

November 7, 2023

MEMORANDUM

To: City of White House Industrial Development Board
Gerald Herman, City Administrator
Valerie Webb, City Attorney

From: Derek Watson, City Recorder

Re: Meeting of the Industrial Development Board

Notice is hereby given that the Industrial Development Board of the City of White House, Tennessee, will meet on Wednesday, November 15 2023, to consider a utility easement for Advanex Americas and property conveyance for The Kroger Company.

The meeting will take place at 5:00 pm at the Billy S. Hobbs Municipal Center located at 105-D College Street.

If you have any questions or are unable to attend please contact me at 615-672-4350, ext. 2111.

CITY OF WHITE HOUSE
Industrial Development Board Agenda
November 15, 2023
5:00 p.m.

1. Call to Order
2. Roll Call
3. Adoption of the Agenda
4. Approval of Minutes of the March 27, 2023, Industrial Development Board Meeting
5. New Business
 - A. To approve or reject a utility easement for Advanex Americas.
 - B. To approve or reject property conveyance for The Kroger Company.
6. Other Business
7. Adjournment

CITY OF WHITE HOUSE
Industrial Development Board Agenda
March 27, 2023
5:00 p.m.

1. Call to Order

Meeting was called to order at 5:03 pm by President Tim Murphy.

2. Roll Call

Ken Duley - Absent; Gary Faust - Present; John Mechler - Present; Tim Murphy - Present; Mark Reid – Present; Michael Wall – Present; John Wilkinson - Present; **Quorum - Present**

3. Adoption of the Agenda

Motion was made by Mr. Murphy, second by Mr. Wall. A voice vote was called for with all members voting aye. **Agenda was adopted.**

4. Approval of Minutes of the February 7, 2023, Industrial Development Board Meeting

Motion was made by Mr. Reid, second by Mr. Wilkinson with one correction. A voice vote was called for with all members voting aye. **February 7, 2023 minutes were approved.**

5. New Business

A. To approve or reject payment in Lieu of Ad Valorem Taxes for Sembler Company

Motion was made by Mr. Reid, second by Mr. Mechler to approve payment in Lieu of Ad Valorem Taxes for Sembler Company. A voice vote was called for with all members voting aye except Mr. Wilkinson who abstained. **Motion was approved.**

6. Other Business

7. Adjournment

Meeting was adjourned at 5:20 pm

John D. Wilkinson, Secretary

EASEMENT

Prepared by: /s/ Jeffrey E. James, Attorney, 525 S Tryon St., Mailcode: DEP-21B, Charlotte, NC 28202
Return Recorded Document To: Piedmont Natural Gas Company, Inc., 525 S Tryon St., Mailcode: DEP-21B, Charlotte, NC 28202

STATE OF TENNESSEE

COUNTY OF ROBERTSON

For Internal Informational Purposes Only
LINE NO. Whitehouse Supply Line Loop
PROJECT TRACT NO. TN-RBRT-015
PROJECT NO. 0236382
PARCEL ID #: _106 187.02 000_

THIS "EASEMENT" is made and granted as of this ____ day of _____, 20__, from **The Industrial Development Board of the City of White House, Tennessee and Advanex Americas, Inc., a California corporation** ("Grantor", whether one or more), to **PIEDMONT NATURAL GAS COMPANY, INC.**, a North Carolina corporation ("Piedmont").

WHEREAS, Grantor is the owner of, or has an interest in, that property situated in the County of Robertson, Tennessee, as more particularly described in the instrument recorded in Book 2145, Page 185, Robertson County Registry (the "**Property**").

NOW, THEREFORE, Grantor for and in consideration of the sum of _____ (\$_____), the receipt and legal sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, and conveys unto Piedmont, its successors and assigns the following easement(s) and right(s) of way under, upon, over, through, and across the Property, as shown on the survey attached hereto as **Exhibit A** and incorporated herein by reference (the "**Survey**").

Pipeline Easement. A perpetual easement under, upon, over, through, and across that portion of the Property, generally 35 feet wide, designated "Pipeline Easement" on the Survey (the "**Pipeline Easement Area**") for purposes of constructing, installing, maintaining, operating, repairing, altering, replacing, removing, relocating, inspecting, upgrading, and protecting one or more pipelines (which pipelines shall be underground) and appurtenant facilities (including, without limitation: at or below grade valves and anode beds; and above ground markers, cathodic protection equipment, bollards) for the transportation of natural gas.

Temporary Construction Easement ("TCE"). A temporary right to use the area designated "TCE" on the Survey (the "**TCE Area**") for the purposes of performing construction activities and laying, storing, erecting, parking, and/or protecting any equipment, vehicles, materials, fill, gravel, components, parts, and tools associated with the construction of Piedmont's natural gas pipelines and appurtenant facilities for which this TCE is given, which may or may not be located on the Property. Piedmont shall have the right, but not the obligation, to install temporary fencing around the TCE Area and to exclude all persons, including Grantor, from any fenced portions of the TCE Area.

Following all facilities for which this TCE is given being placed in service, the TCE shall automatically terminate upon (1) Piedmont's restoration of the TCE Area pursuant to the restoration requirements described in the Damages section below and (2) when any permits have been issued for construction and/or erosion and sediment control measures are present, the release of Piedmont from its obligations under all permits and the removal of all temporary erosion and sediment control measures from the Property. The TCE does not grant Piedmont the right to place any permanent facilities in the TCE Area.

Temporary Access Easement. A temporary access easement upon, over, and across that portion of the Property designated "Temporary Access" on the Survey (the "**Temporary Access Area**") for the purposes of ingress, egress, and regress. Piedmont shall have the right, but not the obligation, to construct, reconstruct, maintain, repair, improve, and/or use roads or driveways within the Temporary Access Area (including, without limitation, grading, graveling, and installing culverts). Either party may install gates within the Temporary Access Area with the prior written approval of the other party, which shall not be unreasonably withheld, provided that both parties have reasonable means of using any locked gates. Grantor assumes all risk in connection with use, maintenance, and/or improvement of any roads, driveways, or gates within the Temporary Access Area by Grantor, its employees, agents, contractors, and invitees.

Following all facilities for which this temporary access easement is given being placed in service, the temporary access easement shall automatically terminate upon (1) Piedmont's restoration of the Temporary Access Area pursuant to the restoration requirements described in the Damages section below and (2) when any permits have been issued for construction and/or erosion and sediment control measures are present, the release of Piedmont from its obligations under all permits and the removal of all temporary erosion and sediment control measures from the Property.

For purposes of this EASEMENT, the term "**Easements**" shall refer collectively to all easements described above and as depicted on the Survey and the term "**Easement Areas**" shall refer collectively to all the easement areas described above and as depicted on the Survey.

Piedmont's Use. Piedmont shall have all rights necessary or convenient for the full use and enjoyment of the Easement(s) herein granted, including, without limitation: (1) reasonable access across the Property to and from the Easement Areas, and (2) the right, but not the obligation, to clear and keep the Easement Areas cleared of vegetation, undergrowth, trees (including overhanging limbs and foliage), buildings, structures, installations, and any other obstructions (collectively, "**Obstructions**") which unreasonably interfere with the rights granted herein. Some or all of the natural gas pipelines and appurtenant facilities (collectively, as described and permitted in the Easements granted herein, the "**Facilities**") may be installed now and/or in the future. All Facilities shall be and remain the property of Piedmont and may be removed by it at any time and from time to time.

Grantor's Reservation of Rights. Grantor reserves the right to use the Property and Easement Areas for all purposes that do not unreasonably interfere with the rights granted herein and that are not inconsistent with any applicable federal, state, or local law, rule, or regulation. Grantor may change the use of the Easement Areas or install certain Obstructions within the Easement Areas if Grantor has obtained prior written approval from Piedmont, which approval shall not be unreasonably withheld, conditioned or delayed. Anything to the contrary herein notwithstanding, Grantor shall not: (1) unreasonably interfere with Piedmont's access to or maintenance or use of the Facilities or Easement Areas; (2) endanger the safety of Grantor, Piedmont, the general public, private or personal property, access roads or driveways, or the Facilities; or (3) install or maintain, or permit to be installed or maintained, any Obstructions within the Easement Areas except as approved in writing by Piedmont.

Damages. Piedmont shall be responsible for actual physical damage to (1) the land within the Property and Easement Areas and (2) improvements and annual crops located on the Property that are not in violation of the terms hereof, to the extent caused by Piedmont in exercising the rights granted herein, provided that a claim is made by Grantor within one hundred and twenty (120) days after such damages are sustained. Piedmont shall restore and level the surface of the Easement Areas to a condition which is reasonably close to the condition existing immediately prior to Piedmont's use of the Easement Area, excepting those permanent alterations which may be permitted in connection with each Easement above, if any, and earthen water bars to prevent erosion. Piedmont shall not be liable for any damage caused to Obstructions installed or maintained in violation of the terms hereof and may remove them at Grantor's expense without Grantor's prior approval or permission.

No Waiver or Additional Representations. The failure by Piedmont to exercise and/or enforce any of the rights, privileges, and Easements herein described shall not be construed as a waiver or abandonment of any such rights, privileges and Easements, and Piedmont thereafter may exercise and/or enforce, at any time and from time to time, any or all of them. It is understood and acknowledged by Grantor that only terms expressly stated herein will be binding on Piedmont.

Ownership of the Property. Grantor represents, warrants and covenants that it (i) is the lawful owner of the Property and has the right to convey the rights set forth herein and that the Property is free from all encumbrances, except for encumbrances of record and (ii) has obtained any necessary approvals from any applicable tenant interests.

To have and to hold said rights, privileges, and Easements unto Piedmont, its affiliates, successors, and assigns. Piedmont and its successors and assigns shall have the right to assign, license, lease, or otherwise transfer, in whole or in part, this EASEMENT, or any rights granted herein, to any person or entity, including but not limited to, any affiliate, parent, or subsidiary of Piedmont, for the uses and purposes expressly stated herein. This EASEMENT shall run with the land and inure to the benefit of and be binding upon Grantor, Piedmont and their respective heirs, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this EASEMENT has been executed by Grantor, as of the date first above written.

GRANTOR:

By: **The Industrial Development Board of the City of White House, Tennessee**

Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of _____ County, State of _____, do hereby certify that _____, [Manager / Member / Managing Member] of **The Industrial Development Board of the City of White House, Tennessee**, personally appeared before me this day and acknowledged that by authority duly given and as the act of the limited liability company the foregoing Easement was signed in its name by him or her in such capacity.

Witness my hand and official seal this the ___ day of _____, 20__.

[NOTARY SEAL]

_____ Sign

_____ Print

My commission expires: _____

IN WITNESS WHEREOF, this EASEMENT has been executed by Grantor, as of the date first above written.

GRANTOR:

By: **Advanex Americas, Inc., a California corporation**

Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of _____ County, State of _____, do hereby certify that _____, [Manager / Member / Managing Member] of **Advanex Americas, Inc., a California corporation**, personally appeared before me this day and acknowledged that by authority duly given and as the act of the limited liability company the foregoing Easement was signed in its name by him or her in such capacity.

Witness my hand and official seal this the ____ day of _____, 20__.

[NOTARY SEAL]

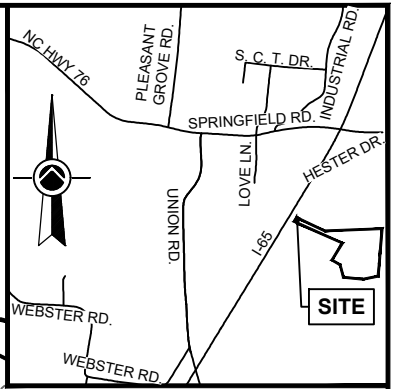
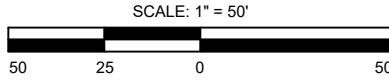
_____ Sign

_____ Print

My commission expires: _____

AREA TABLE		
EASEMENT TYPE	ACRES	SQ. FT.
PIPELINE	0.087	3,807
TEMPORARY ACCESS	0.035	1,524
TCE	0.024	1,403

EXHIBIT A



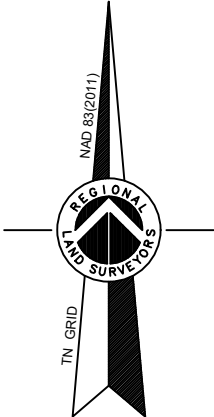
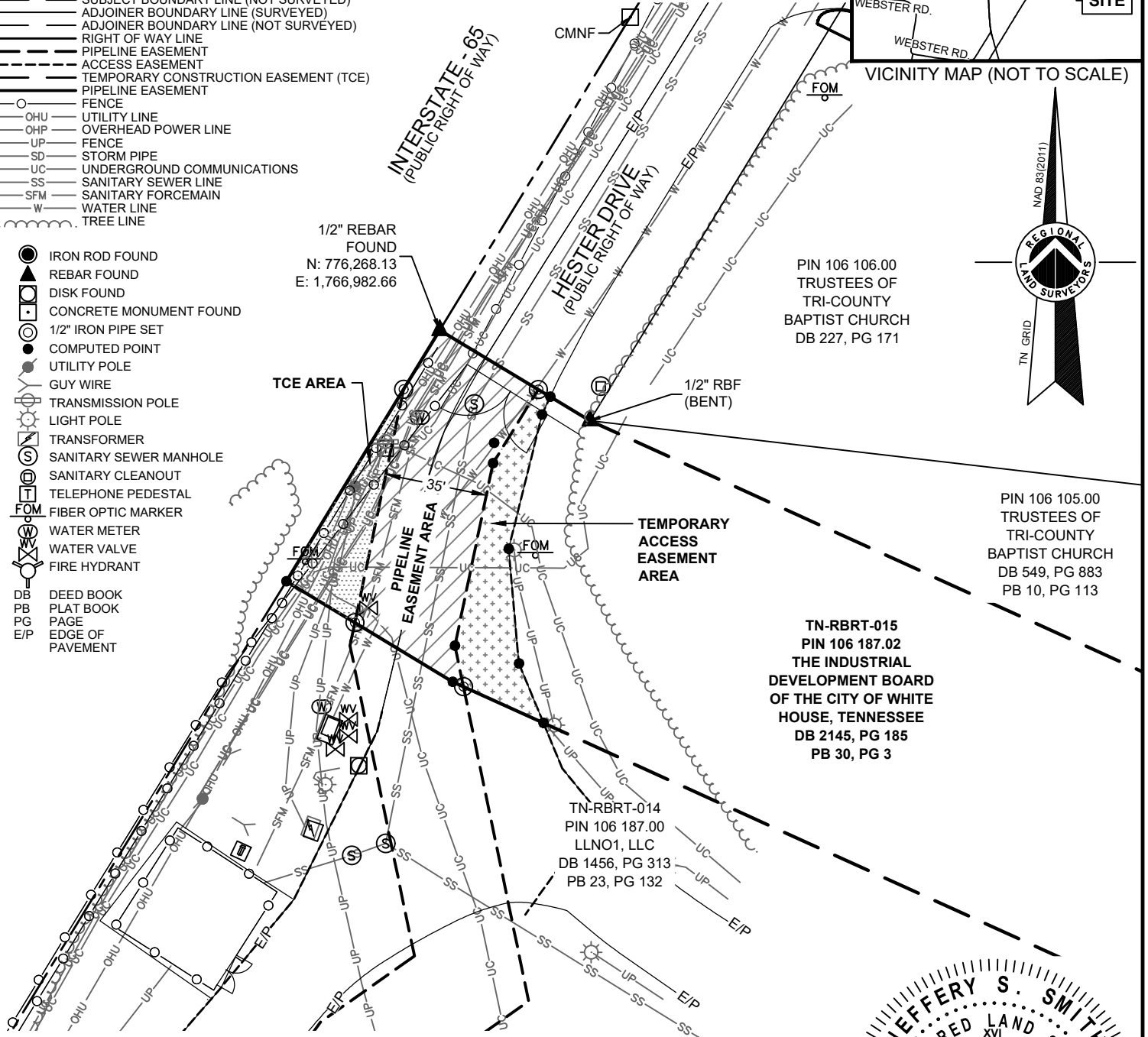
SITE OVERVIEW

SEE DETAIL FOR BEARINGS AND DISTANCE PAGE 2

LEGEND

- SUBJECT BOUNDARY LINE (SURVEYED)
- SUBJECT BOUNDARY LINE (NOT SURVEYED)
- ADJOINER BOUNDARY LINE (SURVEYED)
- ADJOINER BOUNDARY LINE (NOT SURVEYED)
- RIGHT OF WAY LINE
- PIPELINE EASEMENT
- ACCESS EASEMENT
- TEMPORARY CONSTRUCTION EASEMENT (TCE)
- PIPELINE EASEMENT
- FENCE
- UTILITY LINE
- OVERHEAD POWER LINE
- UP
- STORM PIPE
- UNDERGROUND COMMUNICATIONS
- SANITARY SEWER LINE
- SANITARY FORCEMAIN
- WATER LINE
- TREE LINE

- IRON ROD FOUND
- REBAR FOUND
- DISK FOUND
- CONCRETE MONUMENT FOUND
- 1/2" IRON PIPE SET
- COMPUTED POINT
- UTILITY POLE
- GUY WIRE
- TRANSMISSION POLE
- LIGHT POLE
- TRANSFORMER
- SANITARY SEWER MANHOLE
- SANITARY CLEANOUT
- TELEPHONE PEDESTAL
- FIBER OPTIC MARKER
- WATER METER
- WATER VALVE
- FIRE HYDRANT
- DEED BOOK
- PLAT BOOK
- PAGE
- EDGE OF PAVEMENT

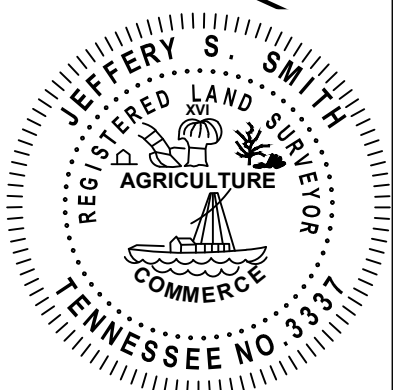


PIN 106 106.00
TRUSTEES OF
TRI-COUNTY
BAPTIST CHURCH
DB 227, PG 171

PIN 106 105.00
TRUSTEES OF
TRI-COUNTY
BAPTIST CHURCH
DB 549, PG 883
PB 10, PG 113

TN-RBRT-015
PIN 106 187.02
THE INDUSTRIAL
DEVELOPMENT BOARD
OF THE CITY OF WHITE
HOUSE, TENNESSEE
DB 2145, PG 185
PB 30, PG 3

TN-RBRT-014
PIN 106 187.00
LLNO1, LLC
DB 1456, PG 313
PB 23, PG 132



NOTES

- SUBJECT PROPERTY SURVEYED AND MAPPED FOR: DUKE ENERGY/PIEDMONT NATURAL GAS.
- AREA BY COORDINATE COMPUTATION METHOD.
- ALL DISTANCES ARE HORIZONTAL GROUND IN U.S. SURVEY FEET.
- PROPERTY SUBJECT TO ANY VALID & ENFORCEABLE EASEMENTS, RESTRICTIONS, & RIGHTS OF WAY.
- SURVEY IS BASED ON PHYSICAL EVIDENCE AND EXISTING MONUMENTATION FOUND DURING THIS SURVEY.
- TN GRID COORDINATES AS SHOWN HEREON ARE BASED UPON GPS OBSERVATIONS UTILIZING TDOT GNSS REFERENCE NETWORK RTK SYSTEM AND ARE REFERENCED TO THE NAD 83 (NSRS 2011) DATUM. IF SHOWN, ELEVATIONS ARE REFERENCED TO NAVD88.

CERTIFICATION

I, JEFFERY S. SMITH, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 2145, PAGE 185); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK AND PAGE AS NOTED; THAT THE RATIO OF PRECISION IS 1:8,208 AND THAT THIS MAP WAS COMPLETED UNDER THE AUTHORITY OF TENNESSEE TCA 62-18-125; THIS SURVEY IS NOT A "GENERAL PROPERTY SURVEY" AS DEFINED IN TENNESSEE RULE 0820-3-07; THE PURPOSE OF THIS EXHIBIT IS FOR RIGHT OF WAY OR EASEMENT ACQUISITION ONLY AND IS NOT INTENDED TO BE A BOUNDARY SURVEY OF THE PROPERTY SHOWN HEREON.

