

AMENDED ORDINANCE NO. 2022-11

INTRODUCED BY MAYOR AND COUNCIL AS A WHOLE

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PROJECT DEVELOPMENT AGREEMENT WITH KROGER FULFILLMENT NETWORK, INC. AND THE KROGER CO. (HEREINAFTER "THE COMPANY") AND DECLARING AN EMERGENCY.

WHEREAS, the Village of Oakwood (hereinafter "Oakwood") and The Company deem it advantageous to each of them to develop property located the intersection of Alexander Road and Macedonia Road in the Village as more fully described in the Project Development Agreement (hereinafter "Agreement") attached hereto and incorporated herein as Exhibit "A"; and,

WHEREAS, Oakwood and the Company have agreed in principle to the terms of said Agreement;

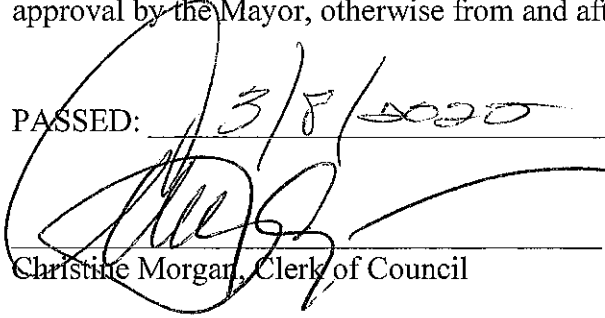
NOW THEREFORE, BE IT RESOLVED by the Council of the Village of Oakwood, County of Cuyahoga, and State of Ohio that:

SECTION 1. The Mayor be and is hereby authorized to enter into the Agreement substantially in the form attached hereto and expressly made a part hereof by reference and marked Exhibit "A".

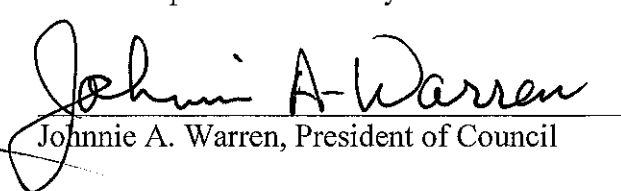
SECTION 2. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Village, the reason for the emergency being that the Agreement permits the Village to take advantage of time-sensitive development opportunities for the economic well-being of the Village and its residents which opportunities are imperiled by undue delay and, therefore, provided it receives two-thirds ($\frac{2}{3}$) of the vote of all members of Council elected thereto, said Ordinance shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise from and after the earliest period allowed by law.

PASSED:

3/8/2020



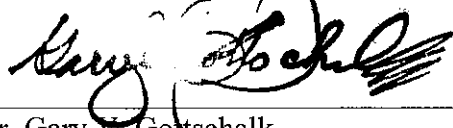
Christine Morgan, Clerk of Council



Johnnie A. Warren, President of Council

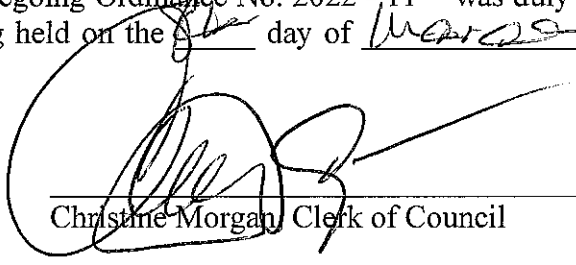
Presented to the Mayor 3/8/2020

Approved: 3/9/2020



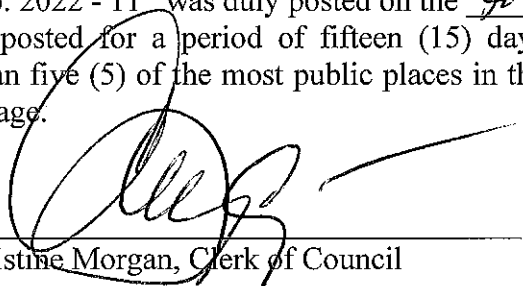
Mayor, Gary V. Gottschalk

I, Christine Morgan, Clerk of Council of the Village of Oakwood, County of Cuyahoga and State of Ohio, do hereby certify that the foregoing Ordinance No. 2022 - 11 was duly and regularly passed by this Council at the meeting held on the 8th day of March, 2022.


Christine Morgan, Clerk of Council

POSTING CERTIFICATE

I, Christine Morgan, Clerk of Council of the Village of Oakwood, County of Cuyahoga and State of Ohio, do hereby certify that Ordinance No. 2022 - 11 was duly posted on the 9th day of March, 2022, and will remain posted for a period of fifteen (15) days thereafter in the Council Chambers and in not less than five (5) of the most public places in the municipality as determined by the Council of said Village.


Christine Morgan, Clerk of Council

DATED: 3/9/2020

Exhibit "A"

PROJECT DEVELOPMENT AGREEMENT

by and between

THE VILLAGE OF OAKWOOD, OHIO

And

KROGER FULFILLMENT NETWORK LLC,

An Ohio limited liability company

And

THE KROGER CO.,
an Ohio corporation

together with Kroger Fulfillment Network LLC, as the Company

Dated

as of

the Effective Date (as hereinafter defined)

PROJECT DEVELOPMENT AGREEMENT
Village of Oakwood — The Kroger Co. Project

THIS PROJECT DEVELOPMENT AGREEMENT (this “Agreement”) is made effective and entered into on this ___ day of _____, 2022 by and between THE VILLAGE OF OAKWOOD, OHIO (the “Village”), a political subdivision organized and existing under the laws of the State of Ohio, Kroger Fulfillment Network LLC, an Ohio limited liability company (“KFN”), and THE KROGER CO., an Ohio corporation, or its affiliates, designees or assigns (collectively with KFN, the “Company”).

