

Form 100-107

1980

1. This Lease Agreement, made and entered into as of the 5th day of MARCH, 1980, by and between KRC HOLDING COMPANY, a Tennessee corporation, Lessor

3. (hereinafter called Landlord), and The Kroger Co. an Ohio corporation, Lessee (hereinafter called Tenant).

4. WITNESSETH: That Landlord and Tenant have entered into a Lease of even date herewith demising unto Tenant a storeroom and its appurtenances,

5. located in the Kroger Shopping Center,

7. all of which is more particularly described in said Lease, located in the City of ALCOA, County of Blount, and State of Tennessee, for a term of twenty (20) years beginning on

9. the first day of November, 1980, and ending on the last day of October, 2000, upon

11. certain terms, covenants, and agreements contained in such Lease and upon covenants and agreements and in reliance upon representations and warranties set forth in a Lease Agreement of even date referred to in said Lease.

12. THEREFORE, in consideration of the execution and delivery of said Lease and of One Dollar (\$1.00) in hand each paid to the other, the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

14. 1. This instrument is the Lease Agreement referred to in the above-mentioned Lease and is made for the purpose of supplementing and completing such Lease and is to be deemed a material part thereof for all purposes and to the same extent as it actually set forth therein. Any reference to the word "Lease" herein shall include the provisions of this Lease Agreement as though fully contained therein.

17. 2. Landlord, at its own cost, agrees to prepare the described land and construct thereon a complete Shopping Center as shown on the plot plan attached hereto, including the storeroom for Tenant. Tenant's storeroom shall be constructed according to plans and specifications to be prepared by Landlord's architect. Tenant shall have the right to approve such plans and specifications as to general conformity with the prior understanding of the parties, but approval thereof shall not imply its approval of structural or engineering design or the quality or fitness of any material or device used. Tenant will furnish Landlord drawings specifying Tenant's requirements, particularly the location and size of all door openings; docks; type and capacity of heating and air cooling equipment; type, size and location of duct work to be used for both heating and cooling; type and colors of floor coverings and decorating; necessary toilet and rest rooms, electric and plumbing requirements, including type and location of light fixtures and all plumbing and electric outlets; and sprinkler system. It shall be the responsibility of Landlord to insure that Tenant's building, when completed, satisfies the requirements shown in said drawings and specifications furnished by Tenant, and is complete and ready for installation of all Tenant's fixtures and equipment.

29. 3. The entire tract of land on which Landlord is to construct said Shopping Center is shown on the plot plan attached to and made a part hereof. Such plot plan designates the location and size of all buildings to be constructed, store sizes, parking area, which shall be sufficient for 263 cars, customer parcel pickup facilities, and tenants' delivery service areas. All that portion of the tract of land not covered by buildings is to be Common Area for the joint use of all tenants, customers, invitees, and employees. No part of the Common Area may be improved with additional buildings, nor may the parking lot layout, including parking spaces, aisles, driveways, and walkways, be altered or removed without the prior written consent of Tenant. Landlord agrees, at its own expense, to maintain all Common Area in good repair, to keep such area clean, to remove snow and ice therefrom, to keep such area lighted during hours of darkness when stores are open for business and to keep the parking area properly striped to assist in the orderly parking of cars. Any claim for damage to property and any claim arising from or out of the injury or death of any person while on the Common Area shall be the responsibility of Landlord, and Landlord agrees to carry ample Public Liability and Property Damage insurance to protect Landlord and Tenant properly and adequately against such claims. SEE ADDITION TO PARAGRAPH 3.

39. 4. Landlord represents and warrants that the demised premises, and the entire Shopping Center, are, and will be, well built, properly constructed, structurally safe and sound, and suitable and fit, and that during the term of this Lease, or any renewals hereof, it will so maintain them.

