

ASSIGNMENT AND CONTRACT OF PERFORMANCE

*MSK*  
This Assignment dated this 19<sup>TH</sup> day of DECEMBER, 1987, by and between THE KROGER CO., an Ohio corporation ("Assignor"), and KING HOLDING COMPANY, a Tennessee corporation ("Assignee");

WITNESSETH:

WHEREAS, Assignor desires to assign its Option Agreement ("Option") between Charles Frank McNutt as "Seller", and The Kroger Co., an Ohio corporation as "Purchaser" dated June 12, 1987, of a certain demised premises ("Premises") as described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Assignee desires to accept such Assignment under certain terms and conditions;

NOW THEREFORE, the parties hereto agree for and in consideration of \$1.00 and other considerations hereinafter set forth, acknowledge by the parties hereto as full and adequate

1. Assignor hereby assigns, quit claims, delivers and conveys any and all of its interest in and to the Option of the Premises to Assignee effective DECEMBER 22, 1987.

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*WJB*  
2. Assignee shall faithfully and completely perform any and all obligations of Assignor under the Option Agreement arising after DECEMBER 22, 1987 and Assignor shall be relieved of any and all obligations under the Option Agreement arising after DECEMBER 22, 1987.

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3. Assignee shall reimburse Assignor ~~the sum of Seven Thousand and 00/100 Dollars (\$7,000.00) incurred by Assignor in securing the Option.~~ ALL OPTION COSTS THAT WILL BE A CREDIT AGAINST THE PURCHASE PRICE OF \$210,000.

4. Assignee covenants and agrees to make every reasonable effort to satisfy the contingencies of the Option and to close on the purchase of the Premises as soon as reasonably practicable.

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*WJB*  
5. Assignee covenants and agrees to, at its sole cost and expense, immediately upon closing on the purchase of the Premises, design a parking lot in conformance with Assignor's requirements set forth in Exhibit B ("Research and Design") and demolish all the improvements and remove all debris from ~~that portion of the Premises shaded in blue on the site plan attached hereto and made a part hereof as Exhibit C ("Site Plan")~~ ("Demolition"), taking particular care to have completed all necessary environmental testing and to have properly disposed of any hazardous waste or materials before commencing Demolition.

, including but not limited to  
asbestos or underground tanks,

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*WJB*

~~Assignee further covenants and agrees to grade and stone the portion of the Premises shown shaded in green on the Site Plan for parking and to clean, refurbish, and keep maintained the building labelled "Lease Space" on the Site Plan.~~

6. Upon completion of the Research and Development and the Demolition, Assignor and Assignee covenant and agree to enter into the Lease Modification Agreement No. 2 and the Lease Amendment attached hereto as Exhibits <sup>C and</sup> ~~D and E~~ <sup>Design</sup> respectively and hereinafter referred to as "LMA No. 2" and the "the Amendment". Should Assignee fail to complete the Research and <sup>Design</sup> ~~Development~~ and the Demolition by <sup>May</sup> ~~March~~ 1, 1988, then Assignor may, in addition to its other remedies in law or in equity, require specific performance, or notify Assignor of its intent not to enter into LMA No. 2 and the Amendment, in which event neither party shall have any further obligations one to the other.

7. Assignee covenants and agrees to hold Assignor harmless from any and all liability, and from any and all costs and expenses, including without limitation reasonable attorney's fees, arising out of Assignee's obligation to purchase the Premises, demolish and remove improvements and debris, or design and construct a parking lot on the Premises.

IN WITNESS WHEREOF, the parties hereto have set their hands this 19<sup>TH</sup> day of December, 1987 (as to Assignor), and this 14<sup>th</sup> of January, 1988 (as to Assignee).

WITNESSETH  
Harold G. King

KING HOLDING COMPANY  
By: H. G. King  
H. G. King, President

WITNESSETH  
Beth Jones  
Sandra M. Sawyer

THE KROGER CO.  
By: Richard L. Bere  
Richard L. Bere, Vice President  
Southland Marketing Area

including without limitation any actions or penalties by any regulatory agencies regarding removal of the hazardous waste,

, including without limitation removal of hazardous waste or materials,

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*JOB Nsh*

SITUATED in District No. 9 of Blount County, Tennessee, in the City of Alcoa, and being in two tracts more particularly described as follows:

FIRST TRACT: BEGINNING on an iron pin at the point of intersection of the north right of way line of Gill Street and the west right of way line of Hall Road; thence with Gill Street S. 52-57-34 W. 450.03 feet to an iron pin at the point of intersection of the north right of way line of Gill Street and the east right of way line of Rankin Road; thence with Rankin Road N. 38-39-20 W. 190.08 feet to an iron pin, corner to Peery, said iron pin being located N. 3-28-38 W. 82.81 feet from a street monument; thence with Peery N. 52-57-34 E. 190.52 feet to an iron pin, corner to Peery; thence with Peery, N. 37-02-26 W. 10 feet to an iron pin, corner to Peery; thence with Peery, N. 52-57-34 E. 264.87 feet to an iron pin, corner to Peery and on the west right of way line of Hall Road; thence with Hall Road S. 37-02-26 E. 200 feet to the point of beginning, and containing 2.034 acres, more or less, all as shown by survey of Don R. Watt dated 9/11/65.