RECITALS

A. The Company acquired or intends to acquire approximately 28.3 acres of real property located and situated in the Village, as depicted as Parcel H on Exhibit A attached hereto and incorporated herein (“Project Site”).

B. The Company intends to improve the Project Site by constructing or causing to be constructed a commercial project, consisting of an approximately 270,000 square foot fulfillment center (the “Building”) and, in its sole discretion, other ancillary commercial real estate components consistent with the applicable zoning code, along with related landscaping and improvements (the “Private Improvements”). The improvement of the Project Site with the Private Improvements is referred to herein as the “Development”. In no event shall the Private Improvements be deemed to include any portion of the Public Improvements (hereinafter defined) or include improvements in various public rights-of-way located within the Project Site.

C. Certain public infrastructure improvements are required in order for Company to proceed with the development of the Project Site, which include grading, a public road, utilities, and other infrastructure as further described in more detail on Exhibit B attached hereto (collectively, the “Public Improvements”). The Public Improvements include certain improvements to certain portions of the Project Site.

D. The Village has determined that the construction of the Public Improvements to support and enable the Development of the Project Site, and the fulfillment generally of this Agreement and the Development of the Project Site, are in the best interests of the Village and necessary for economic development purposes and the health, safety and welfare of its residents, and are necessary for the purpose of enhancing the availability of adequate commercial space, parking, creating jobs and employment opportunities, and improving the economic welfare of the people of the Village.

E. The Village (i) has created a “Community Reinvestment Area” or “CRA” pursuant to R.C. 3735.65 et. Seq., known as Oakwood Community Reinvestment Area No. 1, which encompasses the Project Site and which has been determined to be in the best interests of the Village and necessary for economic development purposes, and the health, safety and welfare of its residents, and (ii) will enter into a CRA agreement with Company to provide each new structure on the Project Site with a 15-year CRA exemption applicable to 75% of the assessed value of the structure.

F. The Village Council (the "Council") will adopt a new ordinance establishing a tax increment financing ("TIF") area pursuant to Ohio Revised Code Sections 5709.41 et. Seq. (the "TIF Ordinance") to exempt from real property taxation the incremental increase in assessed value of the Project Site and providing: (1) that the development of the Project Site is a public purpose necessary for the economic development of the Project Site; (2) for the payment of service payments in lieu of taxes (the "Service Payments") by the owner of the Project Site and any successors in interest to any portion of the Project Site (collectively, the "Owners"), as obligations running with the land, with respect to "Improvements" (as defined in Ohio Revised Code Section 5709.41 and the TIF Ordinance) to the parcels of real property comprising the Project Site; and (3) for the use of the Service Payments to pay for a portion of the costs of developing the Project Site.

In consideration of the foregoing Recitals and as an inducement to and in consideration of the conditions and covenants contained in this Agreement, the parties agree as follows:

Article I

Development of the Project Site

Section 1.01 Private Improvements. The Company is considering constructing or causing to be constructed on the Project Site the Building. In addition, Company may construct or cause the construction of additional buildings as part of the Development, to the extent deemed economically viable by Company and determined by the Village to be in compliance with the Village codes, rules and regulations. If the Company elects to proceed with the Project, the Company shall be responsible for and undertake the construction and landscaping of additional mounding in the areas described in Exhibit C, which mounding shall be consistent in size and shape with existing mounding on the Project Site. The Company agrees that it will not utilize Macedonia Road to access the site at any time. The Company acknowledges that economic development incentives will not be available through the Village for any expansion to the north side of the Project Site.

Section 1.02 Job Creation. As described in Section 2.01, the Company will endeavor to create approximately Eighteen Million Dollars (\$18,000,000) per year in annual payroll in the Village within three years after the Development is completed. The Company commits to following non-discriminatory hiring practices acknowledging that no applicant may be denied employment on the basis of race, color, religion, sex, gender identity, national origin, ancestry, age, disability, creed, status as disabled or Vietnam-era veteran, or any other characteristic protected by applicable law. The Company further agrees to use good-faith efforts in giving hiring preferences to Oakwood Village residents provided that they are otherwise qualified for the position under consideration.

Section 1.03 Public Improvements. The parties acknowledge that the Public Improvements (identified in Exhibit B) on and adjacent to the Project Site are necessary for the Development and will directly benefit the Project Site and the surrounding area. The Village and Company shall each respectively cause the construction of and pay for the Public Improvements as described on Exhibit B and in Sections 1.03, 1.04 and 1.05. Provided that Company has secured the prior written consent of the Village, which shall not be unreasonably withheld, Company shall have the right to revise the Plans and Specifications relating to Public Improvements located on the Project Site from time to time subject to (x) compliance with the Village codes, rules and

