

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contract, agreement, obligation, or expenditure contemplated by the ordinance set out below that:

- () Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- (X) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- () Other.

Ronald C. Bell
Jerrard Bell

Date: 6-9, 2015. City Controller of the City of Houston, Texas

FUND REF: N/A AMOUNT: -0- ENCUMB. NO.: RF50055-15

ymg
By
JHB

City of Houston, Texas, Ordinance No. 2015-589

AN ORDINANCE APPROVING AND AUTHORIZING A TAX ABATEMENT AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, AND THE KROGER CO. FOR PROPERTY LOCATED WITHIN THE KROGER CO. REINVESTMENT ZONE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the City Council hereby approves and authorizes the contract, agreement, or other undertaking ("Agreement") described in the title of this Ordinance, in substantially the form of the document attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute the Agreement described in the title of this Ordinance and all related documents on behalf of the City of Houston and to take all actions necessary to effectuate the City's intent and objectives in approving the Agreement in the event of changed circumstances. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. That the City Council hereby approves Kroger Co.'s request for a variance, as allowed by Section 44-125 of the Code of Ordinances (the "Code"), from the provisions of Section 44-123(g) of the Code, and hereby finds that approval of this variance is consistent with the economic development objectives of Chapter 44 of the Code.

Section 3. That the City Council hereby finds that the terms of the Agreement authorized by this Ordinance meet the guidelines and criteria of Chapter 44 of the Code relating to tax abatement; that the property subject to abatement under the Agreement authorized by this Ordinance lies within the Kroger Co. Reinvestment Zone, a designated reinvestment zone authorized by Chapter 312 of the Texas Tax Code and Section 44-122 of the Code; that this Agreement will result in no substantial potential adverse effect on the provision of City services or the tax base; and that the proposed use of the facility as a distribution center will contribute to the economic development of the City.

Section 4. That the City Attorney is hereby authorized to take all actions necessary to enforce all legal obligations under such contracts, agreements, or other undertakings without further authorization from the City Council.


Section 5. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 17th day of June, 2015.

APPROVED this ____ day of _____, 2015.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 23 2015.



City Secretary

(Prepared by Legal Department Donna Capps ^{GMS})
(DRC:drc June 2, 2015) Assistant City Attorney
(Requested by Andy Icken, Chief Development Officer, Office of the Mayor)
(L. D. File No. 0421400181001)

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AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
✓		DAVIS
✓		COHEN
		ABSENT-OUT OF CITY ON PERSONAL BUSINESS BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
		ABSENT-OUT OF CITY ON PERSONAL BUSINESS GALLEGRO
	✓	LASTER
	✓	GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: JUN 23 2015

TAX ABATEMENT AGREEMENT

This **TAX ABATEMENT AGREEMENT** ("Agreement") is made by and between the **CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule city ("City"), and **THE KROGER CO.**, an Ohio corporation, authorized to transact business in the State of Texas ("Company"). The City and the Company may be referred to singularly as "Party" and collectively as the "Parties." Capitalized terms have the meanings defined in the first section of this Agreement.

RECITALS

WHEREAS, the creation and retention of job opportunities in the City is paramount to the City's continued economic development; and

WHEREAS, in accordance with the requirements of Section 44-127(a)-(c) of the Code, the Company desires to expand a Facility, as defined in Section 44-121 of the Code, to be occupied and used by the Company for distribution of its products ("Improvements"); and

WHEREAS, in accordance with Section 44-123 of the Code, the Company filed a written application for tax abatement dated October 16, 2014; and

WHEREAS, the City Council finds that it is reasonably likely that this Agreement will contribute to the retention, expansion, and creation of primary employment and will attract major investment in the Zone that would be a benefit to property within the Zone and that would contribute to the economic development of the City; and

WHEREAS, the City Council finds that the Improvements are practical and will benefit the area within the Zone and the City; and

WHEREAS, the City Council finds that this Agreement will cause no substantial potential adverse effect on the provision of City services or on the tax base; and

WHEREAS, the Company has represented that the Improvements will be designed, constructed and installed in the Facility according to all applicable federal, state, and local environmental regulations; and

WHEREAS, the City Council finds that the terms of this Agreement meet the applicable requirements of Chapter 44, Article IV, of the Code; and

NOW, THEREFORE, for and in consideration of the premises and mutual promises stated herein, the Parties agree as follows:

1. Definitions

As used in this Agreement, the following capitalized terms shall have the meanings assigned to them below, unless otherwise defined or the context clearly requires otherwise.

"Abated Property" means improvements to the following types of property made subsequent to this Agreement: buildings, structures, fixed machinery and equipment, site improvements, office space and related fixed improvements necessary to the operation and administration of the Facility, and tangible personal property.

