

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is made and entered into as of the _____ day of October, 2015, by and between **Hanover Evangelical Friends Church**, a(n) _____, as Seller, and **Kroger Limited Partnership I, an Ohio limited partnership**, as Purchaser.

WITNESSETH:

WHEREAS, Seller is the owner of that certain real property located at 6420 Mechanicsville Turnpike, Mechanicsville, County of Hanover and Commonwealth of Virginia, together with all improvements located thereon and all rights and appurtenances thereunto appertaining ("Premises"), more particularly described in **Exhibit "A"** attached hereto and made a part hereof; and

WHEREAS, Seller wishes to sell to Purchaser the Premises and Purchaser wishes to purchase from Seller the Premises, upon the terms and conditions hereinafter set forth.

WHEREAS, Purchaser wishes to acquire the Premises to facilitate the widening of Mechanicsville Turnpike and Compass Point Lane as required by Hanover County and Virginia Department of Transportation in conjunction with the construction of a Kroger Marketplace Store located on the northwest corner of Mechanicsville Turnpike and Compass Point Lane.

NOW, THEREFORE, in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I - PURCHASE PRICE

1.1. **Purchase Price.** The purchase price ("Purchase Price") for the Premises shall be Twenty Thousand and 00/100 Dollars (\$20,000.00), to be adjusted as set forth herein.

ARTICLE II - TITLE

2.1. **Survey.** Within thirty (30) days from the date hereof, Purchaser, at its sole cost and expense, shall obtain a current certified survey ("Survey") of the Premises.

- 2.2. **Title Commitment.** Within thirty (30) days from the date hereof, Purchaser, at its sole cost and expense, shall obtain a title insurance commitment (the "Title Commitment") issued by a title company selected by Purchaser ("Title Company") for an Owner's Policy of Title Insurance (ALTA Form 6/17/06), insuring good and marketable title to the Premises, in accordance with the terms of this Agreement. The Title Commitment shall list as exceptions all easements, restrictions, encumbrances, reservations, liens and other matters, including those shown on the Survey ("Exceptions"), affecting the Premises, and shall include legible copies of all instruments creating such Exceptions. Said Title Commitment shall state that all standard exceptions shall be deleted in the final policy and, further, will require the Title Company to provide all affirmative coverages deemed necessary by Purchaser.
- 2.3. **Purchaser's Objections.** Purchaser shall have thirty (30) days after the later to occur of (i) execution of this Agreement or (ii) receipt of all of the following: (a) the Title Commitment, (b) the Survey, and (c) legible copies of all liens and encumbrances enumerated in the Title Commitment, to notify Seller of any Exceptions in the Title Commitment or any matter disclosed by the Survey which makes the Premises unsuitable for Purchaser's purposes, in Purchaser's sole judgment ("Title Objections"). Seller thereupon shall have thirty (30) days within which to cause such Title Objections to be removed from the Title Commitment or cause the matters reflected on the Survey to be removed, as the case may be ("Cure"). In the event that Seller is unable or unwilling to effect such Cure, then Purchaser, at its option, may select (i) to terminate this Agreement, whereupon all consideration paid by Purchaser shall be returned to Purchaser, and the parties hereto shall have no further obligations hereunder except for any obligation hereunder which, by its express terms, survives any termination of this Agreement, or (ii) to waive such Title Objections and to proceed to Closing, as set forth in Article VII hereof, in which event the cost to effect the Cure may be deducted by Purchaser from the Purchase Price. All Exceptions approved by Purchaser or Title Objections subsequently waived in writing shall hereinafter be deemed to be "Permitted Exceptions".

ARTICLE III - ADDITIONAL CONDITIONS PRECEDENT

- 3.1. **Tests, Studies, and Inspections.** Purchaser shall have sixty (60) days from the date hereof within which to conduct such tests, studies, inspections and other examinations (collectively, "Examinations") as it may elect in its sole judgment, to determine the suitability of the

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Premises for Purchaser's purposes. Such Examinations may include, but shall not be limited to, soil tests, borings, engineering studies, environmental studies, feasibility studies, topographical surveys, drainage plans, marketing studies, financial studies, utility availability investigations, and ability to obtain building permits and all other required permits or licenses. If the Examinations disclose matters which make the Premises unsuitable for Purchaser's purposes, in Purchaser's sole judgment, then Purchaser may terminate this Agreement by giving written notice within such sixty (60) day period to Seller, in which event all consideration paid by Purchaser shall be returned to Purchaser, and the parties hereto shall have no further obligations hereunder except for any obligation hereunder which, by its express terms, survives any termination of this Agreement. During such sixty (60) day period, Purchaser and Purchaser's agents, employees and contractor shall have the right to enter upon the Premises at all times except on Sundays to conduct the Examinations.