regulations, and (y) the Village's reasonable determination that the Public Improvements as so revised directly benefit the Project Site and the surrounding area and are consistent with the TIF Ordinance, and this Agreement shall be automatically and without further action of the Village and the Company deemed amended so as to reflect the revisions provided in the permits and plats so approved. If the Company determines in its sole discretion not to proceed with the Project, it will not be required to undertake and complete any Public Improvement it is responsible for under this Agreement, including those described in Exhibit B. The Company is under no obligation to undertake the Project; provided, however, if construction of the Project does not commence by December 31, 2024, the Company shall forfeit its rights to the economic development incentives contained in Article II of this Agreement, including the CRA Exemption and TIF Exemption (both as defined below), unless otherwise agreed to in writing by the Village. Further, the Company shall make a good faith effort to market the Project Site for sale and the Village shall cooperate with and support such marketing efforts. The Company acknowledges that any revisions to Public Improvements which are not located on the Project Site (the "Off-Site Improvements") are subject to the reasonable approval of the Council, and such approval by the Council shall automatically and without further action of the Village and the Company be deemed to amend this Agreement so as to reflect the revisions approved by the Council.

The Village agrees that, in connection with any Off-Site Improvements, it shall undertake such action as may be necessary or desirable to obtain title to such real property as is necessary for the construction of the Off-Site Improvements, with such acquisition to be at the lowest cost, in light of the schedule for construction of such Off-Site Improvements, as reasonably determined by the Council. The Village agrees to consult with the Company in connection with such costs and to work cooperatively to control the cost of such acquisition.

Section 1.04 Costs of Improvements. The Company agrees that the cost for (a) the Private Improvements is currently estimated to be approximately ninety-eight million dollars (\$98,000,000), and (b) the Public Improvements is currently estimated to be approximately two million, one hundred thousand dollars (\$2,100,000), representing a total investment cost for the Development of approximately one hundred million, one hundred thousand dollars (\$100,100,000). The Village will use best efforts to apply for grants from the Ohio Department of Transportation, JobsOhio and other sources (i) as to the Roadway (as defined in Exhibit B), up to the sum of \$1,050,000 and (ii) covering the cost of the signalization (estimated to be \$125,000 to \$150,000), which grants are intended to partially pay for costs of the Public Improvements, provided that the Village shall have no responsibility to pay all or any portion of such Roadway or signalization costs if grants are not awarded. To the extent not covered by a grant(s), Company shall be responsible for payment of all remaining costs of the Roadway. The Village shall be responsible for the costs of signalization. The costs of the Private Improvements may be paid either directly by Company or through financing arranged by Company. It is anticipated that Company may obtain reimbursement for and/or payment of costs of the Private Improvements, to the extent eligible, through financing supported by assignment of the portion of the revenues in the Kroger Urban Redevelopment Tax Increment Equivalent Fund (KTIF) Fund (as defined in Section _ of the TIF Ordinance) which are otherwise payable to Company. Company shall have the right to pledge Company's share of the TIF revenues to pay for some or all of the Company's TIF-eligible costs.

Section 1.05 Construction. Construction of the Public Improvements shall be in accordance with the provisions of Exhibit B. Commencement of construction of the Public Improvements and the Private Improvements shall be subject to compliance with Legal Requirements (as hereinafter defined). The Company and the Village agree to work in good faith to amend the Project Schedule as necessary to account for delays occasioned by economic and other ramifications, complications and other hindrances constituting “force majeure”, including those arising due to the COVID-19 international pandemic.

Section 1.06 Compliance with Laws, Rules and Regulations. The Company and its respective officers, agents, employees and any other persons over whom the Company has control, shall comply with all applicable present and future laws and ordinances of the Village, Federal, State and other local governmental bodies, applicable to or affecting directly or indirectly (a) the Company or its operations and activities on or in connection with the construction and operation of the Development; and (b) which govern, control, or are required in connection with construction of the Private Improvements (collectively, the “Legal Requirements”).

Section 1.07 Insurance. In connection with the construction of the Private Improvements, the Company shall maintain or cause to be maintained insurance for protection from claims under workers’ compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages to property which may arise out of or result from operations and completed operations under this Agreement, whether such operations be by the Company, or by a subcontractor, agent, or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in this Agreement or required by law, whichever coverage is greater, and, as applicable, in a company or companies lawfully authorized to do business in the state of Ohio and having an AM Best rating of A+ or the equivalent. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 10 days’ prior written notice has been given to the Village. The Company shall cause the commercial liability coverage required by this Agreement to include the Village as an additional insured for claims caused in whole or in part by any of the Company’s acts or omissions, and/or any acts or omissions of any subcontractor, agent, or other person or entity directly or indirectly employed by any of them arising out of or relating to the construction of the Private Improvements.

The insurance required by this Agreement shall be written for not less than the following limits, or greater if required by law:

- (i) Workers’ Compensation limits shall be those required by statute.
- (ii) Commercial General Liability insurance including liability on this project and blanket coverage, which insures against bodily injury, personal and property damage claims arising from work conducted, services provided, and/or materials supplied by Company, or any of its subcontractors or agents with limits of at least One Million Dollars (\$1,000,000) combined single limit each occurrence; Two Million Dollars (\$2,000,000) general aggregate; and Two Million Dollars (\$2,000,000) products/completed operations aggregate.
- (iii) Employer’s Liability insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) for bodily injury.

(iv) Commercial/Business Automobile Liability insurance with minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence (bodily injury and property damage liability). Coverage shall be for liability arising out of the use or operation of owned, hired, leased, and non-owned vehicles.