JEFFERY S. SMITH, RLS NO. 3337



PIEDMONT NATURAL GAS COMPANY, INC
EASEMENT EXHIBIT

EASEMENT ACROSS THE LAND OF
THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF WHITE HOUSE, TENNESSEE

510 HESTER DR, WHITE HOUSE
ROBERTSON COUNTY, TENNESSEE

DATE: 06/30/2023
DRAWN BY: JD
CHECKED BY: JSS

SCALE: 1" = 50'
DEED: DB 2145, PG 185
PROPERTY ID #: 115672

REVISION DATES
07/24/2023

DUKE PROJ. #: 0236382

TRACT #: TN-RBRT-015

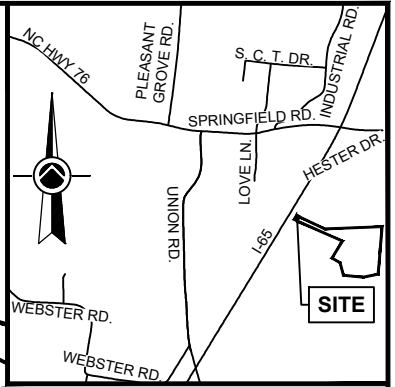
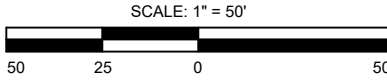
115672_RW_015_WHITEHOUSE_R1_072423



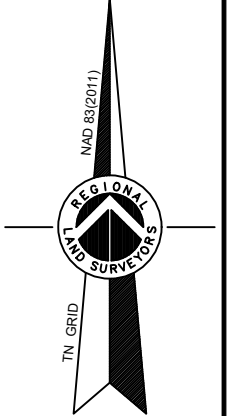
PIEDMONT NATURAL GAS
SUBSIDIARY OF DUKE ENERGY
525 S. TRYON STREET
CHARLOTTE, N.C. 28202
TELEPHONE NO.
800-641-7762

AREA TABLE		
EASEMENT TYPE	ACRES	SQ. FT.
PIPELINE	0.087	3,807
TEMPORARY ACCESS	0.035	1,524
TCE	0.024	1,403

EXHIBIT A

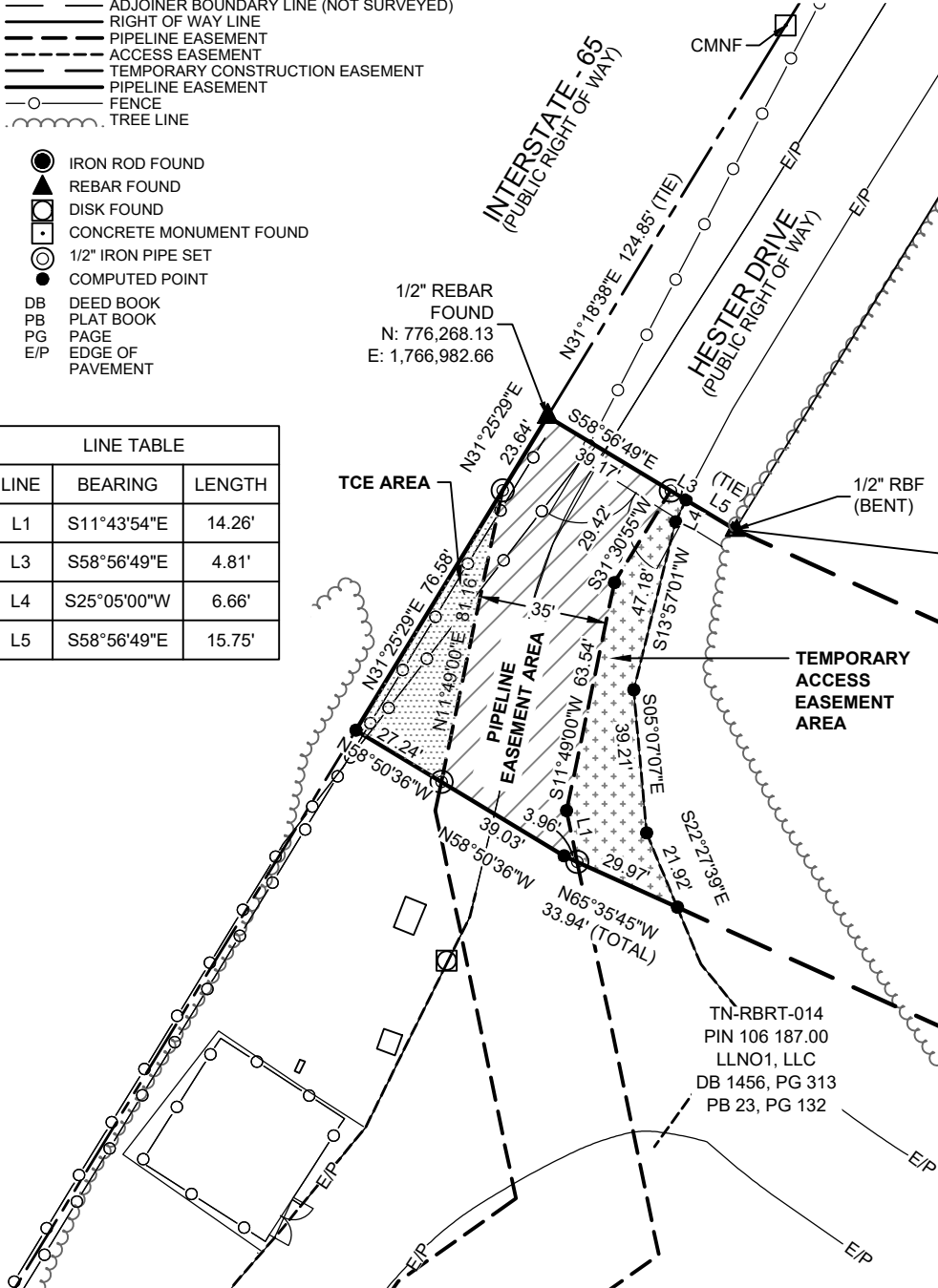


VICINITY MAP (NOT TO SCALE)



- LEGEND**
- SUBJECT BOUNDARY LINE (SURVEYED)
 - - - SUBJECT BOUNDARY LINE (NOT SURVEYED)
 - ADJOINER BOUNDARY LINE (SURVEYED)
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 - DISK FOUND
 - CONCRETE MONUMENT FOUND
 - 1/2" IRON PIPE SET
 - COMPUTED POINT
 - DB DEED BOOK
 - PB PLAT BOOK
 - PG PAGE
 - E/P EDGE OF PAVEMENT

LINE TABLE		
LINE	BEARING	LENGTH
L1	S11°43'54"E	14.26'
L3	S58°56'49"E	4.81'
L4	S25°05'00"W	6.66'
L5	S58°56'49"E	15.75'

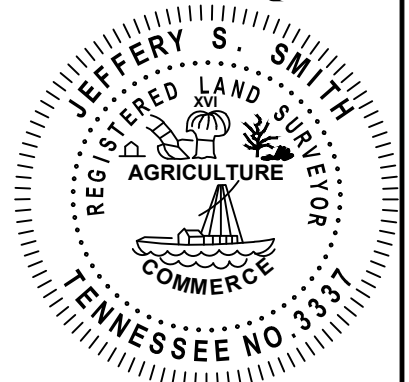


PIN 106.00
TRUSTEES OF
TRI-COUNTY
BAPTIST CHURCH
DB 227, PG 171

PIN 106.00
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TN-RBRT-015
PIN 106.02
THE INDUSTRIAL
DEVELOPMENT BOARD
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HOUSE, TENNESSEE
DB 2145, PG 185
PB 30, PG 3

TN-RBRT-014
PIN 106.187.00
LLNO1, LLC
DB 1456, PG 313
PB 23, PG 132



- NOTES**
- SUBJECT PROPERTY SURVEYED AND MAPPED FOR: DUKE ENERGY/PIEDMONT NATURAL GAS.
 - AREA BY COORDINATE COMPUTATION METHOD.
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 - PROPERTY SUBJECT TO ANY VALID & ENFORCEABLE EASEMENTS, RESTRICTIONS, & RIGHTS OF WAY.
 - SURVEY IS BASED ON PHYSICAL EVIDENCE AND EXISTING MONUMENTATION FOUND DURING THIS SURVEY.
 - TN GRID COORDINATES AS SHOWN HEREON ARE BASED UPON GPS OBSERVATIONS UTILIZING TDOT GNSS REFERENCE NETWORK RTK SYSTEM AND ARE REFERENCED TO THE NAD 83 (NSRS 2011) DATUM. IF SHOWN, ELEVATIONS ARE REFERENCED TO NAVD88.

CERTIFICATION

I, JEFFERY S. SMITH, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 2145, PAGE 185); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK AND PAGE AS NOTED; THAT THE RATIO OF PRECISION IS 1:8,208 AND THAT THIS MAP WAS COMPLETED UNDER THE AUTHORITY OF TENNESSEE TCA 62-18-125; THIS SURVEY IS NOT A "GENERAL PROPERTY SURVEY" AS DEFINED IN TENNESSEE RULE 0820-3-07; THE PURPOSE OF THIS EXHIBIT IS FOR RIGHT OF WAY OR EASEMENT ACQUISITION ONLY AND IS NOT INTENDED TO BE A BOUNDARY SURVEY OF THE PROPERTY SHOWN HEREON.

JEFFERY S. SMITH, RLS No. 3337



PIEDMONT NATURAL GAS COMPANY, INC
EASEMENT EXHIBIT

EASEMENT ACROSS THE LAND OF
THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF WHITE HOUSE, TENNESSEE

510 HESTER DR, WHITE HOUSE
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DATE: 06/30/2023
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REVISION DATES
07/24/2023

DUKE PROJ. #: 0236382

TRACT #: TN-RBRT-015

115672_RW_015_WHITEHOUSE_R1_072423



PIEDMONT NATURAL GAS
SUBSIDIARY OF DUKE ENERGY
525 S. TRYON STREET
CHARLOTTE, N.C. 28202
TELEPHONE NO.
800-641-7762

CLOSING BINDER

**KROGER LIMITED PARTNERSHIP I PILOT
BY AND BETWEEN**

**KROGER LIMITED PARTNERSHIP I
AND
THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF WHITE HOUSE, TENNESSEE**

KROGER LIMITED PARTNERSHIP I
KROGER LIMITED PARTNERSHIP I PILOT

INDEX OF CLOSING DOCUMENTS

Tax Agreement	1
Facility Lease	2
Equipment Lease	3
Quitclaim Deed	4
Memorandum of Facility Lease	5
Resolution of the Board approving PILOT Documents	6
Notice Letter to State and Local Officials	7

TAX AGREEMENT

THIS TAX AGREEMENT (this “Agreement”) is made and entered into as of December 31, 2020 (the “Effective Date”), by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF WHITE HOUSE, TENNESSEE**, a public, nonprofit corporation organized and existing under the laws of the State of Tennessee (together with its successors and assigns, the “Issuer”), and **KROGER LIMITED PARTNERSHIP I**, an Ohio limited partnership (together with its successors and assigns, the “Company”).

WITNESSETH:

WHEREAS, the Issuer is a public, nonprofit corporation and a public instrumentality of the City of White House, Tennessee (the “City”), and is authorized under Chapter 53, Title 7, Tennessee Code Annotated, as amended and supplemented from time to time (the “Act”), to enter into lease agreements with manufacturing, industrial, commercial, and financial enterprises with respect to one or more projects for such payments and upon such terms and conditions as the Board of Directors of the Issuer may deem advisable in accordance with the provisions of the Act in order to maintain and increase employment opportunities by inducing such enterprises to locate in or to remain in the State of Tennessee; and

WHEREAS, to induce the Company to expand a certain retail grocery store (as further defined in the Facility Lease, the “Facility”) located at 510 State Route 76 in the City and Robertson County, Tennessee (the “County”), and to induce the Company to equip the Facility with the Equipment (as defined in the Equipment Lease), the Issuer has agreed to acquire and own the Facility, which shall be leased by the Issuer to the Company pursuant to a certain Facility Lease Agreement (as amended or supplemented from time to time, the “Facility Lease”), dated of even date herewith, and to acquire and own the Equipment, which shall be leased by the Issuer to the Company pursuant to a certain Equipment Lease Agreement (as amended or supplemented from time to time, the “Equipment Lease”), dated of even date herewith; and

WHEREAS, the Board of Directors of the Issuer, pursuant to Section 7-53-102 of the Act, has found and determined that the agreement by the Issuer to acquire, improve, equip and lease such retail grocery store will develop trade and commerce in and adjacent to the City and the County, will contribute to the general welfare, will alleviate conditions of unemployment and has induced or will induce the Company to locate its operations in the Facility, thereby increasing employment opportunities in the City and the County; and

WHEREAS, the Issuer is authorized by law and has deemed it necessary to acquire and improve the Facility and acquire the Equipment (the Facility and the Equipment being sometimes referred to as the “Project”) as aforesaid; and

WHEREAS, pursuant to Section 7-53-305 of the Act, the Board of Mayor and Alderman of the City of White House, Tennessee, has duly adopted Resolution 10-14, at a meeting on August 19, 2010, delegating to the Issuer the authority to negotiate payments in lieu of ad valorem taxes from the Issuer’s lessees; and

WHEREAS, the Issuer and the Company now desire to enter into this Agreement governing payments in lieu of ad valorem taxes with respect to the property leased to the Company pursuant to the Facility Lease and the Equipment Lease.

NOW, THEREFORE, for and in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, it is agreed as follows:

1. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following terms as used herein shall have the following meaning:

(a) “Applicable Ad Valorem Taxes” means any ad valorem taxes that, but for ownership of the Project by the Issuer, would have been due and payable by the Company to the County pursuant to Tenn. Code Ann. § 67-5-102 and to the City pursuant to T.C.A. § 67-5-103 with respect to the Project.

(b) “Operation Year” means a calendar year following the year in which a piece of Equipment was first placed in service at the Facility, so long as the Equipment is placed in service on or after January 1, 2021 and on or before December 31, 2023 (unless the Issuer grants a new incentive agreement as to that Equipment). The numerical qualifier after the term “Operation Year” indicates the number of a given Operation Year in the sequence of calendar years following the year in which the applicable piece of Equipment was first placed in service at the Facility. For example, for Equipment placed in service during calendar year 2022, Operation Year 1 is calendar year 2023 and Operation Year 2 is calendar year 2024.

2. **In Lieu of Tax Payments.** The Company shall make, in addition to any and all other payments required under the Facility Lease and the Equipment Lease, in lieu of ad valorem tax payments (the “In Lieu of Tax Payments”) to the County and to the City for each calendar year, expressed as a percentage of the Applicable Ad Valorem Taxes, as set forth below.

(a) **Facility.** The Company shall make In Lieu of Tax Payments for the property leased under the Facility Lease in accordance with the following:

<u>Assessment Year</u>	<u>Percentage of Applicable Ad Valorem Taxes</u>
2020 and 2021	100%
2022	0%
2023	0%
2024	40%
2025	50%
2026	60%
2027	70%
2028	80%
2029	90%
2030 and thereafter	100%

(b) **Equipment.** The Company shall make In Lieu of Tax Payments for the property leased under the Equipment Lease in accordance with the following:

<u>Assessment Year</u>	<u>Percentage of Applicable Ad Valorem Taxes</u>
Operation Years 1-4	0%
Operation Years 5 and thereafter	100%
Notwithstanding the foregoing, for all Equipment placed in service either (i) before January 1, 2021 or (ii) after December 31, 2023.	100%

(c) **Special Provisions Regarding In Lieu of Tax Payments.** Notwithstanding the provisions of this Section 2, if the Company is required to pay ad valorem taxes by reason of its leasehold interest in the Facility (“Leasehold Taxes”), then the amount of Leasehold Taxes actually paid by the Company shall be deducted from the Company’s In Lieu of Tax Payments next due until such time as the full amount of Leasehold Taxes actually paid by the Company during the term of the Facility Lease shall have been deducted from In Lieu of Tax Payments otherwise owed by the Company during the term of the Facility Lease.

3. Permitted Contests. It is agreed and understood that the Company or any other person (a “Contesting Party”), may, in good faith at its own expense, contest the Applicable Ad Valorem Taxes, or the amount of any In Lieu of Tax Payments based thereon, after giving notice of its intention to do so to the Issuer. In the event of any such contest, the Contesting Party may permit the taxes or the In Lieu of Tax Payments so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Issuer shall notify the Contesting Party, that by non-payment of such items the Project, or any part thereof, may be imminently subject to loss or forfeiture, in which event such taxes, In Lieu of Tax Payments, assessments or charges shall be promptly paid or secured by the Contesting Party’s posting a bond in form and substance satisfactory to the Issuer. The Issuer shall, if requested by the Contesting Party, and provided that the Issuer shall be indemnified and held harmless against and from all costs and expenses (including attorneys’ fees) which may be reasonably incurred by the Issuer in connection therewith, cooperate fully with the Contesting Party in any such contest.

4. Reports and Document Filing.

(a) **Tax Reporting – Personal Property.** As required by Tennessee law, on or before the first (1st) day of each March, the Company shall, on behalf of itself, file a Tangible Personal Property Schedule (State Form) with respect to any personal property owned by the Company that is in service on the first (1st) day of the immediately preceding January and that is not “Equipment” leased to the Company under the Equipment Lease and is, therefore, subject to ad valorem taxation. In addition, on or before the first (1st) day of each March, the Company shall, on behalf of itself, file with the Issuer a Tangible Personal Property Schedule (State Form), with the words “EXEMPT PERSONAL PROPERTY” typed above the name of the document, with respect to all Equipment that is in service on the first (1st) day of the immediately preceding January, that is leased by the Issuer under the Equipment Lease and that is, therefore, not subject to ad valorem taxation, but with the form completed and the Applicable Ad Valorem Taxes calculated based thereon as if the Equipment had been owned by the Company and disclosing the date that the Equipment was placed in service. The Applicable Ad Valorem Taxes for the Equipment leased under the Equipment Lease shall be abated, and an In Lieu of Tax Payment shall thereafter be made as set forth in the manner described in Section 2 of this Agreement.

(b) **Annual Report Pursuant to the Act.** Annually, the Company shall file the report required to be filed pursuant to Section 7-53-305(e) of the Act on or before October 1 of each year. A copy of this report shall also be filed with the Robertson County Assessor of Property and the City. This form can be filed online at <https://comptroller.tn.gov/boards/state-board-of-equalization/sboe-services/property-tax-incentive-programs/pilot-reporting.html>, if desired.

(c) **Cost Versus Benefits Analysis.** The Company hereby submits the “Cost Versus Benefits Analysis For Payment In Lieu of Ad Valorem Tax” forms, attached hereto as **Schedule 1** and incorporated herein by this reference, as required by Section 7-53-305(b) of the Act.

(d) **Tax Bill to be Sent by City and County.** Issuer and the Company shall endeavor in good faith to cause both the County Trustee and the City Recorder to send to the Company and the Issuer bills for the In Lieu of Tax Payments on or before the first (1st) day of November of each year, and the payment thereof shall be made by the Company on or before the last day of February of the following year.

5. Miscellaneous. This Agreement shall be construed in accordance with the laws of the State of Tennessee, and if any one or more of the provisions of this Agreement shall be held invalid, illegal or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, legality or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed the same as if such invalid, illegal or unenforceable provision had never been contained herein.

6. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

ISSUER:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF WHITE HOUSE,
TENNESSEE**

By: 

Tim Murphy, President

COMPANY:

KROGER LIMITED PARTNERSHIP I

By: KRGP Inc., General Partner

By: _____
Joseph W. Bradley, Vice President

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

ISSUER:

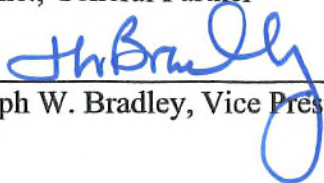
**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF WHITE HOUSE,
TENNESSEE**

By: _____
Tim Murphy, President

COMPANY:

KROGER LIMITED PARTNERSHIP I

By: KRGP Inc., General Partner

By:  _____
Joseph W. Bradley, Vice President

SCHEDULE 1

**COST VERSUS BENEFIT ANALYSIS FOR PAYMENT IN LIEU OF AD VALOREM
TAX FORM**

[SEE ATTACHED]

15994044.4

Cost Versus Benefit Analysis for Payment In Lieu of Ad Valorem Tax

This form should be included with every PILOT agreement submitted to the Comptroller's Office at
<https://www.comptroller.tn.gov/boards/state-board-of-equalization/sboe-services/property-tax-incentive-programs.html>

Instructions: Complete fields shaded gray. Additional comments and information about costs or benefits associated with the project may be attached.

Date:

Person Completing the Form:
 Title:

Lessor:

Lessee:

Describe Abatement Term:

Lease Term Begin Date:

Lease Term End Date:

Comments/Description:

Industry Group (drop down box):

NAICS Code (drop down box):

Step 1	<input type="text" value="50"/> Number of New Jobs	x	<input type="text" value="\$12.50"/> Average Hourly Wage	x	<input type="text" value="2080"/> Hours	=	<input type="text" value="\$1,300,000"/> Direct Income	x	<input type="text" value="1.842"/> Earnings multiplier*	<input type="text" value="\$2,394,340"/> Total New Direct, Indirect & Induced Income		
Step 2	<input type="text" value="50"/> Number of New Jobs	x	<input type="text" value="1.6309"/> Employment multiplier*	=	<input type="text" value="81.5"/> Total Number of New Direct, Indirect & Induced Jobs							
Step 3	<input type="text" value="\$2,394,340"/> Direct, Indirect & Induced Income	x	<input type="text" value="0.0942"/>	=	<input type="text" value="\$225,547"/> New Total Annual State Tax	x	<input type="text" value=".606*"/>	=	<input type="text" value="\$136,681"/> New Annual State Sales Tax	x	<input type="text" value="0.162"/> Local Sales Tax	<input type="text" value="\$22,142"/> New Annual Local Sales Tax

Total New Direct, Indirect & Induced Jobs:	<input type="text" value="81.5"/>
Total Direct, Indirect & Induced Income:	<input type="text" value="\$ 2,394,340.00"/>
Total of New Annual State & Local Sales Tax:	<input type="text" value="\$ 158,823.76"/>

First Full Year of Service*

PILOT Payment County:	<input type="text" value="0"/>
PILOT Payment City:	<input type="text" value="0"/>

** Please attach essential terms relating to PILOT, including term and method of calculation.*

Estimated Project Cost:

Personal Property:	<input type="text" value="\$ 9,500,000.00"/>
Real Property:	<input type="text" value="\$ 4,600,000.00"/>
Total Project Cost:	<input type="text" value="\$ 14,100,000.00"/>

Clawback? Yes or No:

Delegation Resolution(s)

Date of County Resolution:	<input type="text" value="N/A"/>
Date of City Resolution:	<input type="text" value="8/19/10"/>

*RIMS II employment and income multipliers for the State of Tennessee

Terms of PILOT

Lessor: The Industrial Development Board of the City of White House, Tennessee

Lessee: Kroger Limited Partnership I

Term: Approximately 9 years

Lessee shall pay directly to the City of White House, Tennessee (the "City") and Robertson County, Tennessee (the "County"), for each tax year during the term, a payment in lieu of taxes equal to the following percentage of the ad valorem taxes that would otherwise be payable with respect to the Facility if such Facility were owned by Lessee:

<u>Assessment Year</u>	<u>Percentage of Applicable Ad Valorem Taxes</u>
2020 and 2021	100%
2022	0%
2023	0%
2024	40%
2025	50%
2026	60%
2027	70%
2028	80%
2029	90%
2030 and thereafter	100%

Lessee shall pay directly to the City and the County for each tax year during the term, a payment in lieu of taxes equal to the following percentage of the ad valorem taxes that would otherwise be payable with respect to the Equipment if such Equipment were owned by Lessee:

<u>Assessment Year</u>	<u>Percentage of Applicable Ad Valorem Taxes</u>
Operation Years 1-4	0%
Operation Years 5 and thereafter	100%
Notwithstanding the foregoing, for all Equipment placed in service either (i) before January 1, 2021 or (ii) after December 31, 2023.	100%

Any capitalized terms not defined herein shall have the meaning set forth in that certain Tax Agreement, by and between Lessor and Lessee, dated as of December 31, 2020.

