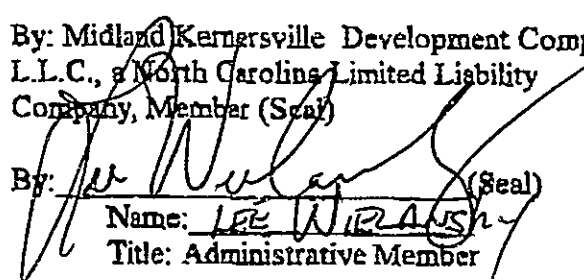
TO HAVE AND TO HOLD the aforesaid easements to Grantee, its heirs, successors and assigns, subject to the aforesaid terms and conditions.

IN WITNESS WHEREOF, the undersigned have caused this Deed of Easement to be executed under seal this 27th day of March, 1997.

GRANTOR:

T&M KERNERSVILLE DEVELOPMENT
COMPANY, L.L.C., a North Carolina Limited
Liability Company (Seal)

By: Midland Kernersville Development Company,
L.L.C., a North Carolina Limited Liability
Company, Member (Seal)

By:  (Seal)
Name: LEE W. RALSTON
Title: Administrative Member

2090

GRANTEE:

BV INVESTMENTS

BV ASSOCIATES I LIMITED
PARTNERSHIP, a North Carolina limited
partnership (Seal)

By: BV Investments, Inc., general partner

By: Maurice N. Jennings, Jr.
Name: Maurice N. Jennings, Jr.
Title: Vice-President

CORPORATE SEAL
ATTEST:

M. H. H. H.
(Asst.) Secretary

The Kroger Co. hereby consents to this Deed of Easement.

CORPORATE SEAL

THE KROGER CO.

By: Paul Keen
(Vice-) President

ATTEST:

Thomas P. O'Brien, Jr.
(Asst.) Secretary

NORTH CAROLINA MISSOURI

WAKE COUNTY OF ST. LOUIS

I, the undersigned Notary Public, do hereby certify that LEE S. WIELANSKY, member of Midland Kernersville Development Company, L.L.C., member of T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is a member of Midland Kernersville Development Company, L.L.C., a North Carolina limited liability company, a member of T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C., and further acknowledged the due execution of this instrument under seal on behalf of and as an act of Midland Kernersville Development Company on behalf of and as an act of T&M KERNERSVILLE DEVELOPMENT COMPANY, L.L.C.

WITNESS my hand and notarial stamp/seal, this the 27th day of March, 1997.

Christopher M. Blanton
Notary Public

My Commission Expires: _____
Notarial Seal/Stamp

XAL/6/13/1

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

2391

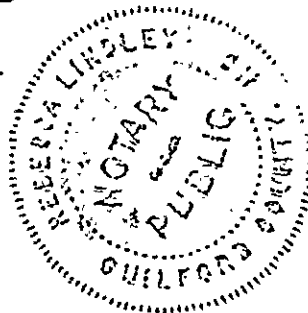
STATE OF North Carolina

COUNTY OF Guilford

I, Rebecca Lindley, Notary Public for said County and State, certify that Marc Isaacson personally came before me this day and acknowledged that he is Asst. Secretary of BV Associates Investments, Inc, general partner of BV ASSOCIATES I LIMITED PARTNERSHIP and that by authority duly given and as the act of the corporation on behalf of BV ASSOCIATES I LIMITED PARTNERSHIP, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by himself as its Asst. Secretary.

WITNESS my hand and notarial seal, this the 27 day of March, 1997.

Rebecca Lindley
Notary Public



My Commission Expires: 7/16/2001
(Notarial Seal or Stamp)

STATE OF OHIO

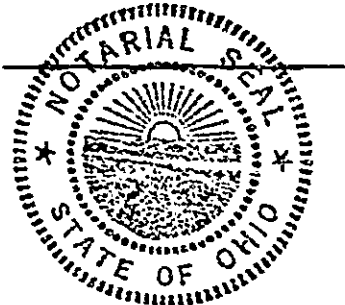
COUNTY OF HAMILTON

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that THOMAS P. D'PRIEN JR personally appeared before me this day and acknowledged that he/she is ASSISTANT Secretary of THE KROGER CO., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its VICE President, sealed with its corporate seal, and attested by himself/herself as its ASSISTANT Secretary.

WITNESS my hand and notarial seal this the 26th day of MARCH, 1997.

Margaret Saunders
Notary Public

My Commission Expires:



MARGARET SAUNDERS
Notary Public, 21 to or Ohio
My Commission Expires Sept. 18, 2001

STATE OF NC - FORSYTH CO

The Foregoing certificate of Christopher M. Benton
Rebecca Lindley and Margaret Saunders NP(s)
is certified to be correct this the 31st day of March, 19 97
Dickie C. Wood, Register of Deeds by: Dickie C. Wood