(v) Umbrella liability coverage of Five Million Dollars (\$5,000,000) above the policies referred to in Items (ii), (iii) and (iv).

The liability insurance required by this Agreement shall: (1) provide that it is primary and non-contributory to any other insurance or self-insurance that the Village may have, (2) obligate Company to pay any deductible or self-insured retention associated with any claim that is made under the policy, including any claim that may be made by an additional insured, (3) contain waivers of subrogation against the Village, if available, and (4) provide that the insurer(s) has/have a duty to defend against potentially covered claims and that the payment of defense costs by the insurer(s) shall not reduce or deplete the limits of liability under the policy(ies). The Company shall deliver to the Village Certificates of Insurance acceptable to all parties evidencing the insurance coverage required by this Agreement.

The Company may satisfy some or all of the foregoing requirements through an agreement with any general contractor specifying that it shall procure insurance that satisfies some or all of the foregoing requirements.

Upon request, Company shall provide Village with access to a Web-based memorandum of insurance evidencing the type and amount of coverage set forth in this Section. Village acknowledges and agrees that Company shall have the right to self-insure as to all or any of the coverages required to be maintained by Company under this Section if Company's net worth during the period of self-insurance shall be at least Fifty Million Dollars (\$50,000,000.00). If Company elects to self-insure all or any part of any risk that would otherwise be covered under the policies and limits described in this Section, Company shall treat Village as an additional insured under such self-insurance. In this regard, a web-based memorandum of insurance made available to Village by Company evidencing such coverage and additional insured shall be acceptable to Village in lieu of any certificate of insurance.

Article II

CRA; Tax Increment Financing; Job Creation Tax Incentives; Village Support

Section 2.01. CRA; Tax Increment Financing. The Village has established the CRA and pursuant thereto, and subject to the approval of the Village Council and the Bedford City School District Board of Education, agrees to enter into a Community Reinvestment Area Agreement ("CRA Agreement") pursuant to Ohio Revised Code Section 3735.671, under which the Village shall provide each new structure on the Project Site with a CRA exemption applicable to 75% of the assessed value of the structure for a period of 15 years (the "CRA Exemption"). The CRA Exemption shall be granted separately for each structure that constitutes part of the Development. If the annual payroll at the Development, whether from the Company or otherwise, is less than \$18,000,000 for any calendar year beginning with the third (3rd) calendar year after the Development is completed, the Village may terminate the CRA Exemption if the Village requests a Shortfall Payment (defined below) from the Company in writing pursuant to the notice provisions in the CRA Agreement and the Company does not make the Shortfall Payment within ninety (90)

days after receipt of the written request. The Shortfall Payment shall be equal to the difference between \$450,000 and the amount of income tax revenue received by the Village for that calendar year from the Development. In addition, the Village and the Company agree, pursuant to R.C. Section 5709.41, to enter into a Tax Increment Financing Agreement pursuant to which the Development shall be granted, with respect to Improvements (as defined in R.C. Section 5709.41), a thirty (30) year, one hundred percent (100%), tax increment financing exemption from real property taxation, for a period commencing on a parcel-by-parcel basis for each parcel the earlier of (i) the first tax year for which there is an Improvement of at least \$100,000 for that parcel, or (ii) tax year 2026 and ending for each parcel on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the Village can no longer require service payments in lieu of taxes, all in accordance with the requirements of Ohio Revised Code Section 5709.41 and the TIF Ordinance (the "TIF Exemption"). After credit to the Company of any Excess TIF Revenue Credit (defined below), the Village shall receive one hundred percent (100%) of the net TIF revenues on an annual basis for years 1 through 15 of the TIF Exemption. In years 16 through 30 of the TIF Exemption, the Village agrees to provide fifty percent (50%) of the net TIF revenues (i.e., the total TIF revenues minus the Bedford City School District's share of TIF Revenues) to the Company on an annual basis. The Village and the Company intend for the CRA Exemption to take priority over the TIF Exemption. Pursuant to a TIF Agreement, the Village will reimburse the Company from the (KTIF) Fund for all TIF-eligible costs plus interest thereon. Interest on the unpaid portion of the TIF-eligible costs will accrue from the date on which the Village certifies to the Company the portion of the costs has been approved by the Village for reimbursement out of the KTIF Fund; provided, that if the Village shall fail to certify such approved portion of the costs within fifteen (15) days of its receipt of a request from the Company, interest shall accrue from the date which is fifteen (15) days following the Village's receipt of the request. Additionally, if at any time before the end of calendar year 2028, a second structure is completed to handle robotic research, development and/or manufacturing on a separate parcel, the Village will approve another 30-year, 100% non-school TIF exemption for that parcel. Additionally, the Village shall provide a 50% share of net TIF revenues to the Company on an annual basis for years 1 through 15 of that TIF exemption, plus any Excess TIF Revenue Credit. The "Excess TIF Revenue Credit" is the aggregate amount, if any, of net TIF revenues received by the Village from the incremental market value (aka "true value in money") of the Development above Twenty-Five Million Dollars (\$25,000,000) as finally determined by the Cuyahoga County Fiscal Officer, up to the aggregate amount, if any, of Shortfall Payments made by the Company. As an example for illustrative purposes only, if (i) the incremental market value of the Development exceeds \$25,000,000, resulting in \$30,000 of additional net TIF revenue, and (ii) one or more Shortfall Payments of \$20,000 in the aggregate have been made, then the Excess TIF Revenue Credit to the Company shall equal \$20,000.

