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ORDINANCE 31-83

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE TO MORGAN GUARANTY TRUST COMPANY OF NEW YORK OF \$1,480,000 INDUSTRIAL DEVELOPMENT REVENUE BOND OF THE MUNICIPALITY OF CENTERVILLE, OHIO; AUTHORIZING SAID MUNICIPALITY TO UTILIZE THE PROCEEDS FROM THE SALE OF SAID BOND TO ASSIST THE KROGER CO. IN FINANCING A COMMERCIAL DEVELOPMENT PROJECT; AUTHORIZING A LOAN AGREEMENT DEFINING THE TERMS AND CONDITIONS OF SAID SALE AND PROVIDING FOR REVENUES TO SAID MUNICIPALITY SUFFICIENT TO PAY PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON SAID BOND; AUTHORIZING THE PLEDGE OF SAID REVENUES AS SECURITY FOR SAID BOND; AUTHORIZING THE ACCEPTANCE OF A NOTE EVIDENCING THE COMPANY'S OBLIGATION TO MAKE LOAN PAYMENTS UNDER SAID LOAN AGREEMENT; AND AUTHORIZING THE ASSIGNMENT TO MORGAN GUARANTY TRUST COMPANY OF NEW YORK OF SAID NOTE AND OF SAID MUNICIPALITY'S RIGHT IN SAID LOAN AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, The Municipality of Centerville, Ohio (the "Issuer"), wishes to issue its \$1,480,000 Industrial Development Revenue Bond, Series 1983 (The Kroger Co. Project) (herein called the "Project Bond") and to utilize the proceeds from the sale of the Project Bond to assist The Kroger Co., an Ohio corporation (the "Company") pursuant to the terms of a Loan Agreement, dated as of December 1, 1983 (herein the "Loan Agreement" or the "Agreement") to expand, remodel, fixture and equip a retail supermarket located within the Municipality of Centerville, Ohio (the "Project"); and

WHEREAS, the issuance and sale of the Project Bond and the utilization of the proceeds from the sale of the Project Bond will induce the Company to locate the Project within the Municipality of Centerville and thereby will increase and maintain employment opportunities within the boundaries of the Municipality of Centerville and the State of Ohio (the "State") and will improve the economic welfare of the people residing within the boundaries of said Municipality and State,

NOW THEREFORE THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:.

Section 1. Definitions. In addition to the words and terms elsewhere defined in this ordinance (herein "Bond

Legislation"), all initially capitalized terms and words used herein shall have the same meaning as in the Loan Agreement (the "Agreement") and/or Indenture of Trust (the "Indenture") relating to the Project Bond authorized by this Bond Legislation, unless the context or use clearly indicates another or different meaning or intent.

Section 2. Determinations by the Legislative Authority. The Legislative Authority hereby determines that the Project is a "project" as defined in Chapter 165 of the Ohio Revised Code, as amended (the "Act") and is consistent with the purposes of the Act.

Section 3. (a) The Issuer is hereby authorized to issue the Project Bond, to deliver the Project Bond to, and cause the Project Bond to be authenticated by, the Trustee in accordance with the terms and conditions of the Indenture and to sell the Project Bond to Morgan Guaranty Trust Company of New York (the "Bank") at the price and on the terms and conditions set forth in a certain Bond Purchase Agreement, dated as of November 21, 1983, between the Issuer and the Bank (the "Bond Purchase Agreement"), which price, terms and conditions are hereby approved. The Project Bond shall have the terms set forth in Section 4 of this Bond Legislation. The proceeds from the sale of the Project Bond shall be used by the Issuer to make the Loan to the Company to assist the Company in financing the Cost of the Project, which Loan is hereby authorized and is hereby determined to be necessary to accomplish the purposes contemplated by the Act.