"Abatement Period" means the ten (10) year time period that begins on the Effective Date of Abatement.

"Agreement" means this Tax Abatement Agreement between the City of Houston and Company.

"Agreement Effective Date" means the date upon which City Council approves this Agreement.

"Base Year Value" means the sum of the assessed value as established and certified by HCAD of all taxable property, including real and personal property (less inventory) in the Zone as of January 1, 2015.

"Chapter 44" means Article IV, Tax Abatement, of the Code, as amended.

"City" means the City of Houston, Texas.

"City Council" means the City Council of the City of Houston, Texas.

"Code" means the Code of Ordinances of the City of Houston, Texas, as amended; specifically, City of Houston, Texas Ordinance No. 2014-245.

"Department" means the City's Office of the Mayor, Economic Development, or its successor.

"Director" means the Chief Development Officer of the Department, or his or her designee, or any person who may be designated in writing by the Mayor to perform the functions delegated to the Director in this Agreement, but only for so long as the designations remain in effect.

"Effective Date of Abatement" means the January 1st immediately following the date that the last certificate of occupancy for the Improvements is issued by the City.

"**EXHIBIT 1**" attached to this Agreement and made a part hereof includes a legal description and a map of the Zone.

"**EXHIBIT 2**" attached to this Agreement and made a part hereof lists the street addresses and the respective HCAD tax account numbers of the taxable property currently and/or to be located in the Zone.

"**EXHIBIT 3**" attached to this Agreement and made a part hereof describes the Abated Property.

"**EXHIBIT 4**" attached to this Agreement and made a part hereof includes financial information related to the Abated Property.

"Facility" means, pursuant to Section 44-121 of the Code, property improvements, completed or in the process of construction or expansion, that together comprise an integral whole.

"HCAD" means the Harris County Appraisal District.

"Improvements" means buildings, structures, fixed machinery and equipment, site improvements, office space and related fixed improvements necessary to the operation and administration of the Facility, and tangible personal property that are developed, constructed, or installed in the Zone by or on behalf of the Company and its affiliates subsequent to the Agreement Effective Date.

"Ordinance" means City Ordinance No. 20____-____ adopted on _____, 20____¹ creating the Zone.

"Company" means the abatement recipient, The Kroger Co., an Ohio corporation authorized to transact business in the State of Texas, which owns or will own the real and/or personal property against which the ad valorem taxes levied will be partially abated pursuant to Chapter 44 of the Code.

"Permanent Employee" means an individual who works for, and is an employee of, either the Company or an affiliate of the Company, works a minimum of thirty-five (35) hours in a seven-day period, and reports to work in the Zone, excluding any contract employee, seasonal employee, or part-time employee.

"Real Property" means the land in the Zone and all improvements existing prior to the Agreement Effective Date, which land is or will be owned by the Company. The Real Property is more specifically described on **EXHIBIT 1**.

"Tax Code" means the Texas Tax Code, as amended.

"Zone" means The Kroger Co. Reinvestment Zone, which is more particularly described in Exhibit "B" of the Ordinance.

¹ City Secretary to insert ordinance number and date adopted by City Council.

2. Authorization

This Agreement is authorized by Chapter 44, Article IV of the Code, which establishes the property tax abatement program for properties in designated reinvestment zones, and by the Ordinance.

3. Property

The street addresses and HCAD tax account numbers of the Real Property and the existing improvements on the Real Property are listed on **EXHIBIT 2**.

4. Representations and Warranties

(a) The Company represents that it owns the Real Property.

(b) The Company represents that the execution and delivery of this Agreement has been duly authorized by all requisite actions of its partners that are necessary for it to have force and effect and that the person signing this Agreement on behalf of the Company has been and is authorized to do so.

(c) The Company represents and warrants that construction or installation of the Improvements described in **EXHIBIT 3** will begin after the Agreement Effective Date. The Company represents that the Real Property comprises approximately 49.75 acres of land.

(d) The Company represents that, to the extent of the actual knowledge of an employee of the Company who has participated in the negotiation or internal analysis of this Agreement, no interest in the Real Property or the Improvements is held or leased by a member of the City Council or a member of the City's Planning Commission. Notwithstanding the foregoing, the Parties acknowledge that the Company is publicly traded and the Company makes no representations as to any interest any such member or the City may hold as a shareholder of the Company.

(e) The Company represents and warrants that it will invest approximately \$24 million related to an upgrade of the Facility and approximately \$17 million related to the expansion of the Facility in the Zone by the Effective Date of Abatement and may continue to invest additional funds after the Effective Date of the Abatement. These estimates are the assessed value amounts.

(f) The Company represents and warrants that The Kroger Co. will retain at least 300 Permanent Employees and hire approximately 15 new Permanent Employees in the Zone whose employment position on the Effective Date of Agreement either does not exist or exists outside the State of Texas.