Section 2.02. Additional Village Support. The Village will waive all tap-in permits and review fees related to any construction on the Project Site. Additionally, the Village agrees in good faith to cooperate with the Company to secure in a timely manner all necessary and proper building and zoning approvals, permits, variances, and conditional use permits, including, but not limited to:

- (a) A variance to Oakwood Village Code Section 1190.09 or conditional use permit reducing the existing wetlands setback from fifty (50) feet to zero (0) feet.

- (b) A variance to Oakwood Village Code Section 1173.09 or conditional use permit allowing exterior walls of each elevation to be construction of insulated metal panels.
- (c) A variance to Oakwood Village Code Section 1173.07 or conditional use permit allowing a building height of fifty (50) feet for the main building.
- (d) A zoning certificate and all other necessary governmental approvals allowing the use of buildings for the purpose of receiving and reloading of groceries and other goods transported to and from the Project Site by motor vehicles, including trailers, as well as a gasoline station, a service station, a repair shop operated in conjunction with that use, and parking for at least:
 - a. 25 tractor units
 - b. 35 trailers
 - c. 250 delivery vans
 - d. 500 personal vehicles

Section 2.03. No Violation of JEDZ Agreements. The parties recognize that the Village is a party to a certain Joint Economic Development Zone Agreement (“JEDZ”) with the City of Cleveland, Ohio dated October 22, 2007, which restricts the ability of the Village to offer certain economic incentives to business re-locating from Cleveland to the Village and requires the sharing of certain tax and other revenues in certain instances in which businesses move between Cleveland and the Village.

Section 2.04. State Grant Funds. The Village shall provide all State of Ohio grant funds provided to the Village as a conduit for costs associated with the Project incurred by the Company, including 629 Grant funds, promptly to the Company after the Village receives such funds.

Section 2.05. Reimbursement of Professional Fees. The Company shall reimburse the Village for its reasonable professional fees and expenses incurred in the formulation of this Agreement and the other agreements called for herein, up to a maximum amount of Forty-Five Thousand and 00/100 Dollars (\$45,000.00).

Article III

Plans and Specifications - Reviews, Approvals and Permits

Section 3.01. Private Improvements. The Company shall submit to the applicable Village bodies for review and approval its plans, drawings, and other materials in connection with the Development (the “Plans and Specifications”). The Village’s review shall be consistent with the applicable Village requirements. The Plans and Specifications shall include, but not be limited to, a site plan, building layout, elevations of structures, parking, landscaping, signage, and any other planning materials that reasonably are required by the applicable Village bodies. The Village shall cause timely review of all Plans and Specifications and shall issue its decisions not later than thirty (30) days after application for permits have been made by Company.

Section 3.02. Public Improvements. Responsibility for drawings and specifications, construction and payment for Public Improvements is set forth in Exhibit B.

Article IV

Covenants and Obligations; Representations of Village and Company

Section 4.01 Binding Nature of Obligations.

(a) Except as otherwise specified in this Agreement or terminated in accordance with the terms of this Agreement, the duty to perform the obligations of this Agreement shall be binding and enforceable by the Village against the Company, or any successor or assigns of Company and, with respect to Service Payments only, any future Owner.

(b) Except as otherwise set forth in this Agreement, the rights of the Company, or any successor or assign of Company's obligations hereunder, shall not be terminated by the Village for any cause other than an Event of Default occurring hereunder (as defined in Section 6.01).

Section 4.02 Village's Representations.

The Village represents, warrants and covenants to and with the Company that as of the Effective Date:

(a) The Village is a Charter Village validly existing under the laws of the State of Ohio, and the Village has all necessary power and authority to enter into and perform the Village's obligations under this Agreement.

(b) The Village has taken all actions required to be taken under the laws of the State of Ohio and under the Village's governing documents to approve or authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

(c) The Village reasonably believes that it can perform its obligations hereunder with respect to the CRA and TIF.

Section 4.03 Company's Representations.

The Company represents, warrants and covenants to and with the Village that as of the Effective Date:

(a) The Company is duly organized and validly existing as a corporation under the laws of the State of Ohio and is in full force and effect under the laws of the State of Ohio. The Company is authorized to do business in the State of Ohio and is properly licensed by all necessary governmental, public, and quasi-public authorities having jurisdiction over it and the work to be performed under this Agreement.

(b) This Agreement has been duly executed, authorized and delivered by Company and is a valid and binding obligation of the Company, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws in effect from time to time affecting the enforcement of creditors' rights generally and to the extent the same may be subject to the exercise of judicial discretion in accordance with general principles of equity.

(c) This Agreement and the consummation of these transactions are valid and binding upon the Company and do not constitute a default (or an event which with notice and passage of

time or both will constitute default) under its Articles of Incorporation or any contract to which the Company is a party or by which it is bound.

(d) So long as this Agreement is in effect and Company undertakes and completes construction of the Building, Company shall provide the donations and grants, or cause the provision of such donations or grants, as are set forth in Schedule I, attached hereto and incorporated by reference herein.