(b) To secure the payment of the Project Bond, the Issuer is authorized to enter into, and to perform its obligations under, the Bond Purchase Agreement, the Agreement, the Assignment and the Indenture in substantially the forms submitted to the Issuer but with such changes therein as (i) are not inconsistent with this Bond Legislation, (ii) are not substantially adverse to the Issuer, (iii) are permitted by the Act and (iv) are approved by the officers of the Issuer executing and delivering such agreements and instruments, all of which facts shall be conclusively evidenced by such officers' execution and delivery of such agreements and instruments.

(c) The Project Bond shall be executed by the Manager of the Issuer (the "Executive") and/or by the Director of Finance of the Issuer (the "Fiscal Officer"). The Bond Purchase Agreement, the Agreement, the Assignment and the Indenture shall be executed, acknowledged (where appropriate) and delivered, and the Note shall be endorsed to effect its assignment to the Bank, by the Executive and/or the Fiscal Officer, each such officer being hereby authorized and directed to do the same.

(d) Each of the Executive and the Fiscal Officer is hereby authorized and directed to take all steps necessary to effect the due authentication, delivery and securing of the Project Bond under the terms of this Bond Legislation and Indenture.

(e) The Clerk of Council of the Issuer (the "Clerk") shall cause to be furnished to the Bank and Messrs. Taft, Stettinius & Hollister, bond counsel ("Bond Counsel"), a true, certified transcript of proceedings had with reference to the issuance of the Project Bond, such transcript to include such information designated by Bond Counsel from the Issuer's records as is necessary to determine the regularity and validity of the issuance of said Project Bond.

(f) The Issuer is hereby authorized to enter into, and to perform its obligations under, such other agreements, instruments and documents, and to take such other actions as are, in the opinion of Bond Counsel, necessary (i) to perfect the liens, security interest, pledges and other encumbrances created by the Indenture and Assignment, (ii) to assign the Issuer's right, title and interest in such liens, security interests, pledges and other encumbrances to the Trustee and (iii) to consummate the transactions provided for in, or contemplated by, this Bond Legislation, the Bond Purchase Agreement, the Agreement, the Assignment and/or the Indenture. Each of the Executive and the Fiscal Officer is hereby authorized and directed to execute and deliver such agreements, instruments and documents and to take such action by and on behalf of the Issuer.

Section 4. Terms of Bonds. (a) The Project Bond shall be designated "The Municipality of Centerville, Ohio, Industrial Development Revenue Bond, Series 1983 (The Kroger Co. Project)" and shall be in the aggregate principal amount of \$1,480,000.00. The Project Bond shall be substantially in the form of the bond set forth in the Indenture, with appropriate variations, omissions and insertions.

(b) Principal of the Project Bond shall be payable on January 1, 1994. The Project Bond shall be dated the date of its delivery and shall bear interest from its date payable quarterly on each April 1, July 1, October 1 and January 1, commencing on April 1, 1984, until the Project Bond is paid.

(c) The Project Bond will be issuable only as a single fully registered bond without coupons in the denomination of \$1,480,000. The Trustee will act as Bond Registrar and will maintain books at its principal office for the registration and registration of transfer of the Project Bond. No charge will be made for any transfer or exchange,

provided that any tax, fee or other governmental charge applicable in connection therewith must be paid as a condition to the exercise of such privilege. In the event the Project Bond is mutilated, lost, stolen, or destroyed, the Issuer may execute and the Trustee may authenticate a new Project Bond in accordance with the provisions therefor in the Indenture. The Issuer and the Trustee may charge the holder or owner of such Project Bond their reasonable fees and expenses in this connection, and in the case of a lost or destroyed Project Bond, the holder may be required to provide the Issuer, the Trustee and the Company with evidence of the loss or destruction and appropriate indemnity.

(d) The principal of and interest, on the Project Bond will be payable in immediately available funds to the registered owner or, if the Trustee shall have received written instructions to such effect from the registered owner, then by official bank wire.

(e) The Project Bond shall bear interest at a rate per annum equal to eight and six tenths percent (8.60%) per annum; provided, the rate of interest borne by the Project Bond shall never exceed the maximum rate permitted by applicable federal or state law or regulation.