(g) The Company represents that developing, constructing, and installing the Improvements in the Zone are necessary because its existing facilities cannot efficiently and economically provide the required capacity needed by the Company and its

affiliates when reasonable allowance is made for necessary improvements to the existing facilities.

(h) The Company represents and warrants that it will operate the Facility as described in **EXHIBIT 1**.

(i) The Company represents and warrants that the Improvements will be constructed, installed, and operated in accordance with all applicable federal, state, and local environmental laws and regulations.

5. Terms of the Agreement

(a) The Company shall cause the Improvements to be developed, constructed, and installed substantially in conformity with the description, plans, and specifications described in **EXHIBIT 3** and applicable provisions of the City of Houston Building Code ("Building Code"). In case of any conflict between **EXHIBIT 3** and the Building Code, the Building Code shall prevail. In addition, during the Abatement Period, the Company shall comply with Chapter 42 of the Code, if applicable (platting regulations), and all other laws and regulations applicable to the construction and installation of the Improvements.

(b) Upon completion of the construction and installation of the Improvements, the Company shall use the Facility or cause the Facility to be used for the proposed uses specified herein during the Abatement Period; provided, however, that the Director may approve a change from those proposed uses if the Director determines that the change is consistent with Chapter 44 and with the City's general purpose of encouraging development or redevelopment of the Zone during the Abatement Period. The proposed use of the Facility (unless the Director approves a change in use) is to distribute products.

(c) The Company shall maintain the Improvements in good repair and condition during the Abatement Period.

(d) The Company shall allow City employees to have access to the Facility for the purpose of inspecting the Improvements to ensure that the Improvements are completed, installed, and maintained in accordance with the terms of this Agreement. All inspections will be made only after giving the Company at least seven (7) days' advance notice, and will be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the Facility. All inspections will be made with one or more representatives of the Company and in accordance with the Company's safety and security procedures. The above shall not act as a limitation on the City's ability to otherwise perform any inspections or to otherwise enter the Facility pursuant to the Code, the Building Code, or otherwise.

(e) The Company shall provide and cause its affiliates to provide City employees reasonable access to any relevant records requested and necessary for the purpose of conducting an audit of the Facility to ensure compliance with this Agreement. Any such audit shall be made only after giving the Company at least seven (7) days'

advance notice, and will be conducted in such a manner as to not unreasonably interfere with the operation of the Facility. Documents and materials provided to the City by the Company or its affiliates in connection with any audit or other inspections under this Agreement which contain information that is, or which themselves are, confidential or proprietary to the Company shall not be removed from the Facility, nor shall the information contained in them be used or disclosed by the City other than for the sole purpose of determining the Company's compliance with the terms and conditions of this Agreement, unless disclosure is otherwise required by state or federal law. In the event that the City receives any request for information pursuant to the Texas Open Records Act or similar provision of federal law, the City agrees to promptly give the Company notice of that request. If the Company, for itself or one or more of its affiliates, advises the City that it believes that the right of the City to withhold such information from disclosure is allowed by the Texas Open Records Act or other applicable state or federal statute, rule or regulation, the City agrees to withhold the information or to immediately request an opinion from the Texas Attorney General or other appropriate public official with legal authority to render such decision on the City's right to withhold such information. If the decision rendered is to the effect that disclosure is not required to be made, then the City agrees to withhold disclosure of such information unless thereafter authorized by the Company to be disclosed. The City agrees that during any period after request but before the rendering of a decision by the Texas Attorney General or other appropriate public official regarding the obligation of the City to make disclosure of information deemed confidential, proprietary, or both by the Company, it will not disclose the requested information unless ordered to do so by a court of competent jurisdiction.

(f) This Agreement may be assigned to a new owner or lessee of the Facility with the written consent of the Director, which consent shall not be unreasonably withheld. If the proposed assignee is an affiliated entity of the assignor, the Director may consent to an assignment if the assignor is in compliance with all terms of this Agreement. Any assignment of this Agreement shall not relieve the assignor of continuing liability under this Agreement unless specifically agreed to in a writing signed by both the Director and the City Attorney. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in this Agreement. Any assignment of the Agreement shall be to an entity that contemplates the same improvements to the Real Property, except to the extent such improvements have been completed. No assignment shall be approved if either the assignor or the assignee is indebted to the City for ad valorem taxes or other obligations. Notwithstanding the foregoing, if any such assignment is not to an affiliated entity of the Company and if the Director shall reasonably object to any such assignment, the City shall have the option to terminate this Agreement as of the date of such assignment and the Company shall reimburse the City for any taxes abated during and after the date of such assignment. In addition, any assignment must comply with the provisions of Section 44-134 of the Code.