42. 5. Landlord will, at its own expense, have a topographical survey of the site, including boundary line measurements, conforming to the legal description set forth in the Lease prepared by a licensed surveyor within thirty (30) days of receipt of the Lease, fully executed, and will promptly supply three copies of such survey to Tenant at no charge to Tenant. If the dimensions shown by such survey vary materially, in Tenant's sole judgment, from those shown on the attached plot plan or from the description set forth in the Lease, Tenant may, within thirty (30) days of receipt of such survey, cancel this Lease. Thereupon the Lease shall end, and neither of the parties shall have any further obligation hereunder to the other.

48. 6. If the premises are not ready for occupancy within ninety (90) days after the commencement date, as stated above, Tenant may cancel the Lease, and the obligations of the parties thereunder shall thereupon end. The words "ready for occupancy" shall mean that the premises are fully completed in accordance with the plans and specifications, and that all tools, scaffolding, surplus building materials, waste, debris, and rubbish of every sort in or about the demised premises have been removed, certificates of inspection or similar approvals required in the community have been delivered to Tenant, and exclusive possession of the demised premises is delivered to Tenant. SEE ADDITION TO PARAGRAPH 6.

54. 7. Prior to completion of improvements to be made by Landlord, Tenant shall have the right and privilege to receive, store, and install its trade fixtures in or on the demised premises, provided, however, that receiving, storing, and installing shall be in a manner that will not interfere with Landlord's work. It is expressly agreed that such action by Tenant shall not constitute acceptance of such premises as being completed as required herein.

58. 8. Tenant shall pay to the Landlord rental for the demised premises of Twenty-one Thousand One Hundred Seventy and 33/100 (\$21,172.33) Dollars per month payable monthly in advance. Rental hereunder shall commence on the day Tenant opens its store on the demised premises for business, or sixty (60) days after the premises are ready for occupancy, as hereinabove defined, whichever shall be earlier, provided, however, that the rent may be abated for any period during which the premises are not ready for occupancy. Notwithstanding the foregoing, if the premises are not ready for occupancy within ninety (90) days after the commencement date, as stated above, the rent shall be abated until the premises are ready for occupancy. Landlord shall give Tenant notice in writing specifying the date on which the demised premises will be ready for occupancy at least twenty-one (21) days in advance thereof. If at any time rent should become due for a part of a month, such rent shall be prorated and paid on or before the tenth day of the following month. Landlord further agrees that should the demised premises become ready for occupancy during any period commencing October 1 and ending January 1, all rent hereunder shall abate until the next February 15 or the date when Tenant shall open its store in the demised premises for business, whichever date shall be earlier.

71. 9. It is agreed that if any rent shall be in default or if Tenant shall default in any of the covenants herein contained, and should such default continue for thirty (30) days after receipt by Tenant of written notice thereof, it shall be lawful for Landlord to re-enters the demised premises and again have and enjoy the same. SEE ADDITION TO PARAGRAPH 9.

74. 10. Tenant may use the demised premises in any lawful manner. Landlord will supply any apparatus, appliance or material and will cause any work to be done in and about the demised premises which may be required or ordered by any lawful authority unless such requirement is brought about specifically by Tenant's particular type of business operation, in which case Tenant shall supply and install the same.

78. 11. Landlord shall maintain the structure and the exterior of the premises, including, but without limitation, all paved areas, sidewalks, lighting fixtures, entrance and exit doors, including door openings, windows in the outside wall, all structural portions of the building, subfloor, and all inside and exterior utility and service pipes and lines. Tenant shall be responsible for routine servicing of water heaters, heating and air conditioning equipment, which routine service shall include cleaning, tuning, adjustments, and maintenance or repairs to such equipment covered by a \$50.00 per month service contract (parts and maintenance covered by warranties held by Landlord). Tenant shall be responsible for all other maintenance and replacement of such equipment except that above assumed by Landlord. Any damage to Tenant's property occurring by reason of Landlord's failure to maintain and repair the demised premises as set forth in this agreement shall be borne by the Landlord. SEE ADDITION TO PARAGRAPH 11.