**THE INDUSTRIAL DEVELOPMENT BOARD OF THE
CITY OF WHITE HOUSE, TENNESSEE**

and

KROGER LIMITED PARTNERSHIP I

FACILITY LEASE AGREEMENT

DATED AS OF DECEMBER 31, 2020

TABLE OF CONTENTS

	Page No.
Parties	1
Preamble	1
 ARTICLE I DEFINITIONS 	
Section 1.1 <u>Definitions of Terms</u>	2
Section 1.2 <u>References to Lease</u>	4
Section 1.3 <u>References to Articles, Sections, Etc.</u>	4
Section 1.4 <u>Headings</u>	4
 ARTICLE II REPRESENTATIONS, WARRANTIES, AND COVENANTS 	
Section 2.1 <u>Representations, Warranties, and Covenants of the Issuer</u>	4
Section 2.2 <u>Representations, Warranties, and Covenants of the Company</u>	5
 ARTICLE III DEMISING CLAUSE; TERM 	
Section 3.1 <u>Demise of Facility</u>	6
Section 3.2 <u>Lease Term</u>	6
 ARTICLE IV ACQUISITION OF THE FACILITY 	
Section 4.1 <u>Agreement to Provide the Project</u>	6
Section 4.2 <u>Other Amounts Payable by the Company</u>	6
Section 4.3 <u>Further Collateralization</u>	7
 ARTICLE V RENTAL PROVISIONS; PREPAYMENT 	
Section 5.1 <u>Quiet Enjoyment</u>	7
Section 5.2 <u>Rental Payments; Basic Rental Payments; and Additional Rental Payments</u>	7
 ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE 	
Section 6.1 <u>Maintenance of the Facility</u>	8
Section 6.2 <u>Modification of the Facility</u>	8
Section 6.3 <u>Improvements as Part of the Facility</u>	9
Section 6.4 <u>Taxes, Assessments, and Utility Charges</u>	9
Section 6.5 <u>Insurance Required</u>	10

Section 6.6	<u>Insurers and Policies</u>	10
Section 6.7	<u>Application of Net Proceeds of Insurance</u>	10
Section 6.8	<u>Advances by Issuer</u>	10
Section 6.9	<u>Obligation of the Company to Maintain Insurance Regardless of Approval</u>	11

ARTICLE VII
DAMAGE, DESTRUCTION, CONDEMNATION, ETC.

Section 7.1	<u>Damage or Destruction</u>	11
Section 7.2	<u>Condemnation</u>	11

ARTICLE VIII
SPECIAL COVENANTS

Section 8.1	<u>No Warranty of Condition or Suitability; Use of Project</u>	12
Section 8.2	<u>Indemnity and Hold Harmless Provisions</u>	12
Section 8.3	<u>Reimbursement of the Issuer</u>	13
Section 8.4	<u>Compliance with Orders, Ordinances, Etc.</u>	13
Section 8.5	<u>Discharge of Liens and Encumbrances</u>	14
Section 8.6	<u>Restriction Against Certain Religious Activities</u>	14
Section 8.7	<u>Further Assurances and Corrective Instruments</u>	14
Section 8.8	<u>Granting of Easements</u>	15
Section 8.9	<u>Release of Certain Land</u>	15

ARTICLE IX
ASSIGNMENT; REMOVAL OF FIXTURES; ETC.

Section 9.1	<u>Assignment and Subleasing</u>	15
Section 9.2	<u>Restrictions on Mortgage or Sale of Facility by Issuer</u>	16
Section 9.3	<u>Removal of Fixtures</u>	16
Section 9.4	<u>Installation of the Company's Own Machinery</u>	16

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1	<u>Events of Default Defined</u>	16
Section 10.2	<u>Remedies on Default</u>	17
Section 10.3	<u>Remedies Cumulative</u>	18
Section 10.4	<u>Agreement to Pay Attorneys' Fees and Expenses</u>	18
Section 10.5	<u>Delay or Omission Not a Waiver</u>	18
Section 10.6	<u>Force Majeure Provision</u>	18

ARTICLE XI
OPTIONS; PURCHASE OF FACILITY; ETC.

Section 11.1	<u>Options to Terminate</u>	19
Section 11.2	<u>Option to Purchase the Facility</u>	19
Section 11.3	<u>Conveyance on Exercise of Option to Purchase the Facility</u>	19

Section 11.4	<u>Payments Upon, and Conditions For, Early Termination</u>	19
Section 11.5	<u>Continuation of Certain Provisions</u>	20

ARTICLE XII
MISCELLANEOUS

Section 12.1	<u>Certificates and Opinions</u>	20
Section 12.2	<u>Limited Liability of the Issuer</u>	20
Section 12.3	<u>Notices</u>	21
Section 12.4	<u>Binding Effect</u>	21
Section 12.5	<u>Severability</u>	21
Section 12.6	<u>Limitation of Rights</u>	21
Section 12.7	<u>Execution of Counterparts</u>	21
Section 12.8	<u>Applicable Law</u>	22
Section 12.9	<u>Table of Contents and Section Headings Not Controlling</u>	22
Section 12.10	<u>No Liability of the City or the County</u>	22
Section 12.12	<u>Net Lease</u>	22
Section 12.13	<u>Not Partners</u>	22
Section 12.14	<u>Conflicting Provisions</u>	22
Section 12.15	<u>Entire Agreement</u>	22
Section 12.16	<u>Schedules/Exhibits</u>	22
Section 12.17	<u>Business Days</u>	22

Exhibits

Exhibit A	Description of Land	A-1
Exhibit B	Requisition for Payment.....	B-1

FACILITY LEASE AGREEMENT

THIS FACILITY LEASE AGREEMENT (as amended or supplemented from time to time, this “Lease”), dated as of December 31, 2020, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF WHITE HOUSE, TENNESSEE**, a public, nonprofit corporation organized and existing under the laws of the State of Tennessee (together with its successors and assigns, the “Issuer”), and **KROGER LIMITED PARTNERSHIP I**, an Ohio limited partnership (together with its successors and assigns, the “Company”).

WITNESSETH:

WHEREAS, the Issuer is a public, nonprofit corporation and a public instrumentality of the City of White House, Tennessee (the “City”), and is authorized under Chapter 53, Title 7, Tennessee Code Annotated, as amended and supplemented from time to time (the “Act”), to enter into lease agreements with manufacturing, industrial, commercial, and financial enterprises with respect to one or more projects for such payments and upon such terms and conditions as the Board of Directors of the Issuer may deem advisable in accordance with the provisions of the Act in order to maintain and increase employment opportunities by inducing such enterprises to locate in or to remain in the State of Tennessee; and

WHEREAS, to induce the Company to expand a certain retail grocery store located at 510 State Route 76 in Robertson County, Tennessee (the “County”), and the City (the Land and Building being referred to as the “Facility”), and to induce the Company to equip the Facility with the Equipment (as defined below), the Issuer has agreed to acquire and own the Facility, which shall be leased by the Issuer to the Company pursuant to this Lease, and to acquire and own the Equipment, which shall be leased by the Issuer to the Company pursuant to a certain Equipment Lease Agreement dated of even date herewith (as amended or supplemented from time to time, the “Equipment Lease”); and

WHEREAS, the Board of Directors of the Issuer, pursuant to Section 7-53-102 of the Act, has found and determined that the agreement by the Issuer to acquire, improve, equip and lease such retail grocery store will develop trade and commerce in and adjacent to the City and the County, will contribute to the general welfare, will alleviate conditions of unemployment and has induced or will induce the Company to locate its operations in the Facility, thereby increasing employment opportunities in the City and the County; and

WHEREAS, the Issuer has not made and does not intend to make any profit by reason of its business or venture in which it may engage or by reason of its entering into this Lease, and no part of the Issuer’s net earnings, if any, will ever inure to the benefit of any person, firm or corporation except the City and/or the County; and

WHEREAS, the Issuer is authorized by law and has deemed it necessary to acquire and improve the Facility and acquire the Equipment (the Facility and the Equipment being sometimes referred to as the “Project”) as aforesaid; and

WHEREAS, the Issuer proposes to lease the Facility to the Company and the Company desires to lease the Facility from the Issuer upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions of Terms. In addition to the words and terms defined in the preamble hereto and elsewhere defined in this Lease, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meaning, unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

- (a) “Act” shall have the meaning set forth in the preamble hereto.
- (b) “Additional Rental Payments” means that portion of the Rental Payments described in Section 5.2(b) hereof.
- (c) “Authorized Representative” means, in the case of the Issuer, the Chairman, the Vice Chairman, the Secretary or any Assistant Secretary of the Issuer; in the case of the Company, the President, any Vice President, the Secretary or the Treasurer; and, in the case of either of them, such additional persons as, at the time, are designated to act on behalf of the Issuer or the Company, as the case may be, by written certificate furnished to the Issuer, or to the Company, as the case may be, containing the specimen signature of each such person and signed on its behalf by a previously Authorized Representative.
- (d) “Basic Rental Payments” means that portion of the Rental Payments described in Section 5.2(a) hereof.
- (e) “Building” means all buildings, structures, improvements, and fixtures located on the Land.
- (f) “City” shall have the meaning set forth in the preamble hereto.
- (g) “Company” shall have the meaning set forth in the first paragraph hereof.
- (h) “Condemnation” means the taking of title to, or the use of, the Facility under the exercise of the power of eminent domain by any governmental entity or any other person acting under governmental authority.
- (i) “County” shall have the meaning set forth in the preamble hereto.
- (j) “Equipment” means those items of furniture, fixtures, personal property and equipment and related property acquired by the Issuer and leased to the Company pursuant

to the Equipment Lease, including all such items (i) conveyed to the Issuer by the Company upon delivery of an executed Bill of Sale pursuant to the Equipment Lease, (ii) acquired by the Company in its capacity as agent for the Issuer pursuant to Article IV of the Equipment Lease and (iii) acquired in substitution therefor and any renewals or replacements thereof pursuant to the Equipment Lease.

(k) “Equipment Lease” shall have the meaning set forth in the preamble hereto.

(l) “Event of Default” or “Default” means any of those events defined as Events of Default by Section 10.1 of this Lease.

(m) “Facility” shall have the meaning set forth in the preamble hereto.

(n) “Fiscal Year” means the fiscal year, as such from time to time exists, of the Company.

(o) “Issuer” shall have the meaning set forth in the first paragraph hereof.

(p) “Land” means the real estate and interests in real estate described in **Exhibit A**, attached hereto and incorporated herein by this reference, less such real estate and interest in real estate as may be taken by the exercise of the power of eminent domain as provided in Article VII of this Lease and less such real estate and interest in real estate as may be sold to the Company pursuant to Article XI of this Lease.

(q) “Lease” shall have the meaning set forth in the first paragraph hereof.

(r) “Lien” means any interest in Property securing an obligation owed to anyone, whether such interest is based on the common law, statute, or contract, and including, but not limited to, the security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale, trust receipt, lease, consignment, or bailment for security purposes. The term “Lien” also includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases, and other similar title exceptions and encumbrances, including, but not limited to, mechanics’, materialmen’s, warehousemen’s, carriers’, and other similar encumbrances affecting real property. For the purposes of this Lease, one shall be deemed to be the owner of any Property which he, she, or it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in someone else for security purposes.

(s) “Net Proceeds” means so much of the gross proceeds with respect to which that term is used as remains after payment of all expenses, costs, and taxes, including reasonable attorneys’ fees and extraordinary expenses, incurred in obtaining such gross proceeds.

(t) “Parties” means the Issuer and the Company.

(u) “Permitted Encumbrances” means: (i) all Liens, if any, of record as of the date hereof, together with all future Liens arising out of transactions contemplated by the provisions of Section 4.3 herein; (ii) utility, access, and other easements and rights of way,

restrictions, leases and exceptions that do not, in the written opinion of the Authorized Representative of the Company, materially impair the utility or value of the Property affected thereby for the purposes for which it is intended; (iii) mechanics', materialmen's, warehousemen's, carriers', and other similar Liens to the extent permitted by Section 8.5 of this Lease; and (iv) Liens for taxes at the time not delinquent.

(v) "Project" shall have the meaning set forth in the preamble hereto.

(w) "Property" means any interest in any kind of property or assets, whether real, personal or mixed, tangible or intangible.

(x) "Rental Payments" means, collectively, the Basic Rental Payments and the Additional Rental Payments.

(y) "State" means the State of Tennessee.

(z) "Substitute Facilities" shall have the meaning set forth in Section 7.2 hereof.

(aa) "Tax Agreement" means that certain Tax Agreement of even date herewith entered into by and between the Issuer and the Company.

(bb) "Term" shall have the meaning set forth in Section 3.2 hereof.

Section 1.2 References to Lease. The words "hereof," "herein," "hereunder," and other words of similar import refer to this Lease as a whole.

Section 1.3 References to Articles, Sections, Etc. References to Articles, Sections, and other subdivisions of this Lease are to the designated Articles, Sections, and other subdivisions of this Lease as originally executed.

Section 1.4 Headings. The headings of this Lease are for convenience only and shall not define or limit the provisions hereof.

ARTICLE II REPRESENTATIONS, WARRANTIES, AND COVENANTS

Section 2.1 Representations, Warranties, and Covenants of the Issuer. The Issuer hereby represents, warrants, and covenants as follows as the basis for the undertakings on its part herein contained:

(a) That the Issuer: (i) was legally created and exists under the provisions of the Act; (ii) has the power under the provisions of the Act to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder; and (iii) has been duly authorized, by proper action, to execute, deliver and perform this;

(b) That, to the best of the Issuer's knowledge, the Project constitutes a "project" within the meaning of the Act;

(c) That the Issuer will not mortgage or encumber the Facility except pursuant to Section 4.3 hereof;

(d) That nothing in this Lease shall be construed to require Issuer to operate the Project other than as lessor; and

(e) That, to the best of the Issuer's knowledge, all requirements of the Act have been complied with.

Section 2.2 Representations, Warranties, and Covenants of the Company. The Company hereby represents, warrants, and covenants as follows as the basis for the undertakings on its part herein contained:

(a) That the Company: (i) is a limited partnership duly organized and validly existing under the laws of the State of Ohio; (ii) has the power and authority to enter into this Lease; and (iii) has duly authorized the execution, delivery, and performance of this Lease;

(b) That the execution and delivery of this Lease will be valid and binding on the Company and that neither the execution nor delivery of this Lease, nor the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, will conflict with or result in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Company is now a party or by which it is bound, or constitute a default hereunder or under any of the foregoing, or result in the creation or imposition of any Lien upon any Property of the Company under the terms of any instrument or agreement, other than the respective Liens, if any, under this Lease;

(c) That the Project constitutes a "project" within the meaning of the Act, and throughout the Term, the Company will not take, permit to be taken, fail to take, or permit to fail to be taken, any action which would cause the Project not to constitute a "project" within the meaning of the Act;

(d) That, to the Company's knowledge, the execution, delivery and performance in accordance with the respective terms of this Lease and any other documents executed and delivered in connection with this transaction do not and will not (i) violate any applicable law or (ii) conflict with, result in a breach of or constitute a default under any indenture, agreement or other instrument to which the Company is a party or by which the Company or any of the Company's properties may be bound; and

(e) That there is no action, suit, proceeding or, to the Company's knowledge, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the Company's knowledge, threatened against or affecting the Company's Property, wherein an unfavorable decision, ruling or finding would have a material, adverse effect on the validity or enforceability of this Lease, which has not been previously disclosed.

ARTICLE III
DEMISING CLAUSE; TERM

Section 3.1 Demise of Facility. The Issuer demises and leases to the Company, and the Company leases from the Issuer, the Facility, subject only to Permitted Encumbrances, in accordance with the provisions of this Lease, to have and to hold for the Term.

Section 3.2 Lease Term. The Term of this Lease shall commence as of the date hereof and shall terminate December 31, 2029, unless earlier terminated pursuant to the provisions of Article X or Article XI hereof; PROVIDED, HOWEVER, that in no event shall this Lease be terminated, but the Term hereof shall continue on a month-to-month basis, until the later of the date: (a) the Issuer provides written notice to the Company of the expiration of the Term; (b) the Company provides written notice to the Issuer stating that it does not intend to exercise the option to purchase the Facility pursuant to Article XI hereof; (c) all liabilities, reasonable costs, and reasonable expenses of the Issuer, including those of its legal counsel, incurred pursuant to, or in connection with, this Lease shall have been fully paid and discharged to the satisfaction of the Issuer; or (d) all other reasonable liabilities, costs, and expenses which the Company herein assumes or agrees to pay shall have been fully paid or satisfactory provision made therefor.

ARTICLE IV
ACQUISITION OF THE FACILITY

Section 4.1 Agreement to Provide the Project. The Issuer and the Company agree to the following:

(a) The Issuer agrees that it shall acquire the Facility, and the Company agrees that it shall commence, or will continue if such work shall have theretofore commenced, any improvement of the Building that the Company desires on behalf of itself and the Issuer. Such construction, if any, shall be in a good and workmanlike manner. The Company shall have the sole responsibility for, and the Issuer hereby appoints the Company as its agent with respect to, the improvement of the Building and may perform the same itself or through agents, contractors and others selected by it, and may make or issue such contracts, orders, receipts and instructions, and in general do or cause to be done all such other things, as it may in its sole discretion consider requisite or advisable for the improvement of the Building and fulfilling its obligations under this Section 4.1. The Company shall have full authority and the sole right under this Lease to supervise and control, directly or indirectly, all aspects of the improvement of the Building.

(b) In order to effectuate the purposes of this Lease, as and when requested by the Company, the Issuer will make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper, all for the improvement of the Facility, and for evidencing the Issuer's ownership thereof.

Section 4.2 Other Amounts Payable by the Company. The Company agrees to pay all reasonable costs and expenses (including reasonable attorneys' fees), not otherwise paid under the terms of this Lease reasonably incurred by the Issuer in connection with, or as a direct or

indirect result of, or in connection with the administration or enforcement of, and compliance with, this Lease or otherwise in regard to the Facility. The Company may, however, without creating a default hereunder, contest in good faith the necessity, and the reasonableness of, any costs, expenses, fees, amounts, liabilities and obligations referred to in this Section 4.2 and in Section 8.2 hereof.

Section 4.3 Further Collateralization. The Issuer agrees to, upon the Company's request, subordinate its fee interest in all or a portion of the Project in favor of any lender or financial institution that has taken or that takes a Lien against all or a portion of the Project and the Issuer agrees to, upon request, grant a non-recourse deed of trust lien or other security interest in and to the Project, or any portion thereof, in favor of any now existing or future lender or financial institution to secure indebtedness owed by the Company to such lender or financial institution, whether such indebtedness is presently existing or hereafter incurred. The form of any such subordination agreement or security instrument executed by the Issuer shall be in form and substance reasonably satisfactory to such lender or financial institution. The Issuer acknowledges that the Company may grant a lien encumbering its interests in the Project under and pursuant to this Lease, including granting one or more leasehold deeds of trust in favor of any existing or future lender or financial institution to secure indebtedness owed by the Company to such lender or financial institution, and the Issuer hereby consents to the same.

ARTICLE V RENTAL PROVISIONS; PREPAYMENT

Section 5.1 Quiet Enjoyment. The Issuer hereby covenants and agrees that it will not take any action, other than pursuant to Article X of this Lease, to prevent the Company from having quiet and peaceable possession and enjoyment of the Facility during the Term and will, at the request of the Company, and at the requesting person's cost, to the extent that it may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

Section 5.2 Rental Payments; Basic Rental Payments; and Additional Rental Payments. The Company covenants and agrees to pay, or cause to be paid, as and for rental and for use of the Facility, throughout the Term, the Basic Rental Payments and the Additional Rental Payments as provided in this Section, in funds which constitute lawful monies of the United States of America for the payment of public and private debts, as at the time of payment:

(a) Basic Rental Payments. The Company will pay to the Issuer without notice or demand, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, **as Basic Rental Payments on each January 1 during the Term, the sum of \$1.00.** The Issuer acknowledges that the Company has prepaid the Basic Rental Payments for the Term on the date hereof.