(g) Not later than February 1st of each year during the Abatement Period, the Company shall submit to the Director and the Chief Appraiser of HCAD a statement of the number of Permanent Employees the Company and its affiliates collectively employ

in the Zone. The employee count submitted shall correspond to the employee count reported by the Company in its "Employer's Quarterly Report" to the Texas Workforce Commission. The employee count submitted by the Company shall be used to determine abatement eligibility for that year and be subject to audit, if requested by the Director, pursuant to the provisions of Section 44-135 of the Code.

(h) This Agreement may be amended at any time upon the mutual written consent of all Parties hereto, subject to approval by the City Council.

(i) Not later than April 15th or such other date as required by HCAD, whichever date is earlier, of each year during of the Abatement Period, the Company shall file the appropriate form with HCAD to qualify for the tax abatement granted under this Agreement for that year. In addition, not later than April 15th or such other date as required by HCAD, whichever date is earlier, of each year during the Abatement Period, the Company shall render to HCAD the value of all taxable personal property, including the tangible personal property included in the Improvements, located in the Zone on the preceding January 1st.

(j) On or before January 1st of each year the Agreement is in effect, the Company shall provide the Director a sworn statement that includes a delineation of the number of permanent employees, contract employees and part-time employees of the Company and its affiliates as of the immediately preceding December 1st, who report to work in the Zone.

(k) Contract employees and part-time employees may be used to comply with the Company's contractual obligation to create/retain jobs on a full-time equivalency basis for any number of jobs; provided that full-time equivalent jobs shall only be used to satisfy the Company's contractual obligation if the Company maintains a minimum of 25 permanent employees who work within the Zone.

(l) Commencing January 1, 2015, and on or before January 1st of each subsequent year during the Abatement Period, the chief financial officer or an authorized representative of the Company shall provide the Director a sworn statement that the Company is and has been in compliance with all provisions of this Agreement in the prior year.

(m) A chief financial officer or an authorized representative of the Company who cannot make the sworn statement required by paragraph (l) above on any January 1st shall provide the Director with a written statement identifying any provision of the Agreement with which the Company is not or has not been in full compliance.

(n) Failure by the chief financial officer or an authorized representative of the Company to timely provide the Director with either the sworn statement required by paragraph (l) above or the statement required by paragraph (m) above will result in automatic default under this Agreement for which no notice of default or opportunity to cure shall be required.

(o) By April 1st annually, beginning after the Abatement Effective Date, the Company and the City agree that the Company shall provide to the City via an electronic internet link the Company's certified financial records prepared in accordance with GAAP standards for the fiscal year ending December 31st before such April 1st date, reflecting the Company's operating performance for the prior fiscal year.

(p) The Company shall have the option and right at any time during the Abatement Period, to give the City written notice (a "Termination Notice") that the Company has elected to terminate this Agreement and its right to tax abatement on the Improvements effective as of the year in which the Termination Notice is given by the Company; provided, however, at the time the Termination Notice is given by the Company. Upon the giving of a Termination Notice by the Company and subject to the proviso of the preceding sentence, this Agreement and all rights and obligations of the Parties shall cease and terminate and the Company shall not be entitled to any tax abatement pursuant to this Agreement for the year in which the Termination Notice is given by the Company and for all years remaining in the Abatement Period.

(q) The term of this Agreement shall be the Abatement Period. Upon expiration of such Abatement Period, this Agreement shall be terminated automatically without further action of the Parties.

6. Tax Abatement

(a) Base Value means the sum of the assessed value as established and certified by HCAD of all taxable property, included real and personal property (less inventory) in the Zone as of January 1, 2015.

(b) In consideration of the Company's commitment to invest at least Twenty-Four Million Dollars (\$24,000,000) related to upgrades at the Facility and Seventeen Million Dollars (\$17,000,000) related to an expansion in the Zone, the City agrees to grant the Company a seventy-five percent (75%) abatement of the ad valorem taxes on the Improvements related to the expansion in the Zone during the Abatement Period. The estimated benefit of the tax abatement is reflected on **EXHIBIT 4**. In addition, the abatement of the ad valorem taxes granted by this Agreement is specifically subject to the rights of the holders of outstanding bonds of the City as of the effective date of this Agreement. The Abatement Period begins on the January 1st following the date on which the final certificate of occupancy for the Improvements is issued by the City (the "Effective Date of Abatement"). In no case shall the Abatement Period, inclusive of the construction period, exceed ten (10) years from the Effective Date of Abatement.

(c) From the Agreement Effective Date to the Effective Date of Abatement, ad valorem taxes levied on ineligible property, as that term is defined in Section 44-127(e) of the Code, including the Real Property, shall be fully payable.

(d) From the Effective Date of Abatement to the end of the Abatement Period:

(1) Ad valorem taxes levied on "ineligible property," as that term is defined in Section 44-127(e) of the Code, including the Real Property, shall be fully payable.