(f) The Project Bond is subject to extraordinary redemption in whole at the option of the Holder upon notice to the Company from the Holder prior to maturity if, by reason of (x) any changes in the Constitution of the State of Ohio or the Constitution of the United States of America, (y) legislative or administrative action (whether state or Federal) or (z) any final decree, judgment or order of any court or administrative body (whether state or Federal) entered after the contest thereof by the Trustee, the holder or Company in good faith, the Agreement shall have become void, unenforceable or impossible of performance.

In such events, the Project Bond is callable at any time in whole, but not in part, at 100% of the principal amount thereof plus accrued interest to the redemption date, together with payment of any Extraordinary Payments then due.

Section 5. Security Pledged for Bond. As provided herein, the Project Bond shall be payable solely from the Pledged Receipts and shall be secured by a pledge of and lien on moneys deposited in the Acquisition Fund and Bond Fund and by a pledge and assignment of other moneys constituting Pledged Receipts, and shall be further secured by the Indenture and by the pledge of the Note. Anything in this Bond Legislation, the Agreement, the Assignment, the Note, the the Project Bond or the Indenture to the contrary notwithstanding, neither this

Bond Legislation, the Project Bond, nor the Indenture shall constitute an indebtedness or a pledge of the faith and credit of the Issuer, the State or any political subdivision thereof within the meaning of any constitutional or statutory provision, and the holder or owner of the Project Bond shall have no right to have taxes levied by the General Assembly of the State, by the Legislative Authority, or by the taxing authority of any other political subdivision of the State for the payment of the principal of, premium, if any, or interest on the Bonds. The Project Bond is payable solely from the Pledged Receipts and the Project Bond shall contain on the face thereof a statement to that effect; provided, however, that nothing herein shall be deemed to prohibit the Issuer, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of the Agreement, Assignment, Indenture, this Bond Legislation or the Project Bond.

Section 6. Acquisition Fund.

(a) There is hereby created by the Issuer and ordered maintained as a separate trust account (except when invested as provided in Article VII of the Indenture) in the custody of the Trustee a trust fund to be designated "The Municipality of Centerville, Ohio, Acquisition Fund (The Kroger Co. Project)" (herein called the "Acquisition Fund"). After deducting the capitalized interest, if any, on the Project Bond required by Section 7 of this Bond Legislation to be paid into the Bond Fund, the balance of the proceeds of the Project Bond shall be deposited in the Acquisition Fund and shall be disbursed by the Trustee in accordance with the provisions of the Agreement, and the Trustee is hereby authorized and directed to issue its check for each disbursement required by the provisions of the Agreement.

(b) The moneys to the credit of the Acquisition Fund shall, pending application thereof as above set forth, be subject to a lien and charge in favor of the holder of the Project Bond, but only to the extent of its interest therein.

Section 7. Source of Payment--Bond Fund.

(a) There is hereby created by the Issuer and ordered maintained, as a separate trust account (except when invested as provided in Article VII of the Indenture) in the custody of the Trustee, a trust fund to be designated "The Municipality of Centerville, Ohio, Bond Fund (The Kroger Co. Project)" (herein called the "Bond Fund"). The Trustee shall deposit in the Bond Fund from the proceeds of the sale of the Project Bond, amounts (if any) representing capitalized interest. The Bond Fund and the moneys and investments therein are hereby pledged to and

shall be used solely and exclusively for the payment of Loan Payments as they fall due at stated maturity or by redemption all as provided herein, in the Indenture and in the Agreement; provided that no part thereof (except as may otherwise be provided for herein, in the Indenture or in the Agreement) shall be used to redeem, prior to maturity, the Project Bond.

(b) The moneys to the credit of the Bond Fund shall, pending application thereof as above set forth, be subject to a lien and charge in favor of the holders from time to time of the Bond, but only to the extent of their interest therein.

(c) As provided in the Agreement, Loan Payments sufficient in time and amount to pay the principal of and interest on the Project Bond as it comes due are to be paid by the Company directly to the Trustee for the account of the Issuer and are to be deposited in the Bond Fund.