- 3.2. **Funding Approval.** If Purchaser's management or the senior management of The Kroger Co., an Ohio corporation fails to approve funding for the project contemplated for the Premises within ninety (90) days after the date hereof, Purchaser may terminate this Agreement by giving written notice within such ninety (90) day period to Seller, in which event consideration paid to Seller shall be returned to Purchaser and the parties hereto shall have no further obligations hereunder except for any obligation hereunder which, by its express terms, survives any termination of this Agreement.

ARTICLE IV - REPRESENTATIONS

- 4.1. **Representations of Seller.** Seller represents and warrants to Purchaser that the following statements are true as of the date hereof and shall continue to be true on the Closing Date, (as hereinafter defined):
- (i) Seller has good and marketable fee simple absolute title to the Premises.
 - (ii) There is no pending or contemplated claim, litigation, condemnation, administrative action or other legal proceeding involving or affecting any portion of the Premises.
 - (iii) There is no oral or written lease, agreement or contract in any way affecting or related to the Premises.

- (iv) No default exists under any agreement which in any way affects the Premises.
- (v) Both Seller and the individual executing this Agreement on behalf of Seller have the full right, power and authority to enter into this Agreement and to cause the same to create a legal and binding obligation of Seller.
- (vi) There is no violation of any applicable building code, zoning code or environmental or other law or regulation affecting the Premises.
- (vii) No portion of the Premises or any property adjoining or in the immediate vicinity of the Premises heretofore has been used as a site for the dumping of hazardous waste or other toxic materials, and Seller has conducted such tests, studies and questionnaires as are necessary in order to determine that all laws, governmental standards and regulations applicable to the Premises in respect of occupational health and safety, hazardous waste and substances and environmental matters have been and currently are being complied with.
- (viii) The Premises have unrestricted access to Mechanicsville Turnpike and Compass Point Lane which are dedicated public streets that have been accepted by the governmental authority having jurisdiction.
- (ix) The Premises are not under a tax reduction program or any other classification that lessens or reduces the real estate tax obligations in any manner and that has caused or may cause an increase in present or future real estate taxes on the Premises as a result of the tax savings or deferrals received in prior years.
- (x) No portion of the Premises is located within any state, local or federally protected "wetlands" (as such term is defined in applicable state, local or federal legislation).

Deleted: Seller hereby agrees to indemnify and save harmless Purchaser from and against all costs, claims, expenses or damages, including reasonable attorneys' fees and costs of suit, related to the failure of the aforementioned representation to be true, including, but not limited to, liability imposed under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

4.2. **Survival of Representations, Covenants and Warranties.** Representations, covenants and warranties set forth in this Agreement shall be continuing and shall survive the Closing and shall not be affected by any investigation, verification or approval by any party hereto or by anyone on behalf of any party hereto.

ARTICLE V - LOSS

- 5.1. **Risk of Loss.** If the Premises or any portion thereof are damaged by casualty, force majeure or other cause, then Purchaser, at its option may elect (i) to deduct the cost of restoration, as determined by Purchaser's engineer, from the Purchase Price, and to proceed in accordance with the terms and conditions of this Agreement, or (ii) to terminate this Agreement, whereupon all consideration paid by Purchaser shall be returned to Purchaser and the parties hereto shall have no further obligations hereunder.

ARTICLE VI - CONDEMNATION

- 6.1. **Condemnation.** In the event that condemnation proceedings are commenced or Purchaser has reasonable cause to believe that such proceedings hereafter may be commenced, then Purchaser may elect to terminate this Agreement by giving written notice to Seller, whereupon Purchaser shall receive all consideration paid by Purchaser under this Agreement, and the parties hereto shall have no further obligations hereunder. In the event of an actual taking in condemnation or a conveyance in lieu thereof prior to Closing, then Purchaser, at its option, may (i) proceed to Closing, or (ii) terminate this Agreement and the parties hereto shall have no further obligations hereunder. Seller shall not convey any portion of the Premises and shall not agree to any condemnation settlement without Purchaser's prior written consent, and any condemnation award not paid prior to Closing shall be assigned to Purchaser at Closing.