(2) Ad valorem taxes levied on the Base Year Value of “eligible property,” as that term is defined in Section 44-127(d) of the Code, shall be fully payable.

(3) Twenty-five percent (25%) of the ad valorem taxes levied on the Improvements, as determined each year, shall be fully payable.

(e) The City shall enter into only one tax abatement agreement for the Facility described in this Agreement during the existence of the Zone.

7. Default and Recapture

(a) Events of Default

The Company shall be in default under this Agreement if any of the following occur at any time from the Agreement Effective Date until the expiration of the Abatement Period or such earlier date on which this Agreement may otherwise expire or otherwise be terminated:

(1) The Facility is completed and is occupied, but subsequently is wholly vacated or abandoned for any reason other than the occurrence of a fire, explosion, or other casualty or accident or natural disaster;

(2) The Company fails to comply timely with job creation, investment or payment requirements stated in this Agreement;

(3) The Company fails to comply timely with any material term of this Agreement;

(4) The Company fails to file any required report or statement or to give any required notice pursuant to this Agreement; or

(5) Employees or designated representatives of the City determine pursuant to an inspection under Section 44-134 of the Code that the Company has not complied with this Agreement.

(6) Notwithstanding the foregoing or any statement to the contrary herein, it shall not be a default under this Agreement if any condition hereof shall not be timely satisfied due to labor conditions or unrest.

(b) Notice

(1) If the Director determines that an event of default has occurred, the Director shall notify the Company in writing at the address stated in the Agreement, and if the condition of default is not cured within 60 days from the date of the notice, then the City may take any one or more of the following actions set forth in Section 7(d) of this Agreement; provided, however, that the City shall only be required to give a 60-day notice of default for failure to comply with job creation or investment requirements. The

Company's failure to comply with job creation or investment requirements is an "incurable default." Within such 60-day notice period, the Company shall be entitled to question the accuracy of the City's determination of the incurable default but shall not be entitled to cure the default. After the 60-day notice period, if the City concludes that its determination of the incurable default is correct ("noticed incurable default"), then the City shall be entitled to pursue any one or more of the remedies set forth in Section 7(d) of this Agreement.

(2) If the Company is in default under Section 7(a) of this Agreement, the Company shall notify the City within 90 days of the default, and if the default is one that can be cured hereunder, the default shall be cured within 60 days following the date of the notice of default. If the Company fails to cure the curable default within such 60-day period, then the City may pursue any one or more of the remedies listed in Section 7(d) of this Agreement.

(c) Cure

(1) In curing an event of default based on any of the items set forth in Section 7(a) of this Agreement, and assuming the event of default is curable and is not an incurable default, the Company shall provide sufficient evidence to the Director that the default has been cured within 60 days following the date of the notice of default. Sufficient evidence shall include the providing of the information not timely provided and/or providing evidence of the completion of the act(s) not timely performed. The City shall have the right to ask for additional information to confirm the adequate cure of any default.

(d) City Remedies for Default

(1) In the event of a noticed incurable default or a curable default which has not been cured after notice and an opportunity to cure was given pursuant to Section 7(c) above, no tax abatement shall be allowed for the calendar year in which the default occurs and thereafter, and the City shall have the right to terminate the Agreement and pursue any and all remedies allowed under the Agreement.

(2) In addition to the foregoing, in the event of a noticed incurable default or a curable default which has not been cured after notice and an opportunity to cure has been given, the City, in its sole discretion, may recover all or any part of the taxes abated under the Agreement. The Company shall pay to the City all such previously abated taxes within 60 days of the City's written demand therefor. Any taxes or economic incentive not paid timely shall bear interest at the rate of twelve percent (12%) annually.

(3) Notwithstanding the foregoing, the Director and the City Attorney are hereby authorized to negotiate and enter into amendments and revisions to the Agreements under which there are noticed incurable defaults or curable defaults which have not been cured after notice and opportunity to cure has been given. In the foregoing circumstances, the Parties are also authorized to negotiate and enter into any other and further agreements they determine best protect the City's interests.

(4) Notwithstanding any statement the contrary herein, if the default shall be pursuant to Section 5(b), 5(f), or 7(a)(1) of this Agreement, the City's sole remedy shall be to terminate this Agreement and receive a refund of any taxes applicable to the calendar year during which the default pursuant to Section 5(b), 5(f), or 7(a)(1) shall have occurred.

(e) The City's right and authority to pursue any default and to recover abated taxes granted under this Section 7 shall survive the amendment, revision, expiration, or termination of this Agreement.