(d) On or before each date when Loan Payments are due and payable, the Trustee shall transmit to the other Paying Agents, if any, from moneys in the Bond Fund amounts sufficient to meet payments to be made by such Paying Agents of the Loan Payments then to be due and payable; provided, that to the extent that the amount needed by any other Paying Agent is not sufficiently predictable, the Trustee may make credit arrangements with such Paying Agent so as to permit the meeting of such payments.

Section 8. Other Documents. Either one or both of the Executive and Fiscal Officer is hereby further authorized and directed to execute, deliver and appropriately file (a) financing statements, other assignments and other instruments including such as are in the opinion of Bond Counsel, necessary to perfect the pledges set forth in the Indenture and the Agreement and (b) such other documents and instruments as are necessary to consummate the transactions provided for in the Indenture and Agreement.

Section 10. Open Meetings. It is hereby found and determined that all formal actions of the Issuer concerning and relating to the passage of this Bond Legislation were taken in an open meeting of the Issuer, and that all deliberations of the Issuer and of any of its committees, if any, that resulted in such formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 11. Election by Issuer. The Issuer hereby elects with respect to the Project Bond to be within the limitation imposed by the provision of Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, and each of the Executive and Fiscal Officer is hereby authorized and directed

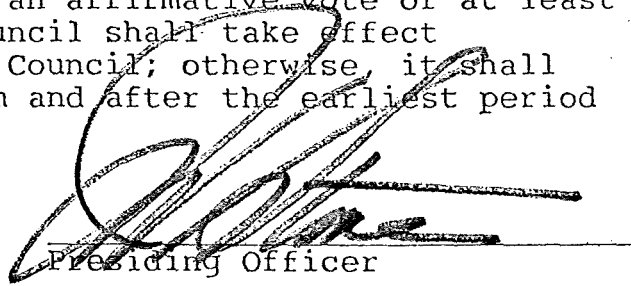
to perform any and all acts and provide such information as may be required by the Secretary of the Treasury, his delegate, or the Internal Revenue Service in order to implement such election.

Section 12. Prevailing Rates of Wages. All laborers and mechanics employed on the Project shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project, which wages shall be determined in accordance with the requirements of Chapter 4115 of the Ohio Revised Code, for determination of prevailing wages; provided, that should the Company or other nonpublic user beneficiary of the Project undertake, as part of the Project, construction to be performed by its regular collective bargaining unit employees who are covered under a collective bargaining agreement which was in existence prior to the date of the commitment instrument undertaking to issue the Project Bond, then, in that event, the rate of pay provided under the collective bargaining agreement may be paid to such employees.

Section 13. Approval Pursuant to Section 103(k) of the Code. For purposes of complying with Section 103(k) of the Code, the legislative Authority hereby approves the issuance of the Project Bond in the maximum aggregate principal amount of \$1,480,000 and the expansion, remodeling and fixturing of the Company's retail supermarket located at 1023 South Main Street, Centerville, Ohio 45459. Prior to granting this approval, the Legislative Authority has conducted a public hearing with respect to the Project and the use of the Project Bond, with notice of such public hearing having been published prior to such hearing in Centerville-Bellbrook Times

Section 14. Declaration of Emergency. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property or health or safety in the Municipality of Centerville, Ohio, the reason for such emergency being the urgent necessity to take such actions as will effectuate financing for the Company of the Project and thus provide employment opportunities and additional tax revenues to the Municipality; wherefore the Ordinance, provided it receives an affirmative vote of at least two thirds of the members of Council shall take effect immediately upon its passage by Council; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: December 19, 1983



Presiding Officer

Attest: Marilyn McLaughlin
Clerk of Council

CERTIFICATE

I, Marilyn J. Weisbaugh Clerk of Council of the Municipality of Centerville, Ohio, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 31-83, passed by the Council of said Municipality on the 19th day of December, 1983.

WITNESS my hand at Centerville, Ohio, this 19th day of December, 1983.

Marilyn J. Weisbaugh
Clerk