Deleted: in which event the Purchase Price shall be reduced by the amount of the condemnation award or the sales price, in the event of a conveyance in lieu of condemnation, if such amounts are paid prior to Closing,

Deleted: whereupon the consideration paid by Purchaser shall be returned to Purchaser

ARTICLE VII - CLOSING

- 7.1. **Date of Closing.** The Closing shall occur at the office of the Title Company, on a date and at a time selected by Purchaser, on or before December 31, 2015 (the "Closing Date"). Purchaser shall notify Seller of the actual date set for Closing which notice shall be at least thirty (30) days prior to the Closing Date. Seller shall provide Purchaser with all documents required under this Agreement to be executed or submitted at Closing for review at least seven (7) days prior to the scheduled Closing Date.
- 7.2. **Seller's Obligations.** At Closing, Seller shall deliver the following:
- (i) Evidence satisfactory to Purchaser that the Title Company, within twenty (20) days of Closing, will issue an Owner's Policy of Title

Insurance with all standard exceptions deleted and all affirmative coverages required by Purchaser in the amount of the Purchase Price, insuring good and marketable fee simple absolute title to the Premises in Purchaser, and insuring all rights, easements and privileges appurtenant to the Premises, free and clear of all liens, encumbrances, restrictions, easements, reservations and other matters, except for the Permitted Exceptions, which shall be at no cost to Seller.

Deleted: (Including without limitation those set forth in the Reciprocal Easement Agreement and the Site Development Agreement, both more particularly described below)

- (ii) A general warranty deed ("Deed"), in form and substance acceptable to Purchaser, fully executed and acknowledged by Seller, and in proper form for recording, conveying the Premises to Purchaser in fee simple absolute, free and clear of all easements, restrictions, conditions, reservations, liens or other encumbrances other than the Permitted Exceptions.
- (iii) A "Certificate of Nonforeign Status-Entity Seller," in the same form as that attached hereto as **Exhibit "B"**, certifying that Seller is not a "foreign person" as such term is defined in the applicable statutes.
- (iv) Seller's Certificate, executed and acknowledged in recordable form, confirming the truth and accuracy of the representations, warranties, and covenants of Seller contained in Section 2.1 and Article IV hereof as well as other agreements set forth herein as of the Closing Date, in the same form as that attached hereto as **Exhibit "C"**.
- (v) Complete and exclusive possession of the Premises to Purchaser.
- (vi) Such affidavits as are required by the Title Company to satisfy all affirmative coverages deemed necessary by Purchaser and for the elimination of any standard or printed exceptions in Purchaser's Owner's Policy of Title Insurance, including, without limitation, the exception for unfiled mechanic's liens, parties in possession and unrecorded easements.
- (vii) Such other documents as may be necessary or desirable to consummate the purchase and sale contemplated in this Agreement. Purchaser shall reimburse Seller for any costs related to other documents needed to consummate the sale of the Premises.

7.3. **Purchaser's Obligations.** Provided that all conditions precedent to Closing set forth herein have been satisfied, and further provided that Seller has delivered all items required by it to be delivered, and the Title Company has committed to deliver the title policy in accordance with Section 7.2(i) hereof, then Purchaser shall deliver to the Title Company, at Closing, the Purchase Price, ~~adjusted in accordance with the terms of this Agreement.~~

~~Deleted: less the consideration paid for this Agreement~~

7.4. **Closing Costs, Adjustment and Prorations.** Rents, if any, and ad valorem taxes and general assessments relating to the Premises for the year of Closing shall be prorated between Seller and Purchaser as of the Closing Date, based upon the best available estimates of the amount of same which will be due and payable on the Premises for the year of Closing. As soon as the actual amount of taxes and assessments is determined, Seller and Purchaser shall readjust the amount of taxes and assessments to be paid by each party. All transfer taxes, Survey charges, title insurance premiums, title examination charges and related attorneys' fees, if any, escrow charges, recording costs other than for recordation of the Deed, special assessments and other costs of Closing shall be borne by Purchaser. ~~The cost of recording the Deed shall be borne by Purchaser.~~ Each party shall be responsible for its own attorneys' fees.

~~Deleted: Seller~~

7.5. **Utilities.** If any utilities servicing the Premises are being used at the time of Closing, Seller shall cause same to be transferred to Purchaser's account at Closing. Seller shall be responsible for payment of all utility charges up to and through Closing.

ARTICLE VIII - DEFAULT

8.1. **Default.** If Seller fails to perform in accordance with the terms of this Agreement, or if any representation or warranty made by Seller herein shall be untrue upon execution hereof or on the Closing Date, then Purchaser, in addition to all other remedies available to it at law or in equity, may rescind this Agreement and may receive back the consideration paid by Purchaser under this Agreement. If Purchaser fails to perform its obligations hereunder, which failure continues for thirty (30) days after Purchaser's receipt of prior written notice of its default hereunder, and if such failure is not caused, in whole or in part, by the acts or omissions of Seller, then Seller, as its sole and exclusive remedy, either at law or in equity, may terminate this Agreement and receive from

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Purchaser the amount of Five Thousand and 00/100 Dollars as liquidated damages and not as a penalty, whereupon the parties hereto shall have no further obligations hereunder. The parties hereto hereby agree that, without resale, Seller's damages will be difficult to ascertain and that the liquidated damages payable to Seller as described in the preceding sentence constitute a reasonable estimation of such damages.