8. Administration

(a) The Chief Appraiser of HCAD shall annually determine the taxable value of the Improvements listed in **EXHIBIT 3**. Each year, the Company shall furnish the City with any additional information applicable to the tax abatement that may be necessary for the administration of the abatement. Once the taxable values of the Improvements have been established and the amount of the tax abatement calculated, the Chief Appraiser of HCAD shall notify the affected jurisdictions that levy taxes on the Improvements of the amounts of the taxable values of the Improvements.

(b) Upon completion of construction or installation of the Improvements, the Director shall annually evaluate the Facility to ensure compliance with this Agreement and prepare a report of any violations of this Agreement.

9. Compliance with Applicable Government Regulations

Except as specifically provided herein, nothing in this Agreement shall be construed to alter or affect the obligation of the Company to comply with any ordinance, rule or regulation of the City, or the laws and regulations of the State of Texas and the United States.

10. Merger

The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement.

11. Notices

All notices shall be in writing and, unless hand-delivered, shall be sent by U.S. Mail certified, return receipt requested. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To the Company: The Kroger Co.
Attn: Rita Williams,
Title and Tax Incentives
1014 Vine Street
Cincinnati, OH 45202

To the City: Mailing Address:

Chief Development Officer
Office of the Mayor, Economic Development
P. O. Box 1562
Houston, Texas 77251

Physical Address:

Chief Development Officer
Office of the Mayor, Economic Development
901 Bagby, 4th Floor
Houston, Texas 77002

Each Party may designate a different address by giving the other Party written notice ten (10) days in advance of such designation.

This Agreement may be executed by the Parties in multiple originals, each having full force and effect.

[Execution page follows]

THE KROGER CO.

CITY OF HOUSTON, TEXAS

By: _____

Mayor

ATTEST:

ATTEST/SEAL:

By: _____
Name:
Title:

City Secretary

COUNTERSIGNED:

City Controller

APPROVED:

DATE COUNTERSIGNED:

Chief Development Officer,
Office of the Mayor, Economic Development

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. 0421400181001

EXHIBIT 1

Legal Description and Map of Property

EXHIBIT 2

Tax Account Number

Street Address

117-228-000-0001

610 Gellhorn Dr., Houston, TX 77029

EXHIBIT 3

ABATED PROPERTY

The "Improvements" as that term is defined in the Tax Abatement Agreement to which this EXHIBIT 3 is attached, is composed of an expansion of approximately 76,843 square feet of an existing distribution center located at 610 Gellhorn Dr., Houston, TX 77029. The investment related to the expansion is approximately \$17 million.

Kroger Tax Abatement: Exhibit 4

Houston, Texas

10 year real property assessment

75.00%

Year	Tax Year	Assessed Value	Kroger					City Prop Tax	Houston ISD Tax	Total Prop Tax	
			County Tax Rate	City Tax Rate	Houston ISD Rate	County Prop Tax	Houston ISD Tax				
1	2016	\$ 10,480,000	0.41455%	0.63108%	1.1867%	43,445	49,603	124,366	217,414	16,534	100% collection
2	2017	\$ 11,266,000	0.41455%	0.63108%	1.1867%	46,703	53,323	133,694	233,720		
3	2018	\$ 12,110,950	0.41455%	0.63108%	1.1867%	50,206	57,322	143,721	251,249		
4	2019	\$ 13,019,271	0.41455%	0.63108%	1.1867%	53,971	61,622	154,500	270,093		
5	2020	\$ 13,995,717	0.41455%	0.63108%	1.1867%	58,019	66,243	166,087	290,350		
6	2021	\$ 15,045,395	0.41455%	0.63108%	1.1867%	62,371	71,211	178,544	312,126		
7	2022	\$ 16,173,800	0.41455%	0.63108%	1.1867%	67,048	76,552	191,934	335,535		
8	2023	\$ 17,386,835	0.41455%	0.63108%	1.1867%	72,077	82,294	206,330	360,700		
9	2024	\$ 18,690,848	0.41455%	0.63108%	1.1867%	77,483	88,466	221,804	387,753		
10	2025	\$ 20,092,661	0.41455%	0.63108%	1.1867%	83,294	95,101	238,440	416,834		
11	2026	\$ 21,599,611	0.41455%	0.63108%	1.1867%	89,541	102,233	21,855,933	22,047,708		
12	2027	\$ 23,219,582	0.41455%	0.63108%	2.01.1867%	96,257	109,901	46,714,710	46,920,867		
13	2028	\$ 24,961,050	0.41455%	0.63108%	3.01.1867%	103,476	118,143	75,179,363	75,400,983		
14	2029	\$ 26,833,129	0.41455%	0.63108%	4.01.1867%	111,237	127,004	107,650,945	107,889,185		
15	2030	\$ 28,845,614	0.41455%	0.63108%	5.01.1867%	119,579	136,529	144,570,379	144,826,488		
16	2031	\$ 31,009,035	0.41455%	0.63108%	6.01.1867%	128,548	146,769	186,422,192	186,697,509		
17	2032	\$ 33,334,712	0.41455%	0.63108%	7.01.1867%	138,189	157,777	233,738,569	234,034,534		
18	2033	\$ 35,834,816	0.41455%	0.63108%	8.01.1867%	148,553	169,610	287,103,777	287,421,940		
19	2034	\$ 38,522,427	0.41455%	0.63108%	9.01.1867%	159,695	182,330	347,158,987	347,501,013		
20	2035	\$ 41,411,609	0.41455%	0.63108%	10.01.1867%	171,672	196,005	414,607,520	414,975,197		
21	2036	\$ 44,517,480	0.41455%	0.63108%	11.01.1867%	184,547	210,706	490,220,564	490,615,817		
22	2037	\$ 47,856,290	0.41455%	0.63108%	12.01.1867%	198,388	226,509	574,843,397	575,268,293		
23	2038	\$ 51,445,512	0.41455%	0.63108%	13.01.1867%	213,267	243,497	669,402,164	669,858,928		
24	2039	\$ 55,303,926	0.41455%	0.63108%	14.01.1867%	229,282	261,759	774,911,252	775,402,273		
25	2040	\$ 59,451,720	0.41455%	0.63108%	15.01.1867%	246,457	281,391	892,481,316	893,009,164		
26	2041	\$ 63,910,599	0.41455%	0.63108%	16.01.1867%	264,941	302,495	1,023,328,013	1,023,895,450		
27	2042	\$ 68,703,894	0.41455%	0.63108%	17.01.1867%	284,812	325,182	1,168,781,508	1,169,391,503		
28	2043	\$ 73,856,686	0.41455%	0.63108%	18.01.1867%	306,173	349,571	1,330,296,808	1,330,952,552		
29	2044	\$ 79,395,938	0.41455%	0.63108%	19.01.1867%	329,136	375,789	1,509,465,006	1,510,169,931		
30	2045	\$ 85,350,633	0.41455%	0.63108%	20.01.1867%	353,821	403,973	1,708,025,514	1,708,783,308		
Total real ad valorem tax						4,492,170	5,128,909	1,759,419	12,018,138,415		