(b) Additional Rental Payments. The Company shall from time to time pay, as Additional Rental Payments, within thirty (30) days of receipt of written demand therefor from the person entitled to payment thereof, an amount sufficient to pay the following costs and expenses:

- (i) All amounts due in respect of the Facility under the Tax Agreement;
- (ii) The reasonable fees and other costs incurred for services of such engineers, architects, attorneys, and independent accountants as are employed to make examinations, opinions, and reports required under, or contemplated by, this Lease;
- (iii) The reasonable fees and other costs, not otherwise paid under this Lease, incurred by the Issuer by reason of its leasing of the Facility or in connection with its administration and enforcement of, and compliance with, this Lease, or otherwise in connection with the Facility; and
- (iv) All amounts advanced by the Issuer under authority of this Lease or otherwise and which the Company is obligated to repay.

(c) Payments of Additional Rental Payments shall be made by the Company directly to the persons entitled to such payment.

(d) In the event the Company shall fail to make any payment required by this Section, the payment so in default shall continue as an obligation hereunder of the Company until the amount in default shall have been fully paid, and the Company shall pay, or cause to be paid, the same with interest thereon from the date of default until so paid at a rate per annum equal to three percent (3.00%) or the maximum rate of interest allowable by applicable law, whichever is less.

(e) The Company shall make the payments required by this Section without any further notice thereof except as may be specifically required by this Section.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE

Section 6.1 Maintenance of the Facility. Throughout the Term, the Company shall, at its own expense, keep and maintain the Facility, or cause the Facility to be kept and maintained, in good condition, repair, and working order (ordinary wear and tear excepted), making, or causing to be made, all repairs and replacements thereto (whether ordinary or extraordinary, structural or nonstructural, or foreseen or unforeseen), and operate the Facility, or cause the Facility to be operated, as deemed necessary and proper by the Company.

Section 6.2 Modification of the Facility.

(a) The Company, at its own cost and expense, may make such additions, renewals, replacements, or improvements to or alterations of the Facility, or may construct or place on the Facility, such additional or renewal or replacement facilities, furnishings, or equipment, as the Company may deem desirable to attain the purposes herein contemplated, provided that such additions, renewals, replacements, improvements, alterations, facilities,

furnishings, or equipment shall not impair the fair market value, structural soundness, or usefulness of the Facility.

(b) At the request of the Company, the Issuer shall join in any application for such municipal and other governmental permits and authorizations as the Company may deem necessary or advisable in connection with any such construction, acquisition or installation, provided that the Company shall indemnify and hold the Issuer harmless, or cause the Issuer to be indemnified and held harmless, against and from all costs and expenses, including attorneys' fees, which may be incurred by the Issuer in connection with any such joinder or application.

Section 6.3 Improvements as Part of the Facility. All buildings, structures, improvements, fixtures, accessions and other Property which shall be constructed, placed, or installed in or upon the Facility as a substitute for, or in renewal or replacement of, any buildings, structures, improvements, fixtures, accessions, or other Property constituting part of the Facility, shall become a part of the Facility.

Section 6.4 Taxes, Assessments, and Utility Charges.

(a) The Company shall pay, or cause to be paid, as the same shall respectively become due: (i) all taxes, in lieu of tax payments, regulatory fees, and governmental charges of any kind whatsoever, including ad valorem taxes, that may at any time be lawfully assessed or levied against or with respect to the Facility, excluding, however, any taxes levied upon or with respect to the income or revenues of the Issuer from the Facility; (ii) all utility or other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the Facility; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements which are in respect of the Facility or any part thereof.

(b) The Company or any other person may, in good faith and at its own expense, contest any such taxes, in lieu of tax payments, assessments, and other charges, after giving notice of its intention to do so to the Issuer; provided that the Company shall pay any amounts that it concedes to be due pending the determination of such contest. In the event of any such contest, the Company or such other person, as applicable, may permit the taxes, assessments, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Issuer shall notify the Company or such other person, as applicable, that by nonpayment of any such items the Facility, or any part thereof, may be imminently subject to loss or forfeiture, in which event such taxes, assessments, or charges shall be paid promptly or secured by posting a bond in form and substance satisfactory to the Issuer. The Issuer shall, if requested by the Company or such other person, as applicable, and provided that the Issuer shall be indemnified and held harmless against and from all costs and expenses (including attorneys' fees) which may be reasonably incurred by the Issuer in connection therewith, cooperate fully with the Company or such other person, as applicable, in any such contest.

Section 6.5 Insurance Required.

(a) At all times throughout the Term, the Company shall maintain insurance against such risks and for such amounts as are customarily insured against by the Company, paying, as the same become due and payable, all premiums in respect thereto, including but not necessarily limited to commercial general liability insurance with a combined single limit of not less than \$1,000,000 per occurrence. The Issuer shall have no obligation to insure the Facility.

(b) The Issuer shall be named as an additional insured under the commercial general liability insurance required above. Any of the insurance required above may provide deductible provisions in amounts not exceeding that in similar policies carried by businesses of a size and character similar to the Company, and the Company shall be a self-insurer to the extent of the amount of the deductible obtained and when the availability of insurance is limited and thus requires the Company to be a self-insurer above the deductible obtained. The Net Proceeds of the insurance carried pursuant to the provisions of this Section shall be paid and applied as provided by Section 6.7 hereof.

Section 6.6 Insurers and Policies.

(a) Each insurance policy required by Section 6.5 hereof shall be issued by one or more financially responsible insurers. Before the expiration of any such policy, the Company shall furnish the Issuer evidence satisfactory to the Issuer that such policy has been renewed or replaced, or is no longer required by this Lease.

(b) Notwithstanding anything to contrary contained herein, so long as the Company and its affiliates have either a tangible net worth greater than or equal to One Hundred Million Dollars (\$100,000,000) or a market capitalization greater than or equal to One Billion Dollars (\$1,000,000,000), the Company may self-insure the obligations set forth in Section 6.5 hereof.

Section 6.7 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to Sections 6.5(a) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid; provided, however, that the Net Proceeds of any casualty insurance carried pursuant to the provisions of Section 6.5(a) shall be applied as provided in Section 7.1 hereof.

Section 6.8 Advances by Issuer.

(a) In the event the Company shall fail to pay, or fail to cause to be paid, any tax, assessment, or governmental charge required to be paid by the provisions of Section 6.4 hereof, prior to the date upon which such tax, assessment or charge would become delinquent, or maintain, or cause to be maintained, the full insurance coverage required by the provisions of Section 6.5 hereof, the Issuer, with not less than ten (10) days' prior written notice to the Company, may (but shall be under no obligation to) pay such tax, assessment, or governmental charge or obtain or maintain the required policy of insurance, and pay the premium or premiums on the same.

(b) All amounts so advanced by any person pursuant to subsection (a) of this Section shall be promptly reimbursed by the Company to the person making the advance, together with interest thereon from the date of such advance to the date of reimbursement at a rate per annum equal to three percent (3.00%) or the maximum rate of interest allowable by applicable law, whichever is less.

Section 6.9 Obligation of the Company to Maintain Insurance Regardless of Approval. No acceptance or approval of any insurance policy by the Issuer shall relieve or release the Company from any liability, duty, or obligation under the provisions of this Lease.

ARTICLE VII DAMAGE, DESTRUCTION, CONDEMNATION, ETC.

Section 7.1 Damage or Destruction. (a) In the event the Facility shall be damaged or destroyed (in whole or in part) at any time during the Term:

- (i) the Company shall promptly give, or cause to be given, written notice of such damage or destruction to the Issuer;
- (ii) all Net Proceeds of insurance resulting from damage to or destruction of the Facility shall be paid to the Company;
- (iii) the Company may, if it desires, promptly replace, repair, or restore the Facility to such condition, value, and utility to allow the Facility to operate as it was designed to operate prior to such damage or destruction, with such changes, alterations, and modifications (including the substitution and addition of other Property) as may then be required by the Company.

(b) In the event such Net Proceeds of insurance, or the portion thereof, if any, are insufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company may complete such replacement, repair, or restoration in its sole discretion, paying from its own monies that portion of the costs thereof in excess of such Net Proceeds of insurance. All such replacements, repairs, or restoration of the Facility made pursuant to this Section, whether or not requiring the expenditure of monies of the Company, shall automatically become a part of the Facility the same as if specifically described herein.

(c) The Company shall be entitled to any insurance proceeds, or the applicable portion thereof, resulting from damage to or destruction of any Property that, at the time of such damage or destruction, is not part of the Facility.

Section 7.2 Condemnation.

(a) In the event all or any part of the title to, or the use of, the Facility shall be taken by Condemnation during the Term:

- (i) the Company shall promptly give, or cause to be given, written notice of any Condemnation proceedings of, or affecting, the Facility, or any portion thereof, to the Issuer;
- (ii) any Net Proceeds of any Condemnation award may be applied by the Company to the prepayment of any portion of Rental Payments, to the restoration of the Facility, and/or to the acquisition of Substitute Facilities, as such term is hereinafter defined;
- (iii) the Company may, if it desires, (A) promptly restore the Facility (excluding any Property taken by Condemnation) to such condition, value, and utility to allow the Facility to operate as it was designed to operate prior to such Condemnation, with such changes, alterations, and modifications as may then be required by the Company, or (B) acquire, by construction or otherwise, facilities (“Substitute Facilities”) of such nature and value to allow the Facility to operate as it was designed to operate prior to such Condemnation, with such changes, alterations, and modifications as may be then required by the Company

(b) In the event that such Net Proceeds are not sufficient to pay in full the costs of such restoration of the Facility or such acquisition of Substitute Facilities, the Company may complete such restoration or acquisition, or to acquire such Substitute Facilities, as applicable, and shall pay from its own monies that portion of the costs thereof in excess of such Net Proceeds of any Condemnation award. All such restored portions of the Facility, or the Substitute Facilities, whether or not requiring the expenditure of the moneys of the Company, shall automatically become part of the Facility.

(c) The Company shall be entitled to the proceeds of any Condemnation award, or the applicable portion thereof, resulting from damage to, or taking of, any Property which, at the time of such damage or taking, is not part of the Facility.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability; Use of Project. The Company acknowledges its full familiarity with the Land and the Building, and it represents that it is solely responsible for the plan under which the Facility will be operated and maintained. The Issuer makes no representations or warranties, either express or implied, as to the condition, title, design, operation, merchantability, or fitness of the Project, or that it is, or will be, suitable for the purposes or needs of the Company.

Section 8.2 Indemnity and Hold Harmless Provisions. The Company hereby releases the Issuer, its directors, officers, members, agents, employees, and consultants from; agrees that the Issuer, its directors, officers, members, agents, employees, and consultants shall not be liable for; and agrees to reimburse and indemnify and hold the Issuer, its directors, officers, members,

agents, employees, and consultants harmless from and against, any and all: (a) liability for loss or damage to Property or any injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the acquisition, occupation, or use of said Project; (b) liability arising from, or expense incurred by reason of, the Issuer's leasing of the Facility, and all causes of action and attorneys' fees and any other expense incurred in defending any suits or actions which may arise as a result of any of the foregoing excluding the Issuer's obligations to the Company hereunder; and (c) costs and expenses of the Issuer or the officers, directors, or employees thereof, incurred as a result of carrying out its obligations under this Lease or any other document herein contemplated; provided, however, that the foregoing shall not apply to the negligence or wanton or willful misconduct of the Issuer, its directors, officers, members, agents, consultants or employees.

Section 8.3 Reimbursement of the Issuer. Notwithstanding that it is the intention of the parties that the Issuer shall not incur any pecuniary liability by reason of this Lease, or by reason of any actions, documents, statutes, ordinances, or regulations pertaining to the foregoing, the Company shall promptly pay any and all reasonable costs and expenses, as such costs and expenses accrue, which may be incurred by, or judgments which may be rendered against, the Issuer or any of its directors, officers, employees, or agents at any time or times during, or subsequent to the Term: (a) in enforcing any of the terms, covenants, conditions, or provisions of this Lease or (b) in defending any action, suit, or proceeding brought against the Issuer or any of its respective directors, officers, employees, or agents as a result of (i) the violation of, or failure to comply with, any present or future Federal, State, or municipal law, ordinance, regulation, or order or (ii) any alleged failure, neglect, misfeasance, or default on the part of the Company, or any of the directors, officers, employees, servants, agents, or independent contractors of any of the foregoing in connection with, arising from, or growing out of, this Lease or the Facility, or any operations conducted in, or any use or occupancy of, said Facility, or any action pertaining to, or connected with, any of the foregoing; provided, however, that the foregoing obligations of the Company shall not apply to the negligence or wanton or willful misconduct of the Issuer, its directors, officers, members, agents, consultants or employees.

Section 8.4 Compliance with Orders, Ordinances, Etc.

(a) The Company shall throughout the Term, without expense to the Issuer, promptly comply, or promptly cause compliance, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, contract provisions, and requirements of all Federal, State, county, municipal, and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials, and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility, or any part thereof, or to any of the streets, roads, passageways, sidewalks, curbs, gutters adjoining the Facility, or any part thereof, or to any use, manner of use, or condition of the Facility, or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this section, the Company or any other person may, in good faith and at his, her, or its own expense, upon prior written notice to the Issuer, contest the validity or the applicability of any requirement of the nature referred to in subsection (a) of this section. In such event, the Company, or any such

person, as applicable, may fail to comply with the requirement or requirements so contested during the period of such contest, and any appeal therefrom, unless the Issuer or the Trustee shall notify the Company, or any such person, as applicable, that by failure to comply with such requirement or requirements, the Facility, or any part thereof, may be imminently subject to loss or forfeiture, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Issuer. The Issuer shall, if requested by the Company or such other person, as applicable, and provided that the Issuer shall be indemnified and held harmless against and from all costs and expenses (including attorneys' fees) which may be reasonably incurred by the Issuer in connection therewith, cooperate fully with the Company or such other person, as applicable, in any such contest.

Section 8.5 Discharge of Liens and Encumbrances.

(a) The Company shall not permit or create, or suffer to be permitted or created, any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof, by reason of any labor, materials, or services rendered or supplied, or claimed to be rendered or supplied. The Company shall immediately give notice to the Issuer of the filing or assertion of any such Lien of which it has knowledge, and except for Permitted Encumbrances shall, within thirty (30) days after receipt of actual notice of the filing or assertion of any such Lien, satisfy the Lien or cause it to be discharged of record or otherwise prevent the enforcement thereby by payment, deposit, filing the requisite bond.

(b) Notwithstanding the provisions of subsection (a) of this section, the Company or any other person, may, in good faith and at his, her, or its own expense, upon prior written notice to the Issuer, contest any such Lien. In such event, the Company or any such person, as applicable, may permit the Lien or encumbrance so contested to remain undischarged and unsatisfied during the period of such contest, and any appeal therefrom. The Issuer shall, if requested by the Company or such other person, as applicable, and provided that the Issuer shall be indemnified and held harmless against and from all costs and expenses (including attorneys' fees) which may be reasonably incurred by the Issuer in connection therewith, cooperate fully with the Company or such other persons, as applicable, in any such contest.

Section 8.6 Restriction Against Certain Religious Activities. The Company hereby covenants that, for such period as may be required by law, no part of the Project shall be used for sectarian instruction, or as a place of religious worship, or in connection with any part of a program of a school or department of divinity of any religious denomination. If at any time the applicable law would permit the Project to be used for a purpose prohibited by this Section, such prohibition shall, to that extent, be of no further force or effect.

Section 8.7 Further Assurances and Corrective Instruments. The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Facility hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

Section 8.8 Granting of Easements. The Company may at any time or times, subject to its leasehold interest, grant easements, licenses, rights of way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property or rights included in the Facility, or the Company may release existing easements, licenses, rights of way and other rights and privileges with or without consideration, and the Issuer agrees that it shall execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right of way or other grant or privilege upon receipt of: (i) a copy of the instrument of grant or release, and (ii) a written application signed by the Authorized Representative of the Company requesting such instrument and stating that such grant or release is not detrimental to the proper conduct of the business of the Company, and that such grant or release will not impair the effective use or interfere with the operation of the Facility.

Section 8.9 Release of Certain Land. Notwithstanding any other provisions of this Lease, the parties hereto reserve the right, at any time and from time to time, to amend this Lease for the purpose of effecting the release of or removal from this Lease and the leasehold estate created hereby of any unimproved part of the Land (on which no part of the Building or other building or equipment owned by the Company and essential to the continued operation of the Project is situated), or any part of the Land with respect to which the Company proposes to convey fee title or an easement to a railroad, public utility or public body in order that railroad service, utility services or roads may be provided for the Project. The Issuer shall take all such actions and execute all such documents as may be required to effect the release of or removal from this Lease of any Land (as described above), as requested by the Company; provided that any costs associated therewith shall be the responsibility of the Company and not the Issuer.

ARTICLE IX
ASSIGNMENT; REMOVAL OF FIXTURES; ETC.

Section 9.1 Assignment and Subleasing.

(a) This Lease may be assigned and the Facility subleased, as a whole or in part, by the Company without the necessity of obtaining the consent of the Issuer, subject, however, to each of the following conditions:

- (i) no assignment shall relieve the Company from primary liability for any obligations under this Lease, and in the event of any such assignment, the Company shall continue to remain primarily liable for payment of the amounts specified in this Lease and for performance and observance of the other agreements on its part provided to be performed and observed by the Company to the same extent as though no assignment had been made;
- (ii) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased; and

- (iii) the Company shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Issuer a true and complete copy of each assignment, assumption of obligation or sublease, as the case may be.

(b) The Company may contract for the performance by others of operations or services on, or in connection with, the Facility, or any part thereof, for any lawful purpose; provided, however, that any such contract shall not be inconsistent with the provisions of this Lease and that the Company shall remain fully obligated and responsible under this Lease, to the same extent as if such contract had not been executed.

Section 9.2 Restrictions on Mortgage or Sale of Facility by Issuer. The Issuer agrees that it will not mortgage, sell, assign, transfer or convey the Facility or any portion thereof during the Term, except as otherwise permitted or required herein.

Section 9.3 Removal of Fixtures. In the event the Company determines from time to time that any item of fixtures or improvements constituting a part of the Facility has become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary, the Company may remove such item constituting a part of the Facility, and may sell, trade-in, exchange, or otherwise dispose of the same, as a whole or in part. The Issuer shall promptly execute any and all instruments deemed necessary by the Company, in its sole discretion, to fully effectuate the provisions of this Section.

Section 9.4 Installation of the Company's Own Machinery. The Company may, from time to time, in its sole discretion and at its own expense, install machinery, equipment and other tangible and movable property in the Facility. All such machinery, equipment and other tangible and movable property shall remain the sole property of the Company in which the Issuer shall have no interest.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Each of the following shall be an "Event of Default" under this Lease, and the terms "Event of Default" or "Default" shall mean, whenever they are used in such Lease, any one or more of the following events:

(a) The failure by the Company to pay, or cause to be paid, within thirty (30) days of when due, the Rental Payments, or any part thereof, specified to be paid under Section 5.2 hereof;

(b) The filing by the Company of a voluntary petition in bankruptcy or any petition or other pleading seeking any reorganization, composition, readjustment, liquidation, or similar relief under any present or future law or regulation, or the seeking of or consent to or acquiescence in the appointment of any trustee, receiver, or liquidator of all or any substantial part of its assets or of its interest in the Facility, or the making of a general assignment for the benefit of creditors, or the admission in writing of the inability by the Company to pay its debts generally as the same shall become due;

(c) The adjudication of the Company to be bankrupt or insolvent, or the filing of a petition or other pleading against the Company seeking an adjudication of bankruptcy, reorganization, composition, readjustment, liquidation, or similar relief under any present or future law or regulation, which shall remain undismissed or unstayed for an aggregate of sixty (60) days (whether or not consecutive), or the entry of an order or decree by a court of competent jurisdiction, without the consent or acquiescence of the Company, appointing a trustee in bankruptcy or reorganization or a receiver or liquidator of the Company, of all or any substantial part of its Property, or of the Facility, which order or decree shall continue unvacated or unstayed on appeal or otherwise and in effect for a period of ninety (90) days (whether consecutive or not);

(d) Subject to Section 10.6, the failure by the Company to observe and perform any covenant, condition, or agreement hereunder on its part to be observed or performed (except obligations referred to in paragraphs (a), (b) or (c) of this Section for which no such notice must be given) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer, unless the Issuer shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Company within the applicable period and diligently pursued until the default is corrected.

Section 10.2 Remedies on Default.

(a) Whenever an Event of Default shall have occurred and be continuing, the Issuer may take any one or more of the following remedial steps:

- (i) Declare, by written notice to the Company, to be immediately due and payable, whereupon all other payments due or to become due under this Lease shall become due and payable;
- (ii) Withhold any or all further performance under this Lease (except that the Company may, nevertheless, exercise any option granted pursuant to Article XI hereof, in which event, Issuer shall perform its obligations thereunder);
- (iii) Re-enter and take possession of the Facility without terminating this Lease, and sublease the Facility for the account of the Company, holding the Company liable for the difference in the rent and other amounts payable by such sublessee in such subleasing and the Rental Payments and other amounts payable by the Company hereunder;
- (iv) Terminate the Term and exclude the Company from possession of the Facility; and/or
- (v) Take any other action or proceeding permitted by the terms of this Lease.

(b) Whenever any Event of Default shall have occurred and be continuing, the Issuer may take, in addition to the above and the following, whatever action at law or in equity may appear necessary or desirable to collect the Rental Payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, warranty or covenant of the Company under this Lease.

(c) No action taken pursuant to this Section shall relieve the Company from its obligation to make all payments required under Section 5.2 hereof.