ARTICLE IX - MISCELLANEOUS

- 9.1. **Seller's Indemnification.** Seller hereby agrees to indemnify and save harmless Purchaser from and against all costs, claims, expenses, or damages, including reasonable attorneys' fees arising out of or related to ownership, possession or use of the Premises up through and including Closing or arising from a breach of Seller's representations, covenants and warranties hereunder.
- 9.2. **Brokerage Commissions.** Seller represents to Purchaser that it has not contacted, contracted with or entered into any agreement with any real estate broker or agent in connection with the sale of the Premises, and that it has not taken any action which might result in any real estate broker's, finder's or other fee or commission being due or payable in connection with this transaction. Seller shall indemnify and save harmless Purchaser from and against all costs, claims, expenses or damages, including reasonable attorneys' fees, resulting from or related to any brokerage commission due or alleged to be due. This obligation to indemnify shall survive the expiration, consummation or earlier termination of this Agreement.
- 9.3. **Notice and Approval.** All notices required or permitted to be given hereunder shall be in writing and shall be delivered to the parties at the following addresses:

If to Seller:

Ed Vinson, Senior Pastor
Hanover Evangelical Friends Church
6420 Mechanicsville Turnpike
Mechanicsville, VA 23111

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Phone Number: (804) 730-9512

If to Purchaser:

Kroger Limited Partnership I
3631 Peters Creek Road, N.W.
Roanoke, VA 24019
Attn: Real Estate Department
Telephone: (540) 563-3652
Fax Number: (540) 563-3682

And to:

The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202-1100
Attn: Law Department
Telephone: (513) 762-4503
Fax Number: (513) 762-4935

Notice shall be deemed to be served upon deposit in an office of the United States Postal Service, or successor governmental agency, registered or certified mail, return receipt requested, or upon receipt by a reputable overnight courier service (such as UPS or Federal Express), receipt requested, or by facsimile during regular business hours at the fax numbers set forth above.

- 9.4. **Integration.** This Agreement constitutes the entire agreement between the parties related to the purchase and sale of the Premises and shall be deemed to be a full, final and completed integration of all prior or contemporaneous understandings or agreements between the parties related thereto.
- 9.5. **Additional Documentation.** Seller and Purchaser shall execute such additional documentation as reasonably may be required to effectuate this Agreement.
- 9.6. **Amendments.** This Agreement may be amended or supplemented only by a written instrument signed by both parties hereto.
- 9.7. **Counterparts.** This Agreement may be executed in any number of identical counterparts, each of which shall be considered an original, but together shall constitute but one and the same agreement.
- 9.8. **Governing Law.** This Agreement shall be governed by and all disputes related hereto shall be determined in accordance with the laws of the Commonwealth of Virginia.

- 9.9. **Successors.** This Agreement shall be binding upon the parties hereto, their respective heirs, administrators, personal representatives, successors and assigns.
- 9.10. **Captions.** The captions or section headings are for convenience and ease of reference only and shall not be construed to limit, modify or alter the terms of this Agreement.
- 9.11. **Survival.** The representations, warranties and agreements set forth herein shall survive Closing.
- 9.12. **Calculation of Time.** In the event the final date of any time period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday, in such event, such time period shall be extended to the next regular business day.

9.13. **Widening of Compass Point Lane.** The Premises will be used only for road improvements to Mechanicsville Turnpike and Compass Point Lane. Purchaser will assume all costs related to the road improvements. Purchaser shall coordinate road construction with the Seller. All road improvements will be built to standards required by Hanover County and Virginia Department of Transportation. Seller will be given the opportunity to review the construction plans for the widening of Compass Point Lane prior to commencement of construction. Purchaser's general contractor will be required to add Seller as an additional insured.

Deleted: Purchaser shall not interrupt traffic flow to or from the Hanover Evangelical Friends Church facilities.

Purchaser's construction activity will include but not be limited to:

- (a) Grading
- (b) Paving
- (c) Paving marking and signs
- (d) Modifications to BMP
- (e) Seeding and returning the construction area to its original condition

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9.14. **Access and Safety.** Purchaser shall not interrupt traffic flow to or from the Hanover Evangelical Friends Church facilities. Purchaser's general contractor shall be required to provide a flagman during hours of Seller's operations to insure safe access.

9.15. **Fence.** Purchaser shall be required to restore the existing wooden stockade fence located along the border of Seller's land and along Compass Point Road. A portion of this fence will be removed during construction and a portion of the fence permanently removed. Purchaser shall install a section of new fencing that will run from the termination of the fence along Compass Point perpendicular to the Church building. Seller and Purchaser shall work together and agree on the specific location and design of the fence. Exhibit D attached hereto and made a part hereof shows the approximate location of the new fence to be installed at Purchaser's expense.

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