86. 12. Landlord has both the right and the responsibility to enter the demised premises periodically at any reasonable time to inspect the condition of said premises and to make repairs. All construction, repair, restorations, alterations, additions, or payments when an obligation of Landlord, shall be completed or made within reasonable time, should Landlord prefer or choose to make or perform such construction, repair, restorations, alterations, additions, or payments, and deduct the cost thereof from the rent thereafter payable. Any repairs or other work done by Landlord shall be performed so as to cause the least possible interference with Tenant's operation.

Landlord shall assign all warranties on said equipment to Tenant on the date Tenant takes occupancy of the premises.

CHANCE APPROVED
This has been transmitted to Landlord specific requirement drawings, specifications, and conditions for the demised premises dated November 12, 1979, and transmitted by cover letter dated November 16, 1979, specifying Tenant's requirements.

94. 12. Landlord agrees that it will not use or permit to be used for advertising purposes any part of the Shopping Center, but it
95. will permit Tenant to place its standard signs in the Shopping Center and will permit Tenant and other occupants thereof to place their
96. names or signs on the exterior of their respective portions of such Shopping Center, provided that such signs are harmonious in size and
97. style. Landlord will not permit occupants of the Shopping Center to paint their names or any advertisement directly on any part of the
buildings of the Shopping Center.

98. 14. Any remodeling, alterations, and additions to demised premises which Tenant may deem necessary during the term hereof or of
99. any renewal hereof shall be made at Tenant's expense, and Landlord hereby consents thereto. Major structural changes to such premises
100. shall be made only with Landlord's written consent, which consent shall not be unreasonably withheld. Tenant shall be under no
101. obligation to restore or remove any such change at the expiration hereof.

102. 15. All fixtures and equipment, of whatsoever nature, placed or installed in or upon the premises by Tenant shall remain its
103. property, and it shall have the right to remove the same at any time. SEE ADDITION TO PARAGRAPH 15.

104. 16. If the demised premises shall be damaged by fire, casualty, or other causes, they shall be promptly restored by Landlord, and,
105. until restored, there shall be an abatement or a proportionate reduction of the rent. If such premises shall be condemned by lawful
106. authority as unsafe or unfit for use, or if they shall become partially or wholly destroyed by fire or other causes, so as to render them
107. untenable for a period in excess of ninety (90) days, the Lease shall terminate, provided, however, that if Landlord commences
108. restoration of the premises within three years of the date on which the premises were rendered untenable, it shall give notice of such
109. fact to Tenant and Tenant shall have sixty (60) days after receipt thereof to elect whether or not to take new lease thereon commencing
110. upon the completion of such restoration for a term equal to the balance of the term remaining under the Lease at the time the premises
111. become untenable. All other conditions of such lease, including renewal terms, shall be the same as are contained herein and in the
112. Lease. Any rental paid in advance and at the time unearned shall be refunded. SEE ADDITION TO PARAGRAPH 16.

113. 17. ~~If any street, adjoining right-of-way, or all or any part of the Common Area is obstructed or blocked for repairs, reconstruction~~
114. ~~or otherwise, to the extent the operation of Tenant's business is adversely affected, a proportionate reduction of rent shall be made.~~
115. ~~If customer access to Tenant's store is blocked, rent shall abate. SEE MODIFICATION OF PARAGRAPH 17.~~

116. 18. ~~Tenant~~ Landlord assumes the liability for plate glass breakage during the term of this Lease unless caused by ~~Tenant~~ Landlord
117. employees or structural defects.

118. 19. Except as otherwise provided herein, Landlord shall not be liable for any damage to fixtures or merchandise of Tenant caused
119. by fire or other hazards normally covered by fire and extended coverage insurance, regardless of the cause thereof, and Tenant does hereby
120. expressly release Landlord of and from all liability for such damages. Tenant shall not be liable for any damages to the demised premises,
121. or any part thereof, caused by fire or other insurable hazards, regardless of the cause thereof, and Landlord does hereby expressly
122. release Tenant of and from all liability for such damages. Landlord agrees to keep the demised premises insured for fire and extended
123. coverage for the insurable value thereof in responsible insurance companies authorized to do fire and extended coverage insurance business
124. in the state where demised premises are located. Landlord agrees that all insurance policies, including plate glass insurance, shall include
125. a clause waiving rights of subrogation against the Tenant. SEE ADDITION TO PARAGRAPH 19.