(d) Notwithstanding the foregoing provisions of this Section, until final action pursuant to this Section shall have been taken which would preclude any of the foregoing actions, the Company may (i) pay all accrued unpaid Rental Payments (exclusive of such Rental Payments accrued solely by virtue of acceleration thereof as provided in Section 10.2(a)(i) hereof), in which event, this Lease shall be fully reinstated as if an Event of Default had not occurred and otherwise fully cure all Events of Default, and/or (ii) exercise any option granted pursuant to Article XI hereof.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease, or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company shall default under any of the provisions of this Lease, and the Issuer shall employ attorneys or incur other expenses for the collection of amounts payable hereunder, or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Issuer the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 Delay or Omission Not a Waiver. No delay or omission of the Issuer to exercise any right or power accruing upon any breach of any covenant or agreement contained herein, or upon the happening of any other Default hereunder, shall impair any such right or power, or shall be construed to be a waiver of any such right or power, or shall be construed to be a waiver of any other Default hereunder, or any acquiescence therein; and every such power, right, or remedy contained herein of the Issuer may be exercised from time to time and as often as may be deemed expedient by the Issuer. Any waiver, permit, consent, or approval of any form or character on the part of the Issuer of any breach of, or default under, this Lease, or any waiver on the part of the Issuer of any provision or condition herein, must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 10.6 Force Majeure Provision. The provisions of Section 10.1(d) are subject to the following limitations: if, by reason of force majeure, the Company is unable in whole or in

part to carry out the agreements of the Company on its part herein contained, the Company shall not be deemed in default during the continuance of such inability and for the duration of any delay caused by such inability. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes; pandemics; lockouts or other industrial disturbances; acts of public enemies; orders of any kind of any governmental body, including the government of the United States or of the State or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides, lightning; earthquake; fire; hurricane; storms; floods; washouts; droughts; arrests; restraint of government and people, civil disturbances; explosions, breakage or accident to machinery, transmission pipes, or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company, in each case which has the effect of making it impossible (as distinguished from impracticable) for the Company to perform, it being agreed that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Company, unfavorable to the Company.

ARTICLE XI OPTIONS; PURCHASE OF FACILITY; ETC.

Section 11.1 Options to Terminate. The Company may terminate this Lease by (i) paying to the appropriate person the amounts required by Section 11.4 hereof, and by (ii) giving the Issuer notice in writing of such termination.

Section 11.2 Option to Purchase the Facility. Subject to compliance with Section 11.3, the Company shall have, and is hereby granted, the option to purchase the Facility at any time for a purchase price of One Hundred Dollars (\$100). To exercise the option granted in this Section, the Company shall notify the Issuer of its intention so to exercise such option not less than five (5) days nor more than ninety (90) days prior to the proposed date of purchase and shall on the date of purchase pay such purchase price to the Issuer.

Section 11.3 Conveyance on Exercise of Option to Purchase the Facility. At the closing of any purchase pursuant to this Lease, the Issuer shall upon receipt of the purchase price, (a) deliver to the Company such documents (including, without limitation, a quitclaim deed) as are reasonably necessary to convey to the Company good and marketable title to the Facility as it then exists, subject only to the following: (i) those Liens (if any) to which title to said Property was subject when conveyed to the Issuer; (ii) those Liens created by the Company or to the creation or suffering of which the Company consented; (iii) those Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease; (iv) Permitted Encumbrances; and (v) any Lien other than a Lien resulting from the action or inaction of the Issuer, and (b) if requested by the Company, cooperate (at no expense to Issuer) with the Company to the extent reasonably necessary for the Company to obtain an owner’s policy of title insurance in connection with such conveyance.

Section 11.4 Payments Upon, and Conditions For, Early Termination. Termination by the Company of this Lease pursuant to Section 11.1 hereof or the purchase of the Facility

pursuant to **Error! Reference source not found.** hereof shall not be effective until the Company shall have made the following payments:

(a) To the Issuer, an amount certified by the Issuer sufficient to pay all unpaid fees and expenses (including reasonable attorneys' fees) of the Issuer due and payable under 5.2 hereof; and

(b) To the appropriate person, an amount sufficient to pay all other fees, expenses, or charges, if any, due and payable or to become due and payable under this and not otherwise paid or provided for.

Section 11.5 Continuation of Certain Provisions. Upon termination of this Lease, the liabilities of the Company under such Lease shall terminate, except that its liabilities and obligations under Sections 8.2 and 8.3 of this Lease, and as otherwise herein expressly provided, shall nevertheless survive.

ARTICLE XII MISCELLANEOUS

Section 12.1 Certificates and Opinions. Any certificate or opinion made or given by an officer or director of the Issuer may be based (whether or not expressly so stated), insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer or director knows that the certificate or representations with respect to the matter upon which his or her certificate or opinion may be based are erroneous; and any certificate or opinion made or given by counsel may be based (insofar as it relates to factual matters, information with respect to which is in the possession of the Issuer) upon the certificate or opinion of, or representation by, an officer or director of the Issuer, unless such counsel knows that the certificate or representations with respect to the matters upon which his or her certificate or opinion may be based as aforesaid are erroneous.

Section 12.2 Limited Liability of the Issuer. No recourse shall be had against the Issuer for the payment or performance, or failure of performance by the Issuer, of any obligations, warranties, covenants, terms, conditions or other agreements contained in this Lease, or in any other documents whatsoever, except to the extent of the Issuer's interest in the Project, it being understood that the Company and all other persons shall look solely to the Issuer's interest in the Facility and this Lease, including any proceeds or awards related thereto, for satisfaction of any and all liabilities and obligations incurred hereunder. No recourse under or upon any obligation, covenant, agreement or certification contained in this Lease, or in any other document whatsoever, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Lease or any other document, shall be had against any incorporator, member, director or officer, as such, past, present or future, of the Issuer, either directly or through the Issuer or any receiver thereof, or for the payment of any other sum or for the performance of any obligation under this Lease, or any other document or certification; provided, however, that the foregoing shall not apply to the negligence or wanton or willful misconduct of the Issuer, its members, agents, consultants and employees.

Section 12.3 Notices. All notices, consents, approvals, deliveries and other communications hereunder shall be properly given only if made in writing and sent by hand delivery, U.S. Certified Mail, Return Receipt Requested, or nationally recognized overnight delivery service (such as Federal Express or UPS), with all delivery charges paid by the sender and addressed as follows:

To the Issuer: The Industrial Development Board of the City of White House, Tennessee
White House City Hall
105 College Street
White House, TN 37188
Attn: President

With a copy to: Valerie Webb, Esq.
Webb Sanders PLLC
2784 Highway 31W
White House, TN 37188

To the Company: Kroger Limited Partnership I
1014 Vine St
Cincinnati, OH 45202
Attn: Rita L. Williams, Economic Development Director
7th Floor/Tax Department

With a copy to: Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201
Attention: Jeff Oldham

Section 12.4 Binding Effect. This Lease shall run with the land and inure to the benefit of and shall be binding upon the Issuer, the Company, and the respective heirs, executors, successors, administrators, and assigns of the foregoing.

Section 12.5 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.6 Limitation of Rights. Except as otherwise expressly provided herein, nothing in this Lease, express or implied, shall be construed to confer upon any person, other than the Issuer and the Company, any right, remedy or claim, legal or equitable, under or by reason of this Lease or any provisions hereof.

Section 12.7 Execution of Counterparts. This Lease may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 12.8 Applicable Law. This Lease has been executed and delivered in the State of Tennessee. The Parties intend that this Lease shall be construed and governed exclusively by the applicable laws of the State of Tennessee and the United States of America.

Section 12.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease have been prepared for convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provision of this Lease.

Section 12.10 No Liability of the City or the County. Neither the City nor the County shall, in any event, be liable for the performance of any obligation or agreement of any kind whatsoever herein, and none of the agreements or obligations of the Company contained in this Lease or otherwise shall be construed to constitute an indebtedness of the City, County or the officers or agents of the City or County, within the meaning of any constitutional or statutory provision whatsoever.

Section 12.12 Net Lease. This Lease shall be deemed and construed to be a fully “net lease,” and the Company shall pay absolutely net during the Term, the rent and all other payments required hereunder, free of any deductions, and without abatement, deduction or setoff, other than those herein expressly provided.

Section 12.13 Not Partners. Nothing contained herein or in any other document shall be deemed to render the Issuer or the Company partners or venturers for any purpose.

Section 12.14 Conflicting Provisions. In the event of a conflict between the provisions of this Lease and the Equipment Lease, the provisions hereof shall prevail as to matters related to the Facility, and the provisions of the Equipment Lease shall prevail as to matters related to the Equipment.

Section 12.15 Entire Agreement. This Lease, the Equipment Lease, the Tax Agreement and the other written agreements signed by the Issuer and/or the Company of even date herewith related to the transactions contemplated herein constitute the final, complete and entire understanding of such parties and supersede all prior agreements and negotiations with respect to the matters herein or therein contained. Except as may be otherwise expressly provided herein, this Lease may not be amended except by a written instrument signed by the Parties.

Section 12.16 Schedules/Exhibits. All schedules and exhibits referenced in this Lease are attached hereto and incorporated herein by reference.

Section 12.17 Business Days. If any date specified in this Lease for the performance of an obligation, the giving of a notice or the expiration of a time period falls on a day other than a business day, then this Lease shall be automatically revised so that such date falls on the next occurring business day.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Issuer has caused this Lease to be executed in its corporate name and on its behalf by its authorized officer, and the Company has caused this Lease to be executed in its name and on its behalf by its authorized officer, all as of the date first above written.

ISSUER:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF WHITE HOUSE,
TENNESSEE**

By: 
Tim Murphy, President

COMPANY:

KROGER LIMITED PARTNERSHIP I

By: KRGP Inc., General Partner

By: _____
Joseph W. Bradley, Vice President

IN WITNESS WHEREOF, the Issuer has caused this Lease to be executed in its corporate name and on its behalf by its authorized officer, and the Company has caused this Lease to be executed in its name and on its behalf by its authorized officer, all as of the date first above written.

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By: _____
Tim Murphy, President

COMPANY:

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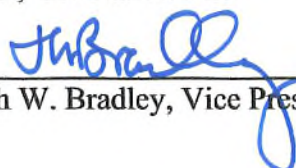
By:  _____
Joseph W. Bradley, Vice President

EXHIBIT A

PROPERTY DESCRIPTION

PARCEL 1

Lot 1 on the Final Plat of Kroger Property of record in Plat Book 15, page 6, Register's Office for Robertson County, Tennessee.

Being the same property conveyed by deed of record in Book 1664, page 792, said Register's Office.

PARCEL 2

Lot 2 on the Final Plat of Kroger Property of record in Plat Book 15, page 6, Register's Office for Robertson County, Tennessee.

Being part of the same property conveyed by deed of record in Book 692, page 851, said Register's Office.

PARCEL 3

BEGINNING at a point in the northerly right-of-way of Highway 76, corner to City of White House property; thence with said right-of-way line running 30 feet from and parallel to the center-line of said Highway West 755 feet; thence N. 8° 39 min. E. 1,706.13 feet to a point in the line of said City property; thence with said property line for 4 calls as follows: S. 89° E. 350 feet; S. 12° W. 907.5 feet; S. 87° E 297 feet; and S. 3° E 778.5 feet, to the beginning, containing 18.84 acres.

INCLUDED IN THE ABOVE LEGAL DESCRIPTION BUT EXPRESSLY EXCLUDED FROM THIS CONVEYANCE is that property more particularly described in conveyances of record in Record Book 551, Page 325; Record Book 692, Page 851; and Record Book 1060, Page 316, Register's Office for Robertson County, Tennessee.

BEING FURTHER DESCRIBED AS:

LAND IN THE 11TH CIVIL DISTRICT OF ROBERTSON COUNTY, TENNESSEE, DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2" IRON PIN FOUND IN THE EAST RIGHT OF WAY LINE OF BYRUM DRIVE (60' R/W), SAID IRON PIN BEING THE NORTHWEST CORNER OF LOT 4 BYRUM PROPERTY, SECTION TWO, RECORDED IN PLAT BOOK 18, PAGE 23; THENCE WITH THE RIGHT OF WAY LINE OF SAID BYRUM NORTH 07 DEGREES 00 MINUTES 27 SECONDS EAST A DISTANCE OF 503.41 FEET TO A 1/2" IRON PIN FOUND; THENCE LEAVING SAID RIGHT OF WAY LINE WITH THE SOUTH LINE OF THE BYRUM FAMILY PARTNERS PROPERTY, RECORDED IN BOOK 1537, PAGE 745 SOUTH 74 DEGREES 08 MINUTES 20 SECONDS EAST A DISTANCE OF 176.86 FEET TO A 5/8" IRON PIN FOUND; THENCE WITH THE SOUTH LINE OF THE BOARD OF EDUCATION PROPERTY, RECORDED IN BOOK 1557, PAGE 645 SOUTH 80 DEGREES 41 MINUTES 13 SECONDS EAST A DISTANCE OF 297.03 FEET TO A NAIL IN ROCK FOUND; THENCE WITH THE WEST LINT OF THE CITY OF WHITE HOUSE PROPERTY, RECORDED IN BOOK 341, PAGE 365 SOUTH 07 DEGREES 00 MINUTES 04 SECONDS WEST A DISTANCE OF 752.21 FEET TO A 1/2" IRON PIN SET IN THE NORTH RIGHT OF WAY LINE OF STATE ROUTE 76; THENCE WITH THE NORTH RIGHT OF WAY LINE OF SAID STATE ROUTE 76, AS FOLLOWS: NORTH 79 DEGREES 55 MINUTES 59 SECONDS WEST A DISTANCE OF 140.56 FEET TO A 4X4 CONCRETE MONUMENT FOUND; THENCE NORTH 85 DEGREES 15 MINUTES 16 SECONDS WEST A DISTANCE OF 80.59 FEET TO A 1/2" IRON PIN FOUND AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE LEAVING SAID RIGHT OF WAY LINE WITH SAID LOT 4, AS FOLLOWS: NORTH 07 DEGREES 00 MINUTES 58 SECONDS EAST A DISTANCE OF 293.95 FEET TO A 1/2" IRON PIN FOUND; THENCE NORTH 85 DEGREES 20 MINUTES 42 SECONDS WEST A DISTANCE OF 251.00 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 288,464 SQUARE FEET, 6.576 ACRES, MORE OR LESS.

Being the same property conveyed by deed of record in Book 1661, page 137, said Register's Office.

15994043.5

**THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF WHITE HOUSE, TENNESSEE**

AND

KROGER LIMITED PARTNERSHIP I

EQUIPMENT LEASE AGREEMENT

DATED AS OF DECEMBER 31, 2020

TABLE OF CONTENTS

	Page No.
Parties	1
Preamble	1
 ARTICLE I DEFINITIONS 	
Section 1.1	Definitions of Terms2
Section 1.2	References to Lease.....4
Section 1.3	References to Articles, Sections, Etc.4
Section 1.4	Headings.....4
 ARTICLE II REPRESENTATIONS, WARRANTIES, AND COVENANTS 	
Section 2.1	Representations, Warranties, and Covenants of the Issuer4
Section 2.2	Representations, Warranties, and Covenants of the Company5
 ARTICLE III DEMISING CLAUSE; TERM 	
Section 3.1	Demise of Equipment.....5
Section 3.2	Lease Term.....5
 ARTICLE IV ACQUISITION OF THE EQUIPMENT 	
Section 4.1	Agreement to Equip the Project6
Section 4.2	Other Amounts Payable by the Company6
Section 4.3	Further Collateralization6
 ARTICLE V RENTAL PROVISIONS; PREPAYMENT 	
Section 5.1	Quiet Enjoyment7
Section 5.2	Rental Payments; Basic Rental Payments; and Additional Rental Payments.....7
Section 5.3	General Obligation; Obligations of the Company Unconditional.....8
 ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE 	
Section 6.1	Maintenance of the Equipment9
Section 6.2	Modification of the Equipment9
Section 6.3	Improvements as Part of the Equipment9

Section 6.4	Taxes, Assessments, and Utility Charges.....	9
Section 6.5	Insurance Required.....	10
Section 6.6	Insurers and Policies.....	10
Section 6.7	Application of Net Proceeds of Insurance.....	11
Section 6.8	Advances by Issuer.....	11
Section 6.9	Obligation of the Company to Maintain Insurance Regardless of Approval....	11

ARTICLE VII
DAMAGE, DESTRUCTION, CONDEMNATION, ETC.

Section 7.1	Damage or Destruction.....	11
Section 7.2	Condemnation	12

ARTICLE VIII
SPECIAL COVENANTS

Section 8.1	No Warranty of Condition or Suitability; Use of Project.....	13
Section 8.2	Indemnity and Hold Harmless Provisions.....	13
Section 8.3	Reimbursement of the Issuer.....	13
Section 8.4	Compliance with Orders, Ordinances, Etc.....	14
Section 8.5	Discharge of Liens and Encumbrances	14
Section 8.6	Restriction Against Certain Religious Activities	15
Section 8.7	Further Assurances and Corrective Instruments	15

ARTICLE IX
ASSIGNMENT; REMOVAL OF EQUIPMENT; ETC.

Section 9.1	Assignment and Subleasing	15
Section 9.2	Restrictions on Mortgage or Sale of Equipment by Issuer.....	16
Section 9.3	Removal of the Equipment.....	16
Section 9.4	Installation of the Company's Own Machinery	16

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1	Events of Default Defined.....	16
Section 10.2	Remedies on Default	17
Section 10.3	Remedies Cumulative	18
Section 10.4	Agreement to Pay Attorneys' Fees and Expenses.....	18
Section 10.5	Delay or Omission Not a Waiver	18
Section 10.6	Force Majeure Provision	18

ARTICLE XI
OPTIONS; PURCHASE OF EQUIPMENT; ETC.

Section 11.1	Option to Terminate	19
Section 11.2	Option to Purchase the Equipment.....	19

Section 11.3	Conveyance on Exercise of Option to Purchase the Equipment.....	19
Section 11.4	Payments Upon, and Conditions For, Early Termination	19
Section 11.5	Continuation of Certain Provisions	20

ARTICLE XII
MISCELLANEOUS

Section 12.1	Certificates and Opinions	20
Section 12.2	Limited Liability of the Issuer.....	20
Section 12.3	Notices.....	20
Section 12.4	Binding Effect	21
Section 12.5	Severability.....	21
Section 12.6	Limitation of Rights	21
Section 12.7	Execution of Counterparts.....	21
Section 12.8	Applicable Law	21
Section 12.9	Table of Contents and Section Headings Not Controlling.....	22
Section 12.10	No Liability of the City or the County	22
Section 12.11	Net Lease.....	22
Section 12.12	Not Partners.....	22
Section 12.13	Conflicting Provisions.....	22
Section 12.14	Entire Agreement	22
Section 12.15	Schedules/Exhibits	22
Section 12.16	Business Days	22

Exhibits

Exhibit “A”	Description of Land	A-1
Exhibit “B”	Bill of Sale	B-1

EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT (as amended or supplemented from time to time, this “Lease”), dated as of December 31, 2020, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF WHITE HOUSE, TENNESSEE**, a public, nonprofit corporation organized and existing under the laws of the State of Tennessee (together with its successors and assigns, the “Issuer”), and **KROGER LIMITED PARTNERSHIP I**, an Ohio limited partnership (together with its successors and assigns, the “Company”).

W I T N E S S E T H:

WHEREAS, the Issuer is a public, nonprofit corporation and a public instrumentality of the City of White House, Tennessee (the “City”), and is authorized under Chapter 53, Title 7, Tennessee Code Annotated, as amended and supplemented from time to time (the “Act”), to enter into lease agreements with manufacturing, industrial, commercial, and financial enterprises with respect to one or more projects for such payments and upon such terms and conditions as the Board of Directors of the Issuer may deem advisable in accordance with the provisions of the Act in order to maintain and increase employment opportunities by inducing such enterprises to locate in or to remain in the State of Tennessee; and

WHEREAS, to induce the Company to expand a certain retail grocery store located at 510 State Route 76 in Robertson County, Tennessee (the “County”), and the City (the Land and Building being referred to as the “Facility”), and to induce the Company to equip said Facility with the Equipment (as defined below), the Issuer has agreed to acquire and own the Facility, which shall be leased by the Issuer to the Company pursuant to a certain Facility Lease (as amended or supplemented from time to time, the “Facility Lease”), dated of even date herewith, and to acquire and own the Equipment, which shall be leased by the Issuer to the Company pursuant to this Lease; and

WHEREAS, the Board of Directors of the Issuer, pursuant to Section 7-53-102 of the Act, has found and determined that the agreement by the Issuer to acquire, improve, equip and lease such retail grocery store will develop trade and commerce in and adjacent to the City and the County, will contribute to the general welfare, will alleviate conditions of unemployment and has induced or will induce the Company to locate its operations in the Facility, thereby increasing employment opportunities in the City and the County; and

WHEREAS, the Issuer has not made and does not intend to make any profit by reason of its business or venture in which it may engage or by reason of its entering into this Lease, and no part of the Issuer’s net earnings, if any, will ever inure to the benefit of any person, firm or corporation except the City and/or the County; and

WHEREAS, the Issuer is authorized by law and has deemed it necessary to acquire and improve the Facility and acquire the Equipment (the Facility and the Equipment being sometimes referred to as the “Project”) as aforesaid, which acquisition of the Facility has occurred of even date herewith; and

WHEREAS, the Issuer proposes to lease the Equipment to the Company and the Company desires to lease the Equipment from the Issuer upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions of Terms. In addition to the words and terms defined in the preamble hereto and elsewhere defined in this Lease, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meaning, unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

- (a) “Act” shall have the meaning set forth in the preamble hereto.
- (b) “Additional Rental Payments” means that portion of the Rental Payments described in Section 5.2(b) hereof.
- (c) “Basic Rental Payments” means that portion of the Rental Payments described in Section 5.2(a) hereof.
- (d) “Building” means all buildings, structures, improvements, and fixtures located on the Land.
- (e) “City” shall have the meaning set forth in the preamble hereto.
- (f) “Company” shall have the meaning set forth in the first paragraph hereof.
- (g) “Condemnation” means the taking of title to, or the use of, the Equipment under the exercise of the power of eminent domain by any governmental entity or any other person acting under governmental authority.
- (h) “County” shall have the meaning set forth in the preamble hereto.
- (i) “Equipment” means those items of furniture, fixtures, personal property and equipment and related property acquired by the Issuer and leased to the Company pursuant to this Lease, including all such items (i) conveyed to the Issuer by the Company upon delivery of an executed Bill of Sale in the form attached as **Exhibit B**, (ii) acquired by the Company in its capacity as agent for the Issuer pursuant to Article IV hereof and (iii) acquired in substitution therefor and any renewals or replacements thereof pursuant hereto.
- (j) “Event of Default” or “Default” means any of those events defined as Events of Default by Section 10.1 of this Lease.