Section 4.04 Maintenance of Development and Public Improvements. Village and Company agree that, following completion of the Public Improvements, (a) Company shall maintain the roadways which are located on the Project Site until such time as the roadways are dedicated to the Village, at which time the Village shall maintain the dedicated roadways together with all associated drainage, detention and easement areas located within the Village right-of-way or subject to a maintenance easement and predominantly devoted to servicing public roadways and rights of way, (b) Village shall maintain any bike or walking trails, (c) Village shall maintain or cause the applicable utility to maintain all utilities within the roadways or public easements and the trail along Macedonia Rd. and (d) Company or any subsequent owner of a parcel within the Project Site shall maintain utility connections to such parcels. In addition, the Village shall maintain landscaping on the mounds constructed adjacent to Macedonia Rd. on such parcels and watering of such landscaping.

Article V Indemnification

Section 5.01. By Company. In addition to the obligations of the Company, as set forth in this Agreement, except to the extent caused by the willful misconduct or negligence of Village or its agents, employees or officials, the Company shall indemnify, defend and hold harmless the Village and its agents, employees and public officials from and against any and all suits, claims, damages, losses, costs or expenses (including reasonable attorneys' fees) arising out of, or resulting from (i) the construction and financing of the Private Improvements, (ii) claims, suits or actions of every kind and description when such suits or actions are caused by negligent, willful and/or wanton acts, and/or errors or omissions of the Company, its officers, agents or employees; and (iii) injury or damages received or sustained by any party because of the negligent, willful and/or wanton acts of the Company, its officers, agents or employees, consultants, sub-consultants, and/or subcontractor.

Article VI Events of Default

The following events are "Events of Default" under this Agreement:

Section 6.01 Events of Default by Company.

(a) The Company fails to materially comply with any term, provision, or covenant of this Agreement, and the Company fails, within sixty (60) days after written demand from the Village, to remedy such failure, unless such failure cannot be cured within such time period, in which case the time for remedying the failure shall be extended so long as the Company is diligently pursuing a remedy to said failure, so long as Company commences such cure during the

initial sixty (60) day period and diligently pursues such cure to completion, subject to Force Majeure.

(b) Prior to the completion of the Private Improvements, the Company (1) is adjudged insolvent, (2) admits in writing its inability to pay its debts generally as they become due, (3) makes a fraudulent transfer, or (4) makes an assignment for the benefit of creditors.

(c) Prior to the completion of the Private Improvements, the Company (1) files a petition under any section or chapter of the federal bankruptcy laws, as amended, or under any similar law or statute of the United States or any state thereof; or (2) is adjudged bankrupt or insolvent in proceedings filed against the Company under those laws or statutes.

(d) Prior to the completion of the Private Improvements, a receiver or trustee is appointed for all or substantially all of the assets of the Company, which receiver is not discharged within ninety (90) days after the appointment.

Section 6.02 Events of Default by the Village. The Village fails to materially comply with any term, provision, or covenant of this Agreement, and the Village fails, within sixty (60) days after written demand from the Company, to remedy such failure, unless such failure cannot be cured within such time period, in which case the time for remedying such failure shall be extended so long as the Village is diligently pursuing a remedy to such failure, so long as Village commences such cure during the initial sixty (60) day period and diligently pursues such cure to completion.

Article VII Remedies

Section 7.01 Generally. If any Event of Default occurs, the defaulting party shall promptly (and in any event within the cure period set forth above) cure or remedy such Event of Default. In case such action is not taken or not diligently pursued, or the Event of Default is not cured or remedied within the required time, the non-defaulting party may:

(a) institute any proceedings that it deems reasonably necessary to recover actual out-of-pocket costs incurred by the Village as the result of the Event of Default (under no circumstances shall the Company be liable for indirect, special, punitive or consequential damages), or

(b) institute any proceedings that it deems reasonably necessary to cure and remedy the Event of Default; provided, however, that the Village will have no right to compel specific performance of the Company's obligations under this Agreement.

Section 7.02 No Waiver by Delay. Any delay by the Village or the Company in asserting its rights under this Agreement shall not operate as a waiver of those rights or deprive the party of or otherwise limit those rights in any way. It is the intention of the parties that the Village shall not be constrained, so as to avoid the risk of being deprived or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches, or otherwise. The parties may exercise any remedy at a time when the parties may still hope to resolve the problems created by an Event of Default. No waiver in fact made by a party with respect to any specific

default under this Agreement may be considered or treated as a waiver of the rights of a party with respect to any other defaults by the other party under this Agreement, or with respect to the particular default except to the extent specifically waived in writing.

Article VIII Force Majeure

Except as otherwise provided, neither the Village nor the Company will be considered in default of its obligations under this Agreement, if a delay in performance is due to a Force Majeure Event, to the extent such Force Majeure Event materially affects the performance of such party. As used herein "Force Majeure Event" means acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; strikes; labor disputes; insurrections, civil disturbances; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; other weather conditions; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities or machinery; partial or entire failure of utilities; acts of terrorism or threats of terrorism; and unavailability of labor or materials due to the occurrence of any of the foregoing events.

It is the intent of the parties that in the event of the occurrence of any Force Majeure Event, the time or times for performance shall be extended for the period of such Force Majeure Event. However, the parties seeking the benefit of the provisions of this Article VIII must within fifteen (15) days after the later of the beginning of the Force Majeure Event or after reasonably recognizing that a Force Majeure Event has occurred, notify the other party in writing of the cause and, if possible at the time of notice, the expected duration of the delay caused by the Force Majeure Event.