126. 20. Landlord agrees to hold Tenant harmless from any and all claims which may arise from, on, in or about the demised premises
127. when such claims arise out of or are caused in whole or in part by a defective, dangerous, or unsafe condition of the premises, equip-
128. ment, fixtures, or appurtenances required by law or the terms hereof to be maintained in good repair by Landlord. SEE ADDI-
TION TO PARAGRAPH 20.

129. 21. In the event the premises hereby leased, or any part thereof, are taken in condemnation proceedings, Tenant may cancel this
130. Lease. In the event any part of the buildings of the Shopping Center, or Common Area, or rights-of-way adjoining, or approaches to the
131. Shopping Center are taken in condemnation proceedings so that in the reasonable judgment of Tenant the premises remaining would be
132. unsatisfactory for Tenant's business operation, Tenant may cancel this Lease, or at its option, retain the premises, in which event Landlord
133. will restore the entire remaining Shopping Center to proper tenable condition forthwith. Until the Shopping Center is restored to
134. proper tenable condition rental shall abate. Thereafter rental shall be reduced in proportion to the amount of land and/or building area
135. lost, or if Tenant shall elect, in proportion to the effect of the loss of such area on Tenant's business. For the purpose of this paragraph,
136. the term "condemnation proceedings" shall include conveyances and grants made in anticipation or in lieu of condemnation proceedings.
137. Nothing herein contained shall constitute a waiver of Tenant's right to compensation for damages. SEE ADDITION TO PARA-
GRAPH 21.

138. 22. Landlord represents and warrants to Tenant, and this Lease has been entered into by Tenant in reliance upon the representation
139. and warranty of Landlord, that such Shopping Center will contain at least the following tenants with store sizes set opposite their names
140. under leases for terms not less than twenty (20) years which are non-cancellable during such time by such tenants and Landlord
141. covenants not to consent to cancellation of any such Lease, to wit:

Superx Drugs - 10,069 Sq.Ft.

142. 23. Landlord agrees that he has or will acquire lawful title and right to make this Lease for the term aforesaid and that he will
143. provide Tenant with evidence thereof prior to the time at which Tenant takes possession of the premises, and that he will put the
144. Tenant into complete and exclusive possession of the premises, including joint use of the Common Area, free from all orders, restrictions
145. and notices of any public or quasi-public authority, and that if the Tenant shall pay the rental and perform all the covenants and
146. provisions of this Lease to be performed by the Tenant, the Tenant shall during the term demised, freely, peaceably and quietly occupy
147. and enjoy the full possession of the premises hereby leased, including the joint use of the Common Area, and the tenements, hereditaments
148. and appurtenances thereunto belonging and the rights and privileges herein granted without molestation or hindrance, lawful or otherwise,
149. and that if at any time during the term hereby demised the title of the Landlord shall fail or be discovered not to enable Landlord to
150. grant the term hereby demised the Tenant shall have the option, at Landlord's expense, to correct any default, or annul and void this Lease.

151. 24. Landlord represents and warrants that the demised premises and the entire Shopping Center are free and clear of any and all
152. incumbrances excepting real estate taxes and assessments for the current year and thereafter which are assumed and will be paid
153. by Landlord as they become due and payable, and except SEE ADDITION TO PARAGRAPH 24.

154. If any mortgage, deed of trust, or lease has been recorded on the demised premises prior to the recording of the Lease, Landlord will
155. notify Tenant thereof and will deliver to Tenant, in form satisfactory to Tenant, Subordination Agreements subordinating any such
156. instruments to the Lease. Landlord and Tenant agree that this Lease Agreement shall not be recorded.