- (k) “Facility” shall have the meaning set forth in the preamble hereto.
- (l) “Facility Lease” shall have the meaning set forth in the preamble hereto.
- (m) “Fiscal Year” means the fiscal year, as such from time to time exists, of the Company.
- (n) “Issuer” shall have the meaning set forth in the first paragraph hereof.
- (o) “Land” means the real estate and interests in real estate described in **Exhibit A**, attached hereto and incorporated herein by this reference, less such real estate and interest in real estate as may be taken by the exercise of the power of eminent domain as provided in Article VII of the Facility Lease and less such real estate and interest in real estate as may be sold to the Company pursuant to Article XI of the Facility Lease.
- (p) “Lease” shall have the meaning set forth in the first paragraph hereof.
- (q) “Lien” means any interest in Property securing an obligation owed to anyone, whether such interest is based on the common law, statute, or contract, and including, but not limited to, the security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale, trust receipt, lease, consignment, or bailment for security purposes. The term “Lien” also includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases, and other similar title exceptions and encumbrances, including, but not limited to, mechanics’, materialmen’s, warehousemen’s, carriers’, and other similar encumbrances affecting real property. For the purposes of this Lease, one shall be deemed to be the owner of any Property which he, she, or it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in someone else for security purposes.
- (r) “Net Proceeds” means so much of the gross proceeds with respect to which that term is used as remains after payment of all expenses, costs, and taxes, including reasonable attorneys’ fees and extraordinary expenses, incurred in obtaining such gross proceeds.
- (s) “Parties” means the Issuer and the Company.
- (t) “Permitted Encumbrances” means: (i) all Liens, if any, of record as of the date hereof, together with all future Liens arising out of transactions contemplated by the provisions of Section 4.3 herein; (ii) mechanics’, materialmen’s, warehousemen’s, carriers’, and other similar Liens to the extent permitted by Section 8.5 of this Lease; and (iii) Liens for taxes at the time not delinquent.
- (u) “Project” shall have the meaning set forth in the preamble hereto.
- (v) “Property” means any interest in any kind of property or assets, whether real, personal, or mixed, tangible or intangible.
- (w) “Rental Payments” means, collectively, the Basic Rental Payments and the Additional Rental Payments.

(x) “State” means the State of Tennessee.

(y) “Substitute Equipment” shall have the meaning set forth in Section 7.2(a) hereof.

(z) “Tax Agreement” means that certain Tax Agreement of even date herewith entered into by and between the Issuer and the Company.

(aa) “Term” shall have the meaning set forth in Section 3.2 hereof.

Section 1.2 References to Lease. The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Lease as a whole.

Section 1.3 References to Articles, Sections, Etc. References to Articles, Sections, and other subdivisions of this Lease are to the designated Articles, Sections, and other subdivisions of this Lease as originally executed.

Section 1.4 Headings. The headings of this Lease are for convenience only and shall not define or limit the provisions hereof.

ARTICLE II REPRESENTATIONS, WARRANTIES, AND COVENANTS

Section 2.1 Representations, Warranties, and Covenants of the Issuer. The Issuer hereby represents, warrants, and covenants as follows as the basis for the undertakings on its part herein contained:

(a) That the Issuer: (i) was legally created and exists under the provisions of the Act; (ii) has the power under the provisions of the Act to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder; and (iii) has been duly authorized, by proper action, to execute, deliver and perform this Lease;

(b) That, to the best of the Issuer’s knowledge, the Project constitutes a “project” within the meaning of the Act, and the Issuer is entering into this Lease to accomplish the public purposes of the Act;

(c) That the Issuer will not pledge the rentals and other amounts derived from the Equipment and will not mortgage or encumber the Equipment except pursuant to Section 4.3 hereof;

(d) That nothing in this Lease shall be construed to require Issuer to operate the Project other than as lessor; and

(e) That, to the best of the Issuer’s knowledge, all requirements of the Act have been complied with.

Section 2.2 Representations, Warranties, and Covenants of the Company. The Company hereby represents, warrants, and covenants as follows as the basis for the undertakings on its part herein contained:

(a) That the Company: (i) is a limited partnership duly organized and validly existing under the laws of the State of Ohio; (ii) has the power and authority to enter into this Lease; and (iii) has duly authorized the execution, delivery, and performance of this Lease; and

(b) That the execution and delivery of this Lease will be valid and binding on the Company and that neither the execution nor delivery of the foregoing documents, nor the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, will conflict with or result in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Company is now a party or by which it is bound, or constitute a default hereunder or under any of the foregoing, or result in the creation or imposition of any Lien upon any Property of the Company under the terms of any instrument or agreement, other than the respective Liens, if any, under this Lease; and

(c) That the Project constitutes a “project” within the meaning of the Act, and throughout the Term, the Company will not take, permit to be taken, fail to take, or permit to fail to be taken, any action which would cause the Project not to constitute a “project” within the meaning of the Act; and

(d) That, to the Company’s knowledge, the execution, delivery and performance in accordance with the respective terms of this Lease and any other documents executed and delivered in connection with this transaction do not and will not (i) violate any applicable law or (ii) conflict with, result in a breach of or constitute a default under any indenture, agreement or other instrument to which the Company is a party or by which the Company or any of the Company’s properties may be bound; and

(e) That there is no action, suit, proceeding or, to the Company’s knowledge, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the Company’s knowledge, threatened against or affecting the Company’s Property, wherein an unfavorable decision, ruling or finding would have a material, adverse effect on the validity or enforceability of this Lease, which has not been previously disclosed.

ARTICLE III DEMISING CLAUSE; TERM

Section 3.1 Demise of Equipment. The Issuer demises and leases to the Company, and the Company leases from the Issuer, the Equipment, subject only to Permitted Encumbrances, in accordance with the provisions of this Lease, to have and to hold for the Term.

Section 3.2 Lease Term. The Term of this Lease shall commence as of the date hereof and shall terminate on December 31, 2027, unless earlier terminated pursuant to the provisions of Article X or Article XI hereof; PROVIDED, HOWEVER, that in no event shall this Lease be terminated, but the Term hereof shall continue on a month-to-month basis, until the later of the date: (a) the Issuer provides written notice to the Company of the expiration of the Term; (b) the

Company provides written notice to the Issuer stating that it does not intend to exercise the option to purchase the Equipment pursuant to Article XI hereof; (c) all liabilities, reasonable costs, and reasonable expenses of the Issuer, including those of its legal counsel, incurred pursuant to, or in connection with, this Lease shall have been fully paid and discharged to the reasonable satisfaction of the Issuer; or (d) the date all other reasonable liabilities, costs, and expenses which the Company herein assumes or agrees to pay shall have been fully paid or satisfactory provision made therefor.

ARTICLE IV ACQUISITION OF THE EQUIPMENT

Section 4.1 Agreement to Equip the Project. The Issuer and the Company agree to the following:

(a) The Issuer agrees that it shall acquire any Equipment presently owned by the Company at the Facility, and the Company agrees that it shall commence, or will continue if such work shall have theretofore commenced, the acquisition and installation, in or about the Building and wholly within the boundary lines of the Land, of the Equipment on behalf of itself and the Issuer. Such installation shall be in a good and workmanlike manner. The Company shall have the sole responsibility for, and the Issuer hereby appoints the Company as its agent with respect to, the acquisition and installation of the Equipment, and may perform the same itself or through agents, contractors and others selected by it, and may make or issue such contracts, orders, receipts and instructions, and in general do or cause to be done all such other things, as it may in its sole discretion consider requisite or advisable for the acquisition of the Equipment, installing the Equipment and fulfilling its obligations under this Section 4.1. The Company shall have full authority and the sole right under this Lease to supervise and control, directly or indirectly, all aspects of the acquisition and the installation of the Equipment.

(b) In order to effectuate the purposes of this Lease, as and when requested by the Company, the Issuer will make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper, all for equipping and completing the Project, and for evidencing the Issuer's ownership thereof.

Section 4.2 Other Amounts Payable by the Company. The Company agrees to pay all reasonable costs and expenses (including reasonable attorneys' fees), not otherwise paid under the terms of this Lease reasonably incurred by the Issuer in connection with, or as a direct or indirect result of, or in connection with the administration or enforcement of, and compliance with, this Lease, or otherwise in regard to the Equipment. The Company may, however, without creating a default hereunder, contest in good faith the necessity, and the reasonableness of, any costs, expenses, fees, amounts, liabilities and obligations referred to in this Section 4.2 and in Section 8.2 hereof.

Section 4.3 Further Collateralization. The Issuer agrees to subordinate its interest in the Equipment in favor of any lender or financial institution that has taken or that takes a Lien against the Equipment and the Issuer agrees to grant a non-recourse security interest in and to the Equipment in favor of any now existing or future lender or financial institution to secure

indebtedness owed by the Company to such lender or financial institution, whether such indebtedness is presently existing or hereafter incurred. The form of subordination agreement and security agreement executed by the Issuer shall be in form and substance reasonably satisfactory to such lender or financial institution.

ARTICLE V
RENTAL PROVISIONS; PREPAYMENT

Section 5.1 Quiet Enjoyment. The Issuer hereby covenants and agrees that it will not take any action, other than pursuant to Article X of this Lease, to prevent the Company from having quiet and peaceable possession and enjoyment of the Equipment during the Term and will, at the request of the Company, and at the requesting person's cost, to the extent that it may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

Section 5.2 Rental Payments; Basic Rental Payments; and Additional Rental Payments. The Company covenants and agrees to pay, or cause to be paid, as and for rental and for use of the Equipment, throughout the Term, the Basic Rental Payments and the Additional Rental Payments as provided in this Section, in funds which constitute lawful monies of the United States of America for the payment of public and private debts, as at the time of payment:

(a) Basic Rental Payments. The Company shall pay, or cause to be paid, as "Basic Rental Payments," in a lump sum on the Effective Date, the amount of One and No/100 Dollars (\$1.00), the payment and receipt of which the parties hereby acknowledge.

(b) Additional Rental Payments. The Company shall from time to time pay, as Additional Rental Payments, within thirty (30) days of receipt of written demand therefor from the person entitled to payment thereof, an amount sufficient to pay the following costs and expenses:

- (i) All amounts due in respect of the Equipment under the Tax Agreement;
- (ii) The reasonable fees and other costs incurred for services of such engineers, architects, attorneys, and independent accountants as are employed to make examinations, opinions, and reports required under, or contemplated by, this Lease;
- (iii) The reasonable fees and other costs, not otherwise paid under this Lease, incurred by the Issuer by reason of its leasing of the Equipment or in connection with its administration and enforcement of, and compliance with, this Lease, or otherwise in connection with the Equipment; and
- (iv) All amounts advanced by the Issuer under authority of this Lease or otherwise and which the Company is obligated to repay.

(c) Payments of Additional Rental Payments shall be made by the Company directly to the persons entitled to such payment.

(d) In the event the Company shall fail to make any payment required by this Section, the payment so in default shall continue as an obligation hereunder of the Company until the amount in default shall have been fully paid, and the Company shall pay, or cause to be paid, the same with interest thereon from the date of default until so paid at a rate per annum equal to three percent (3.00%) or the maximum rate of interest allowable by applicable law, whichever is less.

(e) The Company shall make the payments required by this Section without any further notice thereof except as may be specifically required by this Section.

Section 5.3 General Obligation; Obligations of the Company Unconditional. The Company shall pay to or upon the order of the Issuer, at or before the time when payable by the Issuer, all reasonable costs and liabilities incurred by the Issuer in connection with this Lease or otherwise as a result of the transactions contemplated by this Lease.

(a) The obligations of the Company to make the payments required in Section 5.2 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim which the Company otherwise may have against the Issuer. The Company shall not: (i) suspend, discontinue, or abate any payment required by Section 5.2 hereof (except as provided in this Section 5.3); (ii) fail to observe any of its other covenants or agreements in this Lease; or (iii) except as provided in Article XI hereof, terminate this Lease for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project; failure of the Company to use the Equipment as contemplated in this Lease or otherwise; any change or delay in the time of availability of the Project; any defect in the title, design, operation, merchantability, fitness, or condition of the Project or in the suitability of the Project for the purposes or needs of the Company; failure of consideration; eviction or constructive eviction; destruction of or damage to the Project; commercial frustration of purpose; the taking by Condemnation of title to or the use of all or any part of the Project; any change in the taxation or other laws of the United States of America or of the State or any political subdivision of either; any declaration or finding that any portion of this Lease is invalid or unenforceable; and any failure of the Issuer or the Company to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or in connection with this Lease or otherwise.

(b) Nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part contained in this Lease, and in the event the Issuer should fail to perform any such agreement on its part, the Company may institute such action against the Issuer, as the Company may deem necessary to compel performance; provided, however, that anything contained herein to the contrary notwithstanding, no such action shall: (i) violate the agreements on the part of the Company contained in the second paragraph of this Section; (ii) diminish the amounts required to be paid by the Company pursuant to any provision of this Lease; or (iii) seek to impose any pecuniary liability on the

Issuer or any personal or pecuniary liability on any officer or director of the Issuer. The Company may, at its own cost and expense, and in its own name or in the name of the Issuer, prosecute or defend any action or proceeding or take any action involving third persons which the Company deems reasonably necessary in order to secure or protect its right to possession, occupancy, and use of the Project, and in such event the Issuer shall, provided the Company shall pay, or cause to be paid, all costs (including attorneys' fees) reasonably incurred by the Issuer in connection therewith as such costs accrue, cooperate fully with the Company.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE

Section 6.1 Maintenance of the Equipment. Throughout the Term, the Company shall, at its own expense, keep and maintain the Equipment, or cause the Equipment to be kept and maintained, in good condition, repair, and working order (ordinary wear and tear excepted), making, or causing to be made, all repairs and replacements thereto (whether ordinary or extraordinary, structural or nonstructural, or foreseen or unforeseen), and operate the Equipment, or cause the Equipment to be operated, as deemed necessary and proper by the Company.

Section 6.2 Modification of the Equipment.

(a) The Company, at its own cost and expense, may make such additions, renewals, replacements, or improvements to or alterations of the Equipment, or may construct or place on the Facility, such additional or renewal or replacement facilities, furnishings, or equipment, as the Company may deem desirable to attain the purposes herein contemplated, provided that such additions, renewals, replacements, improvements, alterations, facilities, furnishings, or equipment shall not impair the fair market value, structural soundness, or usefulness of the Facility.

(b) At the request of the Company, the Issuer shall join in any application for such municipal and other governmental permits and authorizations as the Company may deem necessary or advisable in connection with any such construction, acquisition or installation, provided that the Company shall indemnify and hold the Issuer harmless, or cause the Issuer to be indemnified and held harmless, against and from all costs and expenses, including attorneys' fees, which may be incurred by the Issuer in connection with any such joinder or application.

Section 6.3 Improvements as Part of the Equipment. All improvements, fixtures, accessions and other Property which shall be constructed, placed, or installed in or upon the Equipment as a substitute for, or in renewal or replacement of, any improvements, fixtures, accessions, or other Property constituting part of the Equipment, shall become a part of the Equipment.

Section 6.4 Taxes, Assessments, and Utility Charges.

(a) The Company shall pay, or cause to be paid, as the same shall respectively become due: (i) all taxes, in lieu of tax payments, regulatory fees, and governmental charges of any kind whatsoever, including ad valorem taxes, that may at any time be lawfully assessed or levied against or with respect to the Equipment, excluding, however, any taxes levied upon or with respect to the income or revenues of the Issuer from the Equipment; (ii) all utility or other

charges, including “service charges,” incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the Equipment; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements which are in respect of the Equipment or any part thereof.

(b) The Company or any other person may, in good faith and at its own expense, contest any such taxes, in lieu of tax payments, assessments, and other charges, after giving notice of its intention to do so to the Issuer; provided that the Company shall pay any amounts that it concedes to be due pending the determination of such contest. In the event of any such contest, the Company or such other person, as applicable, may permit the taxes, assessments, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Issuer shall notify the Company or such other person, as applicable, that by nonpayment of any such items the Equipment, or any part thereof, may be imminently subject to loss or forfeiture, in which event such taxes, assessments, or charges shall be paid promptly or secured by posting a bond in form and substance satisfactory to the Issuer. The Issuer shall, if requested by the Company or such other person, as applicable, and provided that the Issuer shall be indemnified and held harmless against and from all costs and expenses (including attorneys’ fees) which may be reasonably incurred by the Issuer in connection therewith, cooperate fully with the Company or such other person, as applicable, in any such contest.

Section 6.5 Insurance Required.

(a) At all times throughout the Term, the Company shall maintain insurance against such risks and for such amounts as are customarily insured against by the Company, paying, as the same become due and payable, all premiums in respect thereto, including but not necessarily limited to commercial general liability insurance with a combined single limit of not less than \$1,000,000 per occurrence. The Issuer shall have no obligation to insure the Equipment.

(b) The Issuer shall be named as an additional insured under the commercial general liability insurance required above. Any of the insurance required above may provide deductible provisions in amounts not exceeding that in similar policies carried by businesses of a size and character similar to the Company, and the Company shall be a self-insurer to the extent of the amount of the deductible obtained and when the availability of insurance is limited and thus requires the Company to be a self-insurer above the deductible obtained. The Net Proceeds of the insurance carried pursuant to the provisions of this Section shall be paid and applied as provided by Section 6.7 hereof.

Section 6.6 Insurers and Policies.

(a) Each insurance policy required by Section 6.5 hereof shall be issued by one or more financially responsible insurers. Before the expiration of any such policy, the Company shall furnish the Issuer evidence satisfactory to the Issuer that such policy has been renewed or replaced, or is no longer required by this Lease.

(b) Notwithstanding anything to contrary contained herein, so long as the Company and its affiliates have either a tangible net worth greater than or equal to One Hundred

Million Dollars (\$100,000,000) or a market capitalization equal or greater to One Billion Dollars (\$1,000,000,000), the Company may self-insure the obligations set forth in Section 6.5 hereof.

Section 6.7 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.5(a) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid; provided, however, that the Net Proceeds of any casualty insurance carried pursuant to Section 6.5(a) hereof shall be applied as provided in Section 7.1 hereof.

Section 6.8 Advances by Issuer.

(a) In the event the Company shall fail to pay, or fail to cause to be paid, any tax, assessment, or governmental charge required to be paid by the provisions of Section 6.4 hereof, prior to the date upon which such tax, assessment or charge would become delinquent, or maintain, or cause to be maintained, the full insurance coverage required by the provisions of Section 6.5 hereof, the Issuer, with not less than ten (10) days' prior written notice to the Company, may (but shall be under no obligation to) pay such tax, assessment, or governmental charge or obtain or maintain the required policy of insurance, and pay the premium or premiums on the same.

(b) All amounts so advanced by any person pursuant to subsection (a) of this Section shall be promptly reimbursed by the Company to the person making the advance, together with interest thereon from the date of such advance to the date of reimbursement at a rate per annum equal to three percent (3.00%) or the maximum rate of interest allowable by applicable law, whichever is less.

Section 6.9 Obligation of the Company to Maintain Insurance Regardless of Approval. No acceptance or approval of any insurance policy by the Issuer shall relieve or release the Company from any liability, duty, or obligation under the provisions of this Lease.

ARTICLE VII DAMAGE, DESTRUCTION, CONDEMNATION, ETC.

Section 7.1 Damage or Destruction. (a) In the event the Equipment shall be damaged or destroyed (in whole or in part) at any time during the Term:

- (i) the Company shall promptly give, or cause to be given, written notice of such damage or destruction to the Issuer;
- (ii) all Net Proceeds of insurance resulting from damage to or destruction of the Equipment shall be paid to the Company;
- (iii) the Company may, if it desires, promptly replace, repair, or restore the Equipment to such condition, value and utility to allow the Equipment to operate as it was designed to operate prior to such damage or destruction, with such changes, alterations, and modifications (including the substitution and addition of other Property), and the Issuer may convey any

damaged or destroyed Equipment that is not repaired to the Company by quitclaim bill of sale.

(b) All such replacements, repairs, or restoration of the Equipment made pursuant to this Section, whether or not requiring the expenditure of monies of the Company, shall automatically become a part of the Equipment the same as if specifically described herein upon delivery by the Company to the Issuer of an executed Bill of Sale with respect thereto in the form attached as **Exhibit B**.