Article IX Further Assurances; Full Disclosure; Good Faith and Fair Dealing

The Village and the Company agree to execute such other and further documents as may be necessary or required to consummate or more fully confirm the transactions contemplated hereby. Without limitation of the foregoing, the Village acknowledges that (i) it may be required to, and in such event agrees that it will, enter into a cooperative or other agreement in connection with any financing of the Development, pursuant to which it will agree, among other provisions, to the pledge and transfer of that portion of the monies in the KTIF Fund which are otherwise payable to Company, subject to approval of any such agreement by Village Council to the extent required by law and (ii) it will be required to enter into a mutually agreeable CRA Agreement subject to approval by Village Council consistent with Ohio Revised Code Section 3735.671 and this Agreement. Each respective party covenants that no representation or warranty of such representing party contained herein contains any untrue statement of any material fact as of the time such representation or warranty is made and, to the knowledge of such representing party, no such representation or warranty omits or will omit to state a material fact necessary in order to make such representing party's representations and warranties contained herein or therein not misleading. From and after the date hereof, the Village and the Company agree to cooperate with one another in good faith, and to deal fairly with one another and to resolve unforeseen conditions arising subsequent to the execution of this Agreement.

Article X
Miscellaneous

Section 10.01 Notices. Any notice or demand required or permitted to be given by or to either of the parties hereto and every alleged breach of a warranty or representation contained in this Agreement shall be made in writing and shall be deemed to have been given or delivered, as the case may be, when delivered by: (a) hand delivery; (b) express overnight delivery service; or (c) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon: (i) receipt, if hand delivered; (ii) the next business day, if delivered by express overnight delivery service; or (iii) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses specified below:

If to Village: Village of Oakwood
 24800 Broadway Avenue
 Oakwood, OH 44146
 Attention: Mayor Gary V. Gottschalk

With a Copy to: Mazanec, Raskin & Ryder Co., LPA
 100 Franklin's Row
 34305 Solon Road
 Cleveland, Ohio 44139
 Attention: James A. Climer, Esq.

If to Company: The Kroger Co.
 1014 Vine Street
 Cincinnati, Ohio 45202
 Attn: Tax Department, Economic Development

And to: The Kroger Co.
 1014 Vine Street
 Cincinnati, Ohio 45202
 Attn: Law Department (Logistics, Real Estate)

With a Copy to: Vorys, Sater, Seymour and Pease LLP
 52 East Gay Street
 Columbus, Ohio 43215
 Attn: Scott J. Ziance

Each party may designate, by written notice, another person or address to whom any communication may be sent.

Section 10.02 Termination of Agreement; Conditional Execution and Delivery. Notwithstanding anything contained in this Agreement to the contrary, the Company and the Village acknowledge and agree that this Agreement shall terminate and be of no further force and effect upon the Company's failure to acquire the Project Site identified in Exhibit A (either directly or through its affiliate) on or before March 31, 2022. Upon termination, the Company and the

Village shall thereafter have no further duties or obligations hereunder. At the request of either party, the Company and the Village shall execute an agreement evidencing any such termination.

Section 10.03 Non-Waiver. Neither the waiver by either party to this Agreement of any breach of any agreement, condition or provision of this Agreement, nor the failure of either party to seek redress for violation of, or to insist upon strict performance of any agreement, condition or provision, shall be considered to be a waiver of the agreement, condition or provision or of any subsequent breach of any agreement, condition or provision. No provision of this Agreement may be waived except by written agreement of the party to be charged.

Section 10.04 Paragraph Headings. The paragraph headings contained herein are merely for convenience and reference, and are not intended to be a part of this Agreement, or in any matter to limit or describe the scope or intent of this Agreement or the particular paragraphs to which they refer.

Section 10.05 Legal Relationship of Parties. It is expressly understood and agreed that during the term of this Agreement, the Company shall be engaged solely as an independent contractor and the Village shall be acting as a municipal corporation, and neither shall have any right to control the other's officials, employees, agents, contractors, or representatives. It is further expressly understood that Company's officers, employees, agents, contractors, and representatives are acting solely and exclusively under the direction and control of Company. Nothing in this Agreement shall be deemed to create or establish a relationship of employment, agency, or representation between the Village and Company, its officers, employees, agents, contractors or representatives; and Company shall have no authority whether express, implied, apparent or otherwise to bind or obligate the Village in terms of any third parties.

Section 10.06 No Partnership. Nothing contained herein shall make, or be deemed to make, the Village and the Company a partner of one another, and this Agreement shall not be construed as creating a partnership between the parties.

Section 10.07 Singular and Plural. Wherever the context shall so require, the singular shall include the plural and the plural shall include the singular.

Section 10.08 Binding Effect and Successors and Assigns; Third-Party Beneficiary. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the Village and the Company respectively and their respective partners, successors, assigns and legal representatives. Notwithstanding anything to the contrary contained within this Agreement, except conditioned upon Company meeting the terms of Section 1.01 above, Company may assign rights, interests, obligations and responsibilities under this Agreement in whole or in part (i) to differing owners of parcels of real estate within the Project Site, (ii) to a lender as part of financing the development of the Project Site or the financing of the partially or fully developed Project Site, (iii) to an entity controlling, controlled by or under common control with the Company, and/or (iv) otherwise with the consent of the Village, which will not be unreasonably withheld.