14,515
80,652

3,629

10 year personal property assessment

Year	Tax Year	Assessed Value	Kroger			City Prop Tax	Houston ISD Tax	Total Prop Tax
			County Tax Rate	City Tax Rate	Houston ISD Rate			
1	2016	\$ 2,300,000	0.41455%	0.63108%	1.1867%	10,886	27,294	47,715
2	2017	\$ 2,047,000	0.41455%	0.63108%	1.1867%	9,689	24,292	42,466
3	2018	\$ 1,821,830	0.41455%	0.63108%	1.1867%	8,623	21,620	37,795
4	2019	\$ 1,676,084	0.41455%	0.63108%	1.1867%	7,933	19,890	34,771
5	2020	\$ 1,541,997	0.41455%	0.63108%	1.1867%	7,298	18,299	31,990

6	2021	\$	1,418,637	0.41455%	0.63108%	1.1867%	5,881	6,715	16,835	29,430	
7	2022	\$	1,290,960	0.41455%	0.63108%	1.1867%	5,352	6,110	15,320	26,782	
8	2023	\$	1,161,864	0.41455%	0.63108%	1.1867%	4,817	5,499	13,788	24,104	
9	2024	\$	1,045,677	0.41455%	0.63108%	1.1867%	4,335	4,949	12,409	21,693	
10	2025	\$	941,110	0.41455%	0.63108%	1.1867%	3,901	4,454	11,168	19,524	
11	2026	\$	846,999	0.41455%	0.63108%	1.1867%	3,511	4,009	9,046	15,814	
12	2027	\$	762,299	0.41455%	0.63108%	1.1867%	3,160	3,608	7,327	12,810	
13	2028	\$	686,069	0.41455%	0.63108%	1.1867%	2,844	3,247	5,935	10,376	
14	2029	\$	617,462	0.41455%	0.63108%	1.1867%	2,560	2,923	4,808	8,404	
15	2030	\$	555,716	0.41455%	0.63108%	1.1867%	2,304	2,630	3,894	6,808	
16	2031	\$	500,144	0.41455%	0.63108%	1.1867%	2,073	2,367	3,154	5,514	
17	2032	\$	450,130	0.41455%	0.63108%	1.1867%	1,866	2,131	2,555	4,466	
18	2033	\$	405,117	0.41455%	0.63108%	1.1867%	1,679	1,917	2,069	3,618	
19	2034	\$	364,605	0.41455%	0.63108%	1.1867%	1,511	1,726	1,676	2,930	
20	2035	\$	328,145	0.41455%	0.63108%	1.1867%	1,360	1,553	1,358	2,374	
21	2036	\$	295,330	0.41455%	0.63108%	1.1867%	1,224	1,398	1,358	2,374	
22	2037	\$	265,797	0.41455%	0.63108%	1.1867%	1,102	1,258	1,358	2,374	
23	2038	\$	239,217	0.41455%	0.63108%	1.1867%	992	1,132	1,358	2,374	
24	2039	\$	215,296	0.41455%	0.63108%	1.1867%	893	1,019	1,358	2,374	
25	2040	\$	193,766	0.41455%	0.63108%	1.1867%	803	917	1,358	2,374	
26	2041	\$	174,390	0.41455%	0.63108%	1.1867%	723	825	1,358	2,374	
27	2042	\$	156,951	0.41455%	0.63108%	1.1867%	651	743	1,358	2,374	
28	2043	\$	141,256	0.41455%	0.63108%	1.1867%	586	669	1,358	2,374	
29	2044	\$	127,130	0.41455%	0.63108%	1.1867%	527	602	1,358	2,374	
30	2045	\$	114,417	0.41455%	0.63108%	1.1867%	474	542	1,358	2,374	
Total personal ad valorem tax											
								63,199	107,372	180,914	316,270