(c) The Company shall be entitled to any insurance proceeds, or the applicable portion thereof, resulting from damage to or destruction of any Property that, at the time of such damage or destruction, is not part of the Equipment.

Section 7.2 Condemnation.

(a) In the event all or any part of the title to, or the use of, the Equipment shall be taken by Condemnation during the Term:

- (i) the Company shall promptly give, or cause to be given, written notice of any Condemnation proceedings of, or affecting, the Equipment, or any portion thereof, to the Issuer;
- (ii) all Net Proceeds of any Condemnation award shall be paid to the Company;
- (iii) the Company may if it desires, (A) promptly restore the Equipment (excluding any Property taken by Condemnation) to such condition, value, and utility to allow the Equipment to operate as it was designed to operate prior to such Condemnation, with such changes, alterations, and modifications as may then be required by the Company, or (B) acquire, by construction or otherwise, equipment (“Substitute Equipment”), of such nature and value to allow the Equipment to operate as it was designed to operate prior to such Condemnation, with such changes, alterations, and modifications as may then be required by the Company.
- (iv) The restored portions of the Equipment, or the Substitute Equipment, whether or not requiring the expenditure of the moneys of the Company, shall automatically become part of the Equipment upon delivery by the Company to the Issuer of an executed Bill of Sale with respect thereto in the form attached as **Exhibit B**.

(b) The Company shall also be entitled to the proceeds of any Condemnation award, or the applicable portion thereof, resulting from damage to, or taking of, any Property which, at the time of such damage or taking, is not part of the Equipment.

ARTICLE VIII
SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability; Use of Project. The Company acknowledges its full familiarity with the Equipment, and it represents that it is solely responsible for the plan under which the Equipment will be operated and maintained. The Issuer makes no representations or warranties, either express or implied, as to the condition, title, design, operation, merchantability, or fitness of the Project, or that it is, or will be, suitable for the purposes or needs of the Company.

Section 8.2 Indemnity and Hold Harmless Provisions. The Company hereby releases the Issuer, its directors, officers, members, agents, employees, and consultants from; agrees that the Issuer, its directors, officers, members, agents, employees, and consultants shall not be liable for; and agrees to reimburse and indemnify and hold the Issuer, its directors, officers, members, agents, employees, and consultants harmless from and against, any and all: (a) liability for loss or damage to Property or any injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the acquisition, occupation, or use of said Project; (b) liability arising from, or expense incurred by reason of, the Issuer's leasing of the Equipment, and all causes of action and reasonable attorneys' fees and any other reasonable expense incurred in defending any suits or actions which may arise as a result of any of the foregoing excluding the Issuer's obligations to the Company hereunder; and (c) costs and expenses of the Issuer or the officers, directors, or employees thereof, incurred as a result of carrying out its obligations under this Lease or any other document herein contemplated; provided, however, that the foregoing shall not apply to the negligence or wanton or willful misconduct of the Issuer, its directors, officers, members, agents, consultants or employees.

Section 8.3 Reimbursement of the Issuer. Notwithstanding that it is the intention of the parties that the Issuer shall not incur any pecuniary liability by reason of this Lease, or by reason of any actions, documents, statutes, ordinances, or regulations pertaining to the foregoing, the Company shall promptly pay any and all reasonable costs and expenses, as such costs and expenses accrue, which may be incurred by, or judgments which may be rendered against, the Issuer or any of its directors, officers, employees, or agents at any time or times during, or subsequent to the Term: (a) in enforcing any of the terms, covenants, conditions, or provisions of this Lease or (b) in defending any action, suit, or proceeding brought against the Issuer or any of its respective directors, officers, employees, or agents as a result of (i) the violation of, or failure to comply with, any present or future Federal, State, or municipal law, ordinance, regulation, or order or (ii) any alleged failure, neglect, misfeasance, or default on the part of the Company, or any of the directors, officers, employees, servants, agents, or independent contractors of any of the foregoing in connection with, arising from, or growing out of, this Lease or the Equipment, or any operation or use of the Equipment, or any action pertaining to, or connected with, any of the foregoing; provided, however, that the foregoing obligations of the Company shall not apply to the negligence or wanton or willful misconduct of the Issuer, its directors, officers, members, agents, consultants or employees.

Section 8.4 Compliance with Orders, Ordinances, Etc.

(a) The Company shall throughout the Term, without expense to the Issuer, promptly comply, or promptly cause compliance, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, contract provisions, and requirements of all Federal, State, county, municipal, and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials, and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Equipment, or any part thereof, or to any of the streets, roads, passageways, sidewalks, curbs, gutters adjoining the Equipment, or any part thereof, or to any use, manner of use, or condition of the Equipment, or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this section, the Company or any other person may, in good faith and at his, her, or its own expense, upon prior written notice to the Issuer, contest the validity or the applicability of any requirement of the nature referred to in subsection (a) of this section. In such event, the Company, or any such person, as applicable, may fail to comply with the requirement or requirements so contested during the period of such contest, and any appeal therefrom, unless the Issuer or the Trustee shall notify the Company, or any such person, as applicable, that by failure to comply with such requirement or requirements, the Equipment, or any part thereof, may be imminently subject to loss or forfeiture, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Issuer. The Issuer shall, if requested by the Company, or such other person, as applicable, and provided that the Issuer shall be indemnified and held harmless against and from all costs and expenses (including attorneys' fees) which may be reasonably incurred by the Issuer in connection therewith, cooperate fully with the Company, or such other person, as applicable, in any such contest.

Section 8.5 Discharge of Liens and Encumbrances.

(a) The Company shall not permit or create, or suffer to be permitted or created, any Lien, except for Permitted Encumbrances, upon the Equipment or any part thereof, by reason of any labor, materials, or services rendered or supplied, or claimed to be rendered or supplied. The Company shall immediately give notice to the Issuer of the filing or assertion of any such Lien of which it has knowledge, and except for Permitted Encumbrances shall, within thirty (30) days after receipt of actual notice of the filing or assertion of any such Lien, satisfy the Lien or cause it to be discharged of record or otherwise prevent the enforcement thereby by payment, deposit, filing the requisite bond, or taking such other action as shall be reasonably satisfactory to the Issuer.

(b) Notwithstanding the provisions of subsection (a) of this section, the Company, or any other person, may, in good faith and at his, her, or its own expense, upon prior written notice to the Issuer, contest any such Lien. In such event, the Company, or any such person, as applicable, may permit the Lien or encumbrance so contested to remain undischarged and unsatisfied during the period of such contest, and any appeal therefrom. The Issuer shall, if requested by the Company, and provided that the Issuer shall be indemnified and held harmless against and from all costs and expenses (including attorneys' fees) which may be reasonably

incurred by the Issuer in connection therewith, cooperate fully with the Company, or such other persons, as applicable, in any such contest.

Section 8.6 Restriction Against Certain Religious Activities. The Company hereby covenants that, for such period as may be required by law, no part of the Project shall be used for sectarian instruction, or as a place of religious worship, or in connection with any part of a program of a school or department of divinity of any religious denomination. If at any time the applicable law would permit the Project to be used for a purpose prohibited by this Section, such prohibition shall, to that extent, be of no further force or effect.

Section 8.7 Further Assurances and Corrective Instruments. The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

ARTICLE IX ASSIGNMENT; REMOVAL OF EQUIPMENT; ETC.

Section 9.1 Assignment and Subleasing.

(a) This Lease may be assigned and the Equipment subleased, as a whole or in part, by the Company without the necessity of obtaining the consent of the Issuer, subject, however, to each of the following conditions:

- (i) no assignment shall relieve the Company from primary liability for any obligations under this Lease, and in the event of any such assignment, the Company shall continue to remain primarily liable for payment of the amounts specified in this Lease and for performance and observance of the other agreements on its part provided to be performed and observed by the Company to the same extent as though no assignment had been made;
- (ii) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased; and
- (iii) the Company shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Issuer a true and complete copy of each assignment, assumption of obligation or sublease, as the case may be.

(b) The Company may contract for the performance by others of operations or services on, or in connection with, the Equipment, or any part thereof, for any lawful purpose; provided, however, that any such contract shall not be inconsistent with the provisions of this

Lease and that the Company shall remain fully obligated and responsible under this Lease, to the same extent as if such contract had not been executed.

Section 9.2 Restrictions on Mortgage or Sale of Equipment by Issuer. The Issuer agrees that, it will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term, except as otherwise permitted or required herein.

Section 9.3 Removal of the Equipment. In the event the Company determines from time to time that any item constituting a part of the Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary, the Company may remove such item constituting a part of the Equipment, and may sell, trade-in, exchange, or otherwise dispose of the same, as a whole or in part. The Issuer shall promptly execute any and all instruments deemed necessary by the Company, in its sole discretion, to fully effectuate the provisions of this Section.

Section 9.4 Installation of the Company's Own Machinery. The Company may, from time to time, in its sole discretion and at its own expense, install machinery, equipment and other tangible and movable property in the Building or on the Land. All such machinery, equipment and other tangible and movable property shall remain the sole property of the Company in which the Issuer shall have no interest.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Each of the following shall be an "Event of Default" under this Lease, and the terms "Event of Default" or "Default" shall mean, whenever they are used in such Lease, any one or more of the following events:

(a) The failure by the Company to pay, or cause to be paid, within thirty (30) days of when due, the Rental Payments specified to be paid under Section 5.2 hereof.

(b) The filing by the Company of a voluntary petition in bankruptcy or any petition or other pleading seeking any reorganization, composition, readjustment, liquidation, or similar relief under any present or future law or regulation, or the seeking of or consent to or acquiescence in the appointment of any trustee, receiver, or liquidator of all or any substantial part of its assets or of its interest in the Equipment, or the making of a general assignment for the benefit of creditors, or the admission in writing of the inability by the Company to pay its debts generally as the same shall become due;

(c) The adjudication of the Company to be bankrupt or insolvent, or the filing of a petition or other pleading against the Company seeking an adjudication of bankruptcy, reorganization, composition, readjustment, liquidation, or similar relief under any present or future law or regulation, which shall remain undismissed or unstayed for an aggregate of sixty (60) days (whether or not consecutive), or the entry of an order or decree by a court of competent jurisdiction, without the consent or acquiescence of the Company, appointing a trustee in bankruptcy or reorganization or a receiver or liquidator of the Company, of all or any substantial part of its Property, or of the Equipment, which order or decree shall continue unvacated or

unstayed on appeal or otherwise and in effect for a period of ninety (90) days (whether consecutive or not);

(d) The occurrence of a “default” or an “event of default” by the Company under the Facility Lease or the Tax Agreement, that is not cured within any applicable cure period as provided therein;

(e) Subject to Section 10.6, the failure by the Company to observe and perform any covenant, condition, or agreement hereunder on its part to be observed or performed (except obligations referred to in paragraphs (a), (b) or (c) of this Section for which no such notice must be given) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer, unless the Issuer shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Company within the applicable period and diligently pursued until the default is corrected.

Section 10.2 Remedies on Default.

(a) Whenever an Event of Default shall have occurred and be continuing, the Issuer may take any one or more of the following remedial steps:

- (i) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become due and payable: (A) all unpaid Rental Payments payable pursuant to Section 5.2 hereof; and (B) all other payments due or to become due under this Lease;
- (ii) Withhold any or all further performance under this Lease (except that the Company may, nevertheless, exercise any option granted pursuant to Article XI hereof, in which event, Issuer shall perform its obligations thereunder);
- (iii) Re-enter and take possession of the Equipment without terminating this Lease, and sublease the Equipment for the account of the Company, holding the Company liable for the difference in the rent and other amounts payable by such sublessee in such subleasing and the Rental Payments and other amounts payable by the Company hereunder;
- (iv) Terminate this Lease and convey the Equipment to the Company by quitclaim bill of sale; and/or
- (v) Take any other action or proceeding permitted by the terms of this Lease.

(b) Whenever any Event of Default shall have occurred and be continuing, the Issuer may take, in addition to the above and the following, whatever action at law or in equity

may appear necessary or desirable to collect the Rental Payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, warranty or covenant of the Company under this Lease.

(c) No action taken pursuant to this Section shall relieve the Company from its obligation to make all payments required under Section 5.2 hereof.

(d) Notwithstanding the foregoing provisions of this Section, until final action pursuant to this Section shall have been taken which would preclude any of the foregoing actions, the Company may (i) pay all accrued unpaid Rental Payments (exclusive of such Rental Payments accrued solely by virtue of acceleration thereof as provided in Section 10.2(a)(i) hereof), in which event, this Lease shall be fully reinstated as if an Event of Default had not occurred and otherwise fully cure all Events of Default, and/or (ii) exercise any option granted pursuant to Article XI hereof.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease, or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company shall default under any of the provisions of this Lease, and the Issuer shall employ attorneys or incur other expenses for the collection of amounts payable hereunder, or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Issuer the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 Delay or Omission Not a Waiver. No delay or omission of the Issuer to exercise any right or power accruing upon any breach of any covenant or agreement contained herein, or upon the happening of any other Default hereunder, shall impair any such right or power, or shall be construed to be a waiver of any such right or power, or shall be construed to be a waiver of any other Default hereunder, or any acquiescence therein; and every such power, right, or remedy contained herein of the Issuer may be exercised from time to time and as often as may be deemed expedient by the Issuer. Any waiver, permit, consent, or approval of any form or character on the part of the Issuer of any breach of, or default under, this Lease, or any waiver on the part of the Issuer of any provision or condition herein, must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 10.6 Force Majeure Provision. The provisions of Section 10.1(e) are subject to the following limitations: if, by reason of force majeure, the Company is unable in whole or in part to carry out the agreements of the Company on its part herein contained, the Company shall not be deemed in default during the continuance of such inability and for the duration of any

delay caused by such inability. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes; pandemics; lockouts or other industrial disturbances; acts of public enemies; orders of any kind of any governmental body, including the government of the United States or of the State or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides, lightning; earthquake; fire; hurricane; storms; floods; washouts; droughts; arrests; restraint of government and people, civil disturbances; explosions, breakage or accident to machinery, transmission pipes, or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company, in each case which has the effect of making it impossible (as distinguished from impracticable) for the Company to perform, it being agreed that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Company, unfavorable to the Company.

ARTICLE XI OPTIONS; PURCHASE OF EQUIPMENT; ETC.

Section 11.1 Option to Terminate. The Company shall have, and is hereby granted, the option to terminate this Lease at any time by (i) paying to the appropriate person the amounts required by Section 11.4 hereof; and (ii) giving the Issuer notice in writing of such termination.

Section 11.2 Option to Purchase the Equipment. Subject to compliance with Section 11.3, the Company shall have, and is hereby granted, the option to purchase all or any portion of the Equipment; provided that if all of the Additional Rental Payments under Section 5.2(b) have not been paid in full, the Company shall also pay so much thereof as the Issuer may require, in writing. The purchase price payable by the Company in the event of its purchase pursuant to this Section shall be a sum equal to One Hundred Dollars (\$100).

Section 11.3 Conveyance on Exercise of Option to Purchase the Equipment. At the closing of any purchase pursuant to this Lease, the Issuer shall upon receipt of the purchase price deliver to the Company the following: documents (including, without limitation, a quitclaim bill of sale) conveying to the Company good and marketable title to the Equipment as it then exists, subject to the following: (i) those Liens (if any) to which title to said Property was subject when conveyed to the Issuer; (ii) those Liens created by the Company or to the creation or suffering of which the Company consented; (iii) those Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease; (iv) Permitted Encumbrances; and (v) any Lien other than a Lien resulting from the action or inaction of the Issuer.

Section 11.4 Payments Upon, and Conditions For, Early Termination. Termination by the Company of this Lease pursuant to Section 11.1 hereof or the purchase of the Equipment pursuant to Section 11.2 hereof shall not be effective until the Company shall have made the following payments:

(a) To the Issuer, an amount certified by the Issuer sufficient to pay all unpaid fees and expenses (including reasonable attorneys' fees) of the Issuer due and payable under Section 4.2 and Section 5.2(b) hereof; and

(b) To the appropriate person, an amount sufficient to pay all other fees, expenses, or charges, if any, due and payable or to become due and payable under this Lease and not otherwise paid or provided for.

Section 11.5 Continuation of Certain Provisions. Upon termination of this Lease, the liabilities of the Company under such Lease shall terminate, except that its liabilities and obligations under Section 8.2 and Section 8.3 of this Lease, and as otherwise herein expressly provided, shall nevertheless survive.

ARTICLE XII MISCELLANEOUS

Section 12.1 Certificates and Opinions. Any certificate or opinion made or given by an officer or director of the Issuer may be based (whether or not expressly so stated), insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer or director knows that the certificate or representations with respect to the matter upon which his or her certificate or opinion may be based are erroneous; and any certificate or opinion made or given by counsel may be based (insofar as it relates to factual matters, information with respect to which is in the possession of the Issuer) upon the certificate or opinion of, or representation by, an officer or director of the Issuer, unless such counsel knows that the certificate or representations with respect to the matters upon which his or her certificate or opinion may be based as aforesaid are erroneous.

Section 12.2 Limited Liability of the Issuer. No recourse shall be had against the Issuer for the payment or performance, or failure of performance by Issuer, of any obligations, warranties, covenants, terms, conditions or other agreements contained in this Lease, or in any other documents whatsoever, except to the extent of the Issuer's interest in the Project, it being understood that the Company and all other persons shall look solely to the Issuer's interest in the Equipment and this Lease, including any proceeds or awards related thereto, for satisfaction of any and all liabilities and obligations incurred hereunder. No recourse under or upon any obligation, covenant, agreement or certification contained in this Lease, or in any other document whatsoever, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Lease, or any other document, shall be had against any incorporator, member, director or officer, as such, past, present or future, of the Issuer, either directly or through the Issuer or any receiver thereof, or for the payment of any other sum or for the performance of any obligation under this Lease or any other document or certification; provided, however, that the foregoing shall not apply to the negligence or wanton or willful misconduct of the Issuer, its directors, officers, members, agents, consultants and employees.

Section 12.3 Notices. All notices, consents, approvals, deliveries and other communications hereunder shall be properly given only if made in writing and sent by hand

delivery, U.S. Certified Mail, Return Receipt Requested, or nationally recognized overnight delivery service (such as Federal Express or UPS), with all delivery charges paid by the sender and addressed as follows:

To the Issuer: The Industrial Development Board of the City of White House, Tennessee
White House City Hall
105 College Street
White House, TN 37188
Attn: President

With a copy to: Valerie Webb, Esq.
Webb Sanders PLLC
2784 Highway 31W
White House, TN 37188

To the Company: Kroger Limited Partnership I
1014 Vine St
Cincinnati, OH 45202
Attn: Rita L. Williams, Economic Development Director
7th Floor/Tax Department

With a copy to: Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201
Attn: Jeff Oldham

Section 12.4 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Issuer, the Company and the respective heirs, executors, successors, administrators, and assigns of the foregoing.

Section 12.5 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.6 Limitation of Rights. Except as otherwise expressly provided herein, nothing in this Lease, express or implied, shall be construed to confer upon any person, other than the Issuer and the Company, any right, remedy or claim, legal or equitable, under or by reason of this Lease or any provisions hereof.

Section 12.7 Execution of Counterparts. This Lease may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 12.8 Applicable Law. This Lease has been executed and delivered in the State of Tennessee. The Parties intend that this Lease shall be construed and governed exclusively by the applicable laws of the State of Tennessee and the United States of America.

Section 12.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease have been prepared for convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provision of this Lease.

Section 12.10 No Liability of the City or the County. Neither the City nor the County shall, in any event, be liable for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever herein contained by or of the Issuer and neither the Issuer's agreements or obligations herein or otherwise shall be construed to constitute an indebtedness of the City or the County within the meaning of any constitutional or statutory provision whatsoever.

Section 12.11 Net Lease. This Lease shall be deemed and construed to be a fully "net lease," and the Company shall pay absolutely net during the Term the rent and all other payments required hereunder, free of any deductions, and without abatement, deduction or setoff, other than those herein expressly provided.

Section 12.12 Not Partners. Nothing contained herein or in any other document shall be deemed to render the Issuer or the Company partners or venturers for any purpose.

Section 12.13 Conflicting Provisions. In the event of a conflict between the provisions of this Lease and the Facility Lease, the provisions hereof shall prevail as to matters related to the Equipment, and the provisions of the Facility Lease shall prevail as to matters related to the Facility.

Section 12.14 Entire Agreement. This Lease, the Facility Lease, the Tax Agreement and the other written agreements signed by the Issuer and/or the Company of even date herewith related to the transactions contemplated herein constitute the final, complete and entire understanding of such parties and supersede all prior agreements and negotiations with respect to the matters herein or therein contained. Except as may be otherwise expressly provided herein, this Lease may not be amended except by a written instrument signed by the Parties.

Section 12.15 Schedules/Exhibits. All schedules and exhibits referenced in this Lease are attached hereto and incorporated herein by reference.

Section 12.16 Business Days. If any date specified in this Lease for the performance of an obligation, the giving of a notice or the expiration of a time period falls on a day other than a business day, then this Lease shall be automatically revised so that such date falls on the next occurring business day.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Issuer has caused this Lease to be executed in its corporate name and on its behalf by its authorized officer, and the Company has caused this Lease to be executed in its name and on its behalf by its authorized officer, all as of the date first above written.

ISSUER:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF WHITE HOUSE,
TENNESSEE**

By: Tim Murphy
Tim Murphy, President

COMPANY:

KROGER LIMITED PARTNERSHIP I

By: KRGP Inc., General Partner

By: _____
Joseph W. Bradley, Vice President

IN WITNESS WHEREOF, the Issuer has caused this Lease to be executed in its corporate name and on its behalf by its authorized officer, and the Company has caused this Lease to be executed in its name and on its behalf by its authorized officer, all as of the date first above written.