Mr. Benji Moore  
G. O. REAL ESTATE


SUBJECT: U-862, Alcoa, TN

Pursuant to our telephone conversation of September 15, 1987, I am herewith advising you of the engineering requirements involved in the leasing of the adjacent lot for purposes of immediate parking lot construction and future building expansion. It is my understand that we will be leasing only, and that Mr. King will purchase the property and handle all construction.

1. Soil tests are suggested, both in the lot and building areas. I am enclosing our soil sampling guidelines, pages X E-1, X E-2 and X E-3. I will mark the boring locations on a plan, if provided.
2. It is known that underground tanks, fuel lines and hydraulic lines exist on this site. It is possible that some soil contamination may have occurred. It is also possible that some waste oil products or other hazardous or undesirable materials may have leaked or been dumped on the site. Investigation should be made in conjunction with the soil tests to determine if hazardous waste contamination exists. A determination should be made prior to the closing of any Real Estate transaction.
3. A proposed site plan should be submitted showing all intended improvements, pavement marking, lot lighting, storm sewer, retaining wall location and design, grades and slopes, adjoining streets and property, etc. I am enclosing our standard parking lot layout specification detail ASD-134 (last revised 7/10/87).
4. A paving design should be determined based upon soil tests conducted on site materials and on any off-site fill materials required. I am enclosing pages 2B-1 and 2B-2 (dated 10/10/86) of the Kroger standard specifications. These pages specify asphalt paving, parking lot layout and concrete curbing.
5. Mr. King should investigate the site and all local government or utility requirements. Zoning; setback; building height, size or design limits, easements, extent of right-of-way; off-site improvement; state highway requirements; curb cut regulations; sidewalks; existing plant life; and traffic control are examples of such requirements to be investigated and identified.
6. Agreements should be made concerning the timing of work in the parking lot area. A scheduled completion date should be identified. Further understandings should be developed on construction vehicle activity and parking in our existing lot during demolition and construction as well as effect on customer and store activities.

Mr. Benji Moore  
September 16, 1987  
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7. Agreements should be reached on what structures and activities will remain or be established on the non-parking area of the site prior to the planned construction of the Kroger expansion.
8. The site plan should show any improvements planned for our existing lot, such as resealing/restriping, etc.
9. I am enclosing a copy of the Kroger General Conditions (dated 10/10/86, last revised 3/27/87) which shall rule for all construction.
10. I am enclosing pages 2A-1, 2A-2 and 2A-3 (dated 10/10/86, last revised 3/27/87 of the Kroger Standard Specifications. These pages specify site work improvements required including parking lot lighting.
11. A Specification and Responsibility data sheet should be completed.
12. I am enclosing the A.L.T.A unimproved property survey checklist (pages X d-5 and X D-6, dated 5/28/85) and the Lawyer's Title Survey Instructions and Surveyor's Certificate (page X S-7 and X D-8). Also enclosed is the A.L.T.A. "as-built" survey checklist.



John A. Sloane

JAS:ef

cc: Ed Hudson  
Mike Woodke

Encl.

SPECIFICATIONS  
SOIL TEST BORINGS

These specifications apply to test boring locations numbered \_\_\_\_\_ through \_\_\_\_\_ of a total of \_\_\_\_\_ borings as shown on the attached test hole location drawing dated \_\_\_\_\_.

1. Test samples are to be taken using the Standard Penetration Test; i.e., a 140 lb. weight falling 30 inches to drive a 2" o.d. x 1-3/8" i.d. sampling spoon a depth of 1 foot.
2. Test samples are to be taken at each noticeable change in subsoil characteristic but in no case at greater intervals than 5 feet.
3. Test borings are to be made at the locations shown on the copy of the survey furnished by The Kroger Co. If structures or other obstructions prohibit boring at the specified locations, borings are to be made as close as possible to same. (If no survey drawing is furnished, assume surface elevations to be zero.)
4. Test borings are to be advanced by auger wherever the subsoil structure permits.
5. Test borings are to be taken to a depth of \_\_\_\_\_ ft. in building area unless refusal; i.e., 59 blows per foot of penetration is obtained first. Test borings are to be taken to a depth of \_\_\_\_\_ ft. in parking area unless refusal; i.e., 59 blows per foot of penetration is obtained first.
6. If at the level specified in Article 5, poor soil; i.e., 6 blows or under per foot of penetration, is encountered, borings will be taken to a depth either of \_\_\_\_\_ ft. or until at least 8 to 10 blows per foot are obtained, whichever comes first.
7. A graphical report is to be submitted in either a reproducible copy or tracing showing the location of each boring with the vertical arrangement, thickness, geological character, relative hardness of the various strata penetrated and if ground water is encountered, the water bearing strata and the elevation of the hydraulic grade of each boring. A statement is to be included in the report specifying the method by which borings were advanced and specifying the type of sampling spoon by which samples were taken; i.e., split or other.
8. Submit an analysis or elevation of boring results and make a foundation recommendation based on the analysis.

0031d  
8/25/83