Tax Abatement Benefit to Kroger		
Projected Year 1 Abatement		60,489
Over Ten Years Abatement		773,893
30 years property taxes		5,236,281

10 year personal property (inventory) assessment

Year	Tax Year	Assessed Value	County Tax		City Tax		Houston		City Prop		Houston ISD		Total Prop Tax
			Rate	Rate	Rate	Rate	Prop Tax	ISD Rate	Tax	Tax	Tax		
1	2016	\$ 3,800,000	0.41455%	0.63108%	0.41455%	0.63108%	1.1867%	15,753	23,981	45,095	84,829		
2	2017	\$ 3,800,000	0.41455%	0.63875%	0.41455%	0.63875%	1.1867%	15,753	24,273	45,095	85,120		
3	2018	\$ 3,800,000	0.41455%	0.63875%	0.41455%	0.63875%	1.1867%	15,753	24,273	45,095	85,120		
4	2019	\$ 3,800,000	0.41455%	0.63875%	0.41455%	0.63875%	1.1867%	15,753	24,273	45,095	85,120		
5	2020	\$ 3,800,000	0.41455%	0.63875%	0.41455%	0.63875%	1.1867%	15,753	24,273	45,095	85,120		
6	2021	\$ 3,800,000	0.41455%	0.63875%	0.41455%	0.63875%	1.1867%	15,753	24,273	45,095	85,120		
7	2022	\$ 3,800,000	0.41455%	0.63875%	0.41455%	0.63875%	1.1867%	15,753	24,273	45,095	85,120		
8	2023	\$ 3,800,000	0.41455%	0.63875%	0.41455%	0.63875%	1.1867%	15,753	24,273	45,095	85,120		
9	2024	\$ 3,800,000	0.41455%	0.63875%	0.41455%	0.63875%	1.1867%	15,753	24,273	45,095	85,120		
10	2025	\$ 3,800,000	0.41455%	0.63875%	0.41455%	0.63875%	1.1867%	15,753	24,273	45,095	85,120		

Total personal (inventory) ad valorem tax

157,529	242,434	450,946	850,909
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Total ad valorem tax (real + personal)

4,712,898	5,478,715	2,391,279	12,019,305,593
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Not eligible for tax abatement

Kroger

Year	Tax Year	Assessed Value	County Tax Rate	City Tax Rate	Houston ISD Rate	City Prop Tax	Houston ISD Tax	Total Prop Tax
1	2016	\$ 3,800,000	0.41455%	0.63108%	1.1867%	23,981	45,095	84,829
2	2017	\$ 3,800,000	0.41455%	0.63875%	1.1867%	24,273	45,095	85,120
3	2018	\$ 3,800,000	0.41455%	0.63875%	1.1867%	24,273	45,095	85,120
4	2019	\$ 3,800,000	0.41455%	0.63875%	1.1867%	24,273	45,095	85,120
5	2020	\$ 3,800,000	0.41455%	0.63875%	1.1867%	24,273	45,095	85,120
6	2021	\$ 3,800,000	0.41455%	0.63875%	1.1867%	24,273	45,095	85,120
7	2022	\$ 3,800,000	0.41455%	0.63875%	1.1867%	24,273	45,095	85,120
8	2023	\$ 3,800,000	0.41455%	0.63875%	1.1867%	24,273	45,095	85,120
9	2024	\$ 3,800,000	0.41455%	0.63875%	1.1867%	24,273	45,095	85,120
10	2025	\$ 3,800,000	0.41455%	0.63875%	1.1867%	24,273	45,095	85,120