ISSUER:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF WHITE HOUSE,
TENNESSEE**

By: _____
Tim Murphy, President

COMPANY:

KROGER LIMITED PARTNERSHIP I

By: KRGP Inc., General Partner

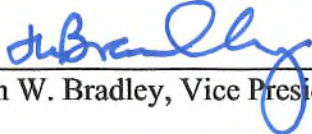
By:  _____
Joseph W. Bradley, Vice President

EXHIBIT A

PROPERTY DESCRIPTION

PARCEL 1

Lot 1 on the Final Plat of Kroger Property of record in Plat Book 15, page 6, Register's Office for Robertson County, Tennessee.

Being the same property conveyed by deed of record in Book 1664, page 792, said Register's Office.

PARCEL 2

Lot 2 on the Final Plat of Kroger Property of record in Plat Book 15, page 6, Register's Office for Robertson County, Tennessee.

Being part of the same property conveyed by deed of record in Book 692, page 851, said Register's Office.

PARCEL 3

BEGINNING at a point in the northerly right-of-way of Highway 76, corner to City of White House property; thence with said right-of-way line running 30 feet from and parallel to the center-line of said Highway West 755 feet; thence N. 8° 39 min. E. 1,706.13 feet to a point in the line of said City property; thence with said property line for 4 calls as follows: S. 89° E. 350 feet; S. 12° W. 907.5 feet; S. 87° E 297 feet; and S. 3° E 778.5 feet, to the beginning, containing 18.84 acres.

INCLUDED IN THE ABOVE LEGAL DESCRIPTION BUT EXPRESSLY EXCLUDED FROM THIS CONVEYANCE is that property more particularly described in conveyances of record in Record Book 551, Page 325; Record Book 692, Page 851; and Record Book 1060, Page 316, Register's Office for Robertson County, Tennessee.

BEING FURTHER DESCRIBED AS:

LAND IN THE 11TH CIVIL DISTRICT OF ROBERTSON COUNTY, TENNESSEE, DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2" IRON PIN FOUND IN THE EAST RIGHT OF WAY LINE OF BYRUM DRIVE (60' R/W), SAID IRON PIN BEING THE NORTHWEST CORNER OF LOT 4 BYRUM PROPERTY, SECTION TWO, RECORDED IN PLAT BOOK 18, PAGE 23; THENCE WITH THE RIGHT OF WAY LINE OF SAID BYRUM NORTH 07 DEGREES 00 MINUTES 27 SECONDS EAST A DISTANCE OF 503.41 FEET TO A 1/2" IRON PIN FOUND; THENCE LEAVING SAID RIGHT OF WAY LINE WITH THE SOUTH LINE OF THE BYRUM FAMILY PARTNERS PROPERTY, RECORDED IN BOOK 1537, PAGE 745 SOUTH 74 DEGREES 08 MINUTES 20 SECONDS EAST A DISTANCE OF 176.86 FEET TO A 5/8" IRON PIN FOUND; THENCE WITH THE SOUTH LINE OF THE BOARD OF EDUCATION PROPERTY, RECORDED IN BOOK 1557, PAGE 645 SOUTH 80 DEGREES 41 MINUTES 13 SECONDS EAST A DISTANCE OF 297.03 FEET TO A NAIL IN ROCK FOUND; THENCE WITH THE WEST LINT OF THE CITY OF WHITE HOUSE PROPERTY, RECORDED IN BOOK 341, PAGE 365 SOUTH 07 DEGREES 00 MINUTES 04 SECONDS WEST A DISTANCE OF 752.21 FEET TO A 1/2" IRON PIN SET IN THE NORTH RIGHT OF WAY LINE OF STATE ROUTE 76; THENCE WITH THE NORTH RIGHT OF WAY LINE OF SAID STATE ROUTE 76, AS FOLLOWS: NORTH 79 DEGREES 56 MINUTES 59 SECONDS WEST A DISTANCE OF 140.56 FEET TO A 4X4 CONCRETE MONUMENT FOUND; THENCE NORTH 85 DEGREES 15 MINUTES 16 SECONDS WEST A DISTANCE OF 80.59 FEET TO A 1/2" IRON PIN FOUND AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE LEAVING SAID RIGHT OF WAY LINE WITH SAID LOT 4, AS FOLLOWS: NORTH 07 DEGREES 00 MINUTES 58 SECONDS EAST A DISTANCE OF 293.95 FEET TO A 1/2" IRON PIN FOUND; THENCE NORTH 85 DEGREES 20 MINUTES 42 SECONDS WEST A DISTANCE OF 251.00 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 286,464 SQUARE FEET, 6.576 ACRES, MORE OR LESS.

Being the same property conveyed by deed of record in Book 1661, page 137, said Register's Office.

EXHIBIT B

BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **KROGER LIMITED PARTNERSHIP I**, an Ohio limited partnership (the "Company"), by these presents hereby TRANSFERS, CONVEYS, BARGAINS AND SELLS all of its right, title and interest in and to the personal property and equipment set forth on **Schedule 1**, attached hereto and incorporated herein by this reference (the "Equipment"), to **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF WHITE HOUSE, TENNESSEE** (the "Issuer"). The Equipment is sold to the Issuer on an AS-IS, WHERE-IS basis.

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the ____ day of _____, 20__.

COMPANY:

Kroger Limited Partnership I

By: KRGP Inc., General Partner

By: _____
Joseph W. Bradley, Vice President

15994047.5

Connie Stroud, Register
 Robertson County Tennessee
 Rec #: 311557 Instrument #: 375448
 Rec'd: 20.00 Recorded
 State: 0.00 1/15/2021 at 12:16 PM
 Clerk: 0.00 in Record Book
 Other: 2.00 2033
 Total: 22.00 PGS 59-62

THIS INSTRUMENT PREPARED BY:
 BASS, BERRY & SIMS PLC (JAO)
 150 Third Avenue South, Suite 2800
 Nashville, Tennessee 37201

Address New Owner(s)	Send Tax Bills To:	Map-Parcel Number(s)
The Industrial Development Board of the City of White House, Tennessee 105 College Street White House, Tennessee 37188	Exempt	106E A 027.00 106E A 028.00 107 001.00

QUITCLAIM DEED

THIS INDENTURE, made this 31st day of December, 2020, between:

KROGER LIMITED PARTNERSHIP I, an Ohio limited partnership.

First Party, and

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF WHITE HOUSE, TENNESSEE, a public nonprofit corporation organized under the laws of the State of Tennessee.

Second Party,

WITNESSETH: that said First Party, for and in consideration of the sum of ONE DOLLAR (\$1.00) cash and other good and valuable considerations in hand paid by Second Party, the receipt and sufficiency of which is hereby acknowledged, has quitclaimed and does hereby quitclaim unto the said Second Party the following described premises:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A AND MADE A PART HEREOF.

THIS CONVEYANCE is made subject to applicable easements, restrictions and building set back lines of record.

TOGETHER with all the estate, right, title and interest of the First Party therein, with the hereditaments and appurtenances thereto appertaining releasing all claims therein.

In this instrument in every case the plural shall include the singular and vice-versa and each gender the others.

[signature page follows]

IN WITNESS WHEREOF, this instrument has been executed on behalf of First Party by its duly authorized officer on the day and year first above written.

KROGER LIMITED PARTNERSHIP I

By: KRGP Inc., General Partner

By: *Joseph W. Bradley*
Joseph W. Bradley, Vice President

STATE OF OHIO

COUNTY OF HAMILTON

Personally appeared before me, Deborah Moore, Notary Public, Joseph W. Bradley, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the foregoing instrument for the purposes therein contained and who further acknowledged that he is the Vice President of KRGP Inc., General Partner of Kroger Limited Partnership I, a corporation organized and existing under the laws of the State of Ohio, the within named bargainer, and that he is authorized to execute this instrument on behalf of said limited partnership.

WITNES my hand, at office, this 3 day of December, 2020.



DEBORAH MOORE
Notary Public, State of Ohio
My Commission Expires
April 24, 2024

Deborah Moore
Notary Public
4/24/24
My Commission Expires

Name and address of property owner:

The Industrial Development Board of the
City of White House, Tennessee
105 College Street
White House, Tennessee 37188

who is responsible for payment of taxes.

I hereby swear or affirm that the actual consideration for this transfer is \$1.00.

Subscribed and sworn to before me, this 21st day of December 2020.



Cynthia A. Hurley
Affiant
Cynthia A. Hurley
Notary Public

My Commission Expires:
3-4-2023

EXHIBIT A

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Lot 1 on the Final Plat of Kroger Property of record in Plat Book 15, page 6, Register's Office for Robertson County, Tennessee.

Being the same property conveyed by deed of record in Book 1664, page 792, said Register's Office.

PARCEL 2

Lot 2 on the Final Plat of Kroger Property of record in Plat Book 15, page 6, Register's Office for Robertson County, Tennessee.

Being part of the same property conveyed by deed of record in Book 692, page 851, said Register's Office.

PARCEL 3

BEGINNING at a point in the northerly right-of-way of Highway 76, corner to City of White House property; thence with said right-of-way line running 30 feet from and parallel to the center-line of said Highway West 755 feet; thence N. 8° 39 min. E. 1,706.13 feet to a point in the line of said City property; thence with said property line for 4 calls as follows: S. 89° E. 350 feet; S. 12° W. 907.5 feet; S. 87° E. 297 feet; and S. 3° E. 778.5 feet, to the beginning, containing 18.84 acres.

INCLUDED IN THE ABOVE LEGAL DESCRIPTION BUT EXPRESSLY EXCLUDED FROM THIS CONVEYANCE is that property more particularly described in conveyances of record in Record Book 551, Page 325; Record Book 692, Page 851; and Record Book 1060, Page 316, Register's Office for Robertson County, Tennessee.

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Being the same property conveyed by deed of record in Book 1661, page 137, said Register's Office.

28094419.2

Connie Stroud, Register
Robertson County Tennessee
Rec #: 311557 Instrument #: 375449
Rec'd: 25.00 Recorded
State: 0.00 1/15/2021 at 12:16 PM
Clerk: 0.00 in Record Book
Other: 2.00 2033
Total: 27.00 PGS 63-67

This Instrument Prepared by:
Bass, Berry & Sims PLC (JAO)
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201

MEMORANDUM OF FACILITY LEASE

THIS MEMORANDUM OF FACILITY LEASE is made and entered into as of December 31, 2020, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF WHITE HOUSE, TENNESSEE**, a public, nonprofit corporation organized and existing under the laws of the State of Tennessee ("Landlord"), and **KROGER LIMITED PARTNERSHIP I**, an Ohio limited partnership ("Tenant").

WITNESSETH:

Landlord, for and in consideration of the rents to be paid and of the other covenants and agreements to be kept and performed by Tenant, does hereby lease to Tenant, and Tenant does hereby take and hire from Landlord, all that certain piece or parcel of land, together with all appurtenances thereto, situated, lying and being in the City of White House, Robertson County, Tennessee, being more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Demised Premises").

TO HAVE AND TO HOLD the same subject to all the provisions and conditions contained in that certain Facility Lease Agreement, dated as of the date hereof, by and between Landlord and Tenant (as amended or supplemented from time to time, the "Lease"), which Lease is incorporated herein by this reference.

1. The rate of rental and all terms of Tenant's occupancy of the Demised Premises are set forth in the Lease.
2. The term of the Lease shall commence on the date hereof and shall terminate December 31, 2029, unless extended or earlier terminated pursuant to the provisions of the Lease.
3. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other liens for such labor or materials shall attach to or affect the estate or interest of Landlord in and to the Demised Premises. Landlord's interest in the Demised Premises shall not be subject to any mechanic's or other liens, on account of such labor or materials.
4. The sole purpose of this instrument is to give notice of the Lease and all of its terms, covenants and conditions to the same extent as if the same were fully set forth herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and date first above written.

LANDLORD:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF WHITE HOUSE,
TENNESSEE**

By: Tim Murphy
Tim Murphy, President

STATE OF TENNESSEE

COUNTY OF ROBERTSON

Personally appeared before me, Valerie M Webb, Notary Public, Tim Murphy, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the foregoing instrument for the purposes therein contained and who further acknowledged that he is President of THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF WHITE HOUSE, TENNESSEE, a public, nonprofit corporation organized and existing under the laws of the State of Tennessee, the within named bargainer, and that he is authorized to execute this instrument on behalf of said corporation.

WITNESS my hand, at office, this 18th day of December, 2020.

Val M Webb
Notary Public

5/25/22
My Commission Expires



TENANT:

KROGER LIMITED PARTNERSHIP I

By: KRGP Inc., General Partner

By: *JB Bradley*
Joseph W. Bradley, Vice President

STATE OF OHIO

COUNTY OF HAMILTON

Personally appeared before me, *Deborah Moore*, Notary Public, Joseph W. Bradley, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the foregoing instrument for the purposes therein contained and who further acknowledged that he is the Vice President of KRGP Inc., General Partner of Kroger Limited Partnership I, a corporation organized and existing under the laws of the State of Ohio, the within named bargainor, and that he is authorized to execute this instrument on behalf of said limited partnership.

WITNESS my hand, at office, this 3 day of December, 2020.



DEBORAH MOORE
Notary Public, State of Ohio
My Commission Expires
April 24, 2024

Deborah Moore
Notary Public

4/24/24
My Commission Expires

EXHIBIT A

PROPERTY DESCRIPTION

PARCEL 1

Lot 1 on the Final Plat of Kroger Property of record in Plat Book 15, page 6, Register's Office for Robertson County, Tennessee.

PARCEL 2

Lot 2 on the Final Plat of Kroger Property of record in Plat Book 15, page 6, Register's Office for Robertson County, Tennessee.

PARCEL 3

BEGINNING at a point in the northerly right-of-way of Highway 76, corner to City of White House property; thence with said right-of-way line running 30 feet from and parallel to the center-line of said Highway West 755 feet; thence N. 8° 39 min. E. 1,706.13 feet to a point in the line of said City property; thence with said property line for 4 calls as follows: S. 89° E. 350 feet; S. 12° W. 907.5 feet; S. 87° E 297 feet; and S. 3° E 778.5 feet, to the beginning, containing 18.84 acres.

INCLUDED IN THE ABOVE LEGAL DESCRIPTION BUT EXPRESSLY EXCLUDED FROM THIS CONVEYANCE is that property more particularly described in conveyances of record in Record Book 551, Page 325; Record Book 692, Page 851; and Record Book 1060, Page 316, Register's Office for Robertson County, Tennessee.

BEING FURTHER DESCRIBED AS:

LAND IN THE 11TH CIVIL DISTRICT OF ROBERTSON COUNTY, TENNESSEE, DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2" IRON PIN FOUND IN THE EAST RIGHT OF WAY LINE OF BYRUM DRIVE (60' R/W), SAID IRON PIN BEING THE NORTHWEST CORNER OF LOT 4 BYRUM PROPERTY, SECTION TWO, RECORDED IN PLAT BOOK 18, PAGE 23; THENCE WITH THE RIGHT OF WAY LINE OF SAID BYRUM NORTH 07 DEGREES 00 MINUTES 27 SECONDS EAST A DISTANCE OF 503.41 FEET TO A 1/2" IRON PIN FOUND; THENCE LEAVING SAID RIGHT OF WAY LINE WITH THE SOUTH LINE OF THE BYRUM FAMILY PARTNERS PROPERTY, RECORDED IN BOOK 1537, PAGE 745 SOUTH 74 DEGREES 08 MINUTES 20 SECONDS EAST A DISTANCE OF 176.86 FEET TO A 5/8" IRON PIN FOUND; THENCE WITH THE SOUTH LINE OF THE BOARD OF EDUCATION PROPERTY, RECORDED IN BOOK 1557, PAGE 645 SOUTH 80 DEGREES 41 MINUTES 13 SECONDS EAST A DISTANCE OF 297.03 FEET TO A NAIL IN ROCK FOUND; THENCE WITH THE WEST LINE OF THE CITY OF WHITE HOUSE PROPERTY, RECORDED IN BOOK 341, PAGE 365 SOUTH 07 DEGREES 00 MINUTES 04 SECONDS WEST A DISTANCE OF 752.21 FEET TO A 1/2" IRON PIN SET IN THE NORTH RIGHT OF WAY LINE OF STATE ROUTE 76; THENCE WITH THE NORTH RIGHT OF WAY LINE OF SAID STATE ROUTE 76, AS FOLLOWS: NORTH 79 DEGREES 56 MINUTES 59 SECONDS WEST A DISTANCE OF 140.56 FEET TO A 4X4 CONCRETE MONUMENT FOUND; THENCE NORTH 85 DEGREES 15 MINUTES 18 SECONDS WEST A DISTANCE OF 80.58 FEET TO A 1/2" IRON PIN FOUND AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE LEAVING SAID RIGHT OF WAY LINE WITH SAID LOT 4, AS FOLLOWS: NORTH 07 DEGREES 00 MINUTES 58 SECONDS EAST A DISTANCE OF 293.95 FEET TO A 1/2" IRON PIN FOUND; THENCE NORTH 85 DEGREES 20 MINUTES 42 SECONDS WEST A DISTANCE OF 251.00 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 288,464 SQUARE FEET, 6.576 ACRES, MORE OR LESS.

Being the same property conveyed to THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF WHITE HOUSE, TENNESSEE by Quitclaim Deed dated December 31, 2020 from KROGER LIMITED PARTNERSHIP I, of record in Record Book 2033, page 59, in the Register's Office for Robertson County, Tennessee.

RESOLUTION
OF THE BOARD OF DIRECTORS OF
THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF WHITE HOUSE, TENNESSEE

WHEREAS, the Board of Directors of The Industrial Development Board of the City of White House, Tennessee (the "Board") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 53, Title 7 of the Tennessee Code Annotated, as amended (the "Act"), and has met pursuant to proper notice; and

WHEREAS, in order to encourage Kroger Limited Partnership I, an Ohio limited partnership ("Kroger") to acquire, improve and equip property necessary for the expansion of its retail grocery store located at 510 State Route 76 in White House, Tennessee, (collectively, the "Project"), the Corporation will acquire and equip the Project and will lease the Project to Kroger; and

WHEREAS, proposed forms of the following documents (the "PILOT Documents") have been presented at this meeting:

1. Facility Lease Agreement between the Corporation and Kroger;
2. Equipment Lease Agreement between the Corporation and Kroger;
3. Tax Agreement;

and

WHEREAS, the Board of Mayor and Aldermen of the City of White House has delegated to the Corporation the authority to negotiate and accept payments in lieu of ad valorem taxes from Kroger with respect to the Project; and

WHEREAS, it appears that the PILOT Documents referred to above which are now before this meeting are in appropriate form and are appropriate instruments to be executed and delivered by this Corporation for the purposes intended; and

NOW, THEREFORE, Be, and it is Hereby, Resolved by the Board of Directors of The Industrial Development Board of the City of White House, Tennessee, as follows:

RESOLVED, that the acquisition and ownership of the Project will promote industry, trade, and commerce in the State of Tennessee and will increase the availability of employment in the City of White House, Tennessee.

RESOLVED, That the forms, terms and provisions of the PILOT Documents which are before this meeting be and they are hereby approved and the Chairman, or Vice Chairman, and the Secretary, or Assistant Secretary, of the Corporation be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the PILOT Documents in the name and on behalf of the Corporation; that the PILOT Documents are to be in substantially the forms


now before this meeting and hereby approved, or with such changes therein as shall be approved by the officers of the Corporation executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein; and that from and after the execution and delivery of the PILOT Documents, the officers of the Corporation are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the PILOT Documents as executed; and, further

RESOLVED, That all acts and doings of the officers of the Corporation which are in conformity with the purpose and intent of this resolution shall be and the same hereby are in all respects, approved and confirmed.

CERTIFICATE

I hereby certify that the foregoing resolution was duly adopted by the Board of Directors of The Industrial Development Board of the City of White House, Tennessee on November 10, 2020.

THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF WHITE HOUSE, TENNESSEE



Chairman

16437562.1

1700 Riverview Tower
900 S. Gay Street
Knoxville, TN 37902
(865) 521-6200

February 4, 2021

William A. Vogle, County Mayor
Robertson County, Tennessee
501 Main Street Room 108
Springfield, TN 37172

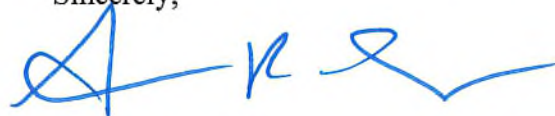
Michael Arnold, Mayor
White House, Tennessee
105 College Street
White House, TN 37188

Arlene Hailey
Via Electronic Mail
Comptroller of the Treasury
State of Tennessee
Division of Property Assessments

Ladies and Gentlemen:

Pursuant to Section 4-17-303 of Tennessee Code Annotated and on behalf of The Industrial Development Board of the City of White House, Tennessee, enclosed to each of you is a copy of (i) the Facility Lease Agreement dated as of December 31, 2020, (ii) the Equipment Lease Agreement dated as of December 31, 2020 (collectively, the "Leases"), and (iii) the Tax Agreement dated as of December 31, 2020 (the "Agreement"), between The Industrial Development Board of the City of White House, Tennessee, and Kroger Limited Partnership I. The Leases and the Agreement represent an "economic development agreement" within the meaning of Section 4-17-302 of the Act. I would refer you to Section 2 of the Agreement for provisions regarding taxes, and governmental and other charges. Please call if you have any questions.

Sincerely,



Alexandra R. Samber

cc: Valerie M. Webb, via e-mail

29638331.1