Section 10.09 Governing Law. This Agreement shall be governed by the laws of the State of Ohio. All disputes arising under this Agreement shall be litigated in the Cuyahoga County

Court of Common Pleas or the Federal Court for the Northern District of Ohio and the parties consent to submit themselves to the jurisdiction and venue of that court.

Section 10.10 Severability. If any provision of this Agreement is for any reason held to be illegal or invalid, it shall not affect any other provision of this Agreement.

Section 10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

Section 10.12 Amendments. This Agreement shall not be amended, supplemented or modified except by an instrument in writing executed by the Village and the Company.

Section 10.13 Consent not to be Unreasonably Withheld. Whenever the phrase, consent not to be unreasonably withheld or a similar phrase is used in this Agreement, it shall mean not unreasonably withheld, conditioned or delayed.

[BALANCE OF PAGE INTENTIONALLY BLANK; SIGNATURES FOLLOW.]

IN WITNESS WHEREOF, the Village and the Company have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

“Village”

THE VILLAGE OF OAKWOOD, CUYAHOGA COUNTY, OHIO,
a body politic and corporate duly existing under
the laws of the State of Ohio

By: 
Gary V. Gottschalk, Mayor

Dated: _____, 2022

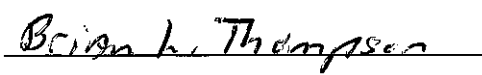
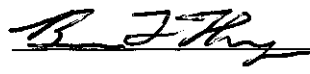
Approved as to form
James A. Climer, Law Director

Dated: _____, 2022

FISCAL OFFICER'S CERTIFICATE

The undersigned Fiscal Officer of Oakwood Village, Ohio, hereby certifies that the money required to meet the obligations of Oakwood Village under the attached agreement during the year 2022 has been lawfully appropriated by Oakwood Village for those purposes and is in the treasury of Oakwood Village or in the process of collection to the credit of the appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Ohio Revised Code Section 5705.41.

Dated: 3-9, 2022


, Fiscal Officer
Oakwood Village, Ohio

“Company”

THE KROGER CO., an Ohio corporation

By: _____

Dated: _____, 2022

Kroger Fulfillment Network LLC, an Ohio limited liability company

By: _____

Dated: _____, 2022

SCHEDULE I

DONATIONS

Oakwood Youth Program	
2022	\$45,000.00
2023-2039	\$50,000.00

Bedford City School District

\$40,000.00 per year for the years commencing with the second year of the Company's CRA Exemption and continuing for a total of 15 years of donations, provided that the Bedford City School District will provide the Company with public recognition for the donation in a manner consistent with how it recognizes similar corporate donations

Landscaping Maintenance

Company shall contribute up to \$17,500 of the actual, reasonable maintenance costs incurred by the Village per year for five (5) years commencing in calendar year 2023 and concluding in calendar year 2027.

Landscape Irrigation Costs

Company shall contribute up to \$15,000 of the actual landscape irrigation costs per year for five (5) years commencing in calendar year 2023 and concluding in calendar year 2027.

The Village shall provide an invoice to the Company by June 1 on an annual basis for the years listed above for the donation to the Oakwood Youth Program, and contributions to the landscaping maintenance costs and landscape irrigation costs. The Company shall pay the invoice within sixty (60) days of receipt.

EXHIBIT A

PROJECT SITE

EXHIBIT B

PUBLIC IMPROVEMENTS

Public Improvements will include:

- (i) a two (2) lane public roadway along I-480/I-270 which intersects Alexander Road providing access to the Project Site and completion of any utilities necessary for the sole benefit of the Private Improvements within said roadway or public easements/rights of way, which may include gas, electric, telecommunications, cable, water, sanitary sewer, and stormwater drainage utilities to be completed by December 31, 2022 (the "Roadway"); to be designed and constructed by the Company at its cost to Village standards pursuant to an agreed-upon inspection protocol as reduced by any grants secured through joint good faith efforts of the Company and the Village and subsequently dedicated to the Village by the Company;
- (ii) six (6) foot wide concrete all-purpose trail to be designed and constructed by the Village along Macedonia Road from the most southerly portion of the Project Site abutting Macedonia Road and extending to Alexander Road within the Village right of way or an easement dedicated to the Village for that purpose, to be completed by December 31, 2024; the Company shall contribute up to one hundred eighty thousand dollars (\$180,000) towards the construction of the trail (with the balance of the cost to be paid by the Village);
- (iii) signalization and realignment of Fair Oaks Road at Alexander Road adjacent to the Project Site entrance; to be completed by December 31, 2023; to be designed and constructed by Village at the Village's cost as reduced by any grants secured through joint good faith efforts of Company and Village;
- (iv) synchronization of the foregoing signals with the traffic signals and signs located at the intersection of Oak Leaf Road and Alexander Road; to be completed by December 31, 2023; to be undertaken at Village's sole cost and control; and
- (v) the Village shall, at its cost, design and perform the necessary reconstruction of Oak Leaf Road and Fair Oaks Roads from the I-271 South entrance ramp at Broadway Avenue to Oak Leaf Oval by December 31, 2026 and from Oak Leaf Oval to Alexander Road by December 31, 2028.

EXHIBIT C

SITE IMPROVEMENTS

Existing mounding along Macedonia Rd. shall be extended both north and south to the Project Site boundary. The additions and any modifications shall be compatible with the design and purpose of the original mounding and landscaping of same.