157. 25. Tenant may sublet or assign the demised premises at any time provided the business which such subtenant or assignee proposes
158. to conduct does not conflict with exclusive rights granted by Landlord in leases to other tenants. Tenant may notify Landlord of its intent
159. to sublet or assign and the nature of the business proposed to be conducted by the subtenant or assignee. If such notice is given and
160. Landlord does not object within ten days, it shall be conclusively presumed that the proposed business does not conflict with any exclusive
161. rights. Landlord shall, at any time Tenant may request, supply to Tenant copies from leases to other tenants of all clauses granting
162. exclusive rights to conduct various businesses in the Shopping Center. SEE ADDITION TO PARAGRAPH 25.

163. 26. Landlord agrees that Tenant may, at its sole cost and expense, construct facilities for single or double island gasoline and
164. related products dispensing units (including an appropriate sign) at the location shown on the attached plat plan. If constructed,
165. Tenant shall be responsible for keeping that portion of the Common Area used in connection with said gasoline dispensing unit in good
166. repair, clean, and to remove ice and snow therefrom. Tenant shall be responsible for the cost of all maintenance required of said gaso-
167. line dispensing unit and for any real estate taxes assessable to said gasoline dispensing unit. Tenant shall indemnify Landlord against
168. any claim for damage to property and any third party arising out of the injury or death of any person resulting from the operation of said
169. gasoline dispensing unit. Tenant shall, within sixty (60) days after the termination of this lease, remove said gasoline dispensing unit
170. and its location in the Common Area to its condition at the time of construction of said gasoline dispensing unit, normal wear and tear excepted.

171. 27. All notices required under this Lease shall be deemed to be properly served if delivered in writing personally or sent by
172. certified or registered mail with return receipt requested, to Landlord at the last address where rent was paid or to Tenant at its Office at
P.O. Box 329
Nashville, Tennessee 37202

173. or to any subsequent address which either may designate for such purpose. Date of service of a notice served by mail shall be the
174. date on which such notice is deposited in a post office of the United States Post Office Department.

175. 28. This instrument, its attachments, and the Lease contain the entire agreement between the parties and there are no covenants,
176. express or implied, except as contained herein. The terms, conditions, provisions or judgments made by either party or agent of either party that is
177. not contained in this instrument shall be null and void. The waiver of any condition or covenant of this Lease by either party
178. shall not constitute a modification of the Lease and shall not constitute a condition or covenant of said Lease.

179. 29. The provisions of this Lease shall bind and inure to the benefit of the parties hereto, their heirs, executors, administrators,
 180. successors and assigns.
 181. 30. Make rent checks payable to KING HOLDING COMPANY
 182. _____
 183. and mail them to the following address: P.O. Box 307, Alcoa, Tennessee 37701
 184. _____

185. 31. Tenant agrees to pay to Landlord a sum of money equal to one (1) % of its sales in excess of \$ 25,404,390.00,
 186. hereinafter called the minimum sales base, made from the leased premises during each lease year, provided, however, that
 187. in no event shall the sum of money payable under the terms of this paragraph exceed \$75,000.00 -- in any one lease
 188. year. A report of sales made from the leased premises shall be given to Landlord within 30 days after the close
 189. of the preceding lease year, and if sales disclosed thereby are sufficient to require a payment hereunder, such payment shall
 190. accompany such report. For the purpose of this paragraph "sales" shall not include rebates; refunds; allowances to cus-
 191. tomers; sales taxes imposed by any governmental authority; cash discounts; cost of trading stamps; sales of cigarettes and
 192. other tobacco products; or any excise tax. Receipts from sales of money orders, lottery tickets or insurance; income from
 193. check cashing, bank activities or vending machines; and similar receipts or income shall be included in sales only to the
 194. extent that any income, commissions, fee, or share of receipts related thereto is retained by Tenant. The words "lease year"
 195. shall mean a period of 12 successive months. The first lease year shall begin on the commencement date of this lease
 196. provided, however, that it shall include any period of time preceding the defined lease year during which Tenant is open for
 197. business prior to the commencement date, and further provided, that the minimum sales base shall be increased pro rata
 198. for any such additional period, but shall not be decreased should Tenant open for business after said commencement date.

199. In the event the premises are ever occupied under a month-to-month tenancy, the percentage payment hereunder
 200. shall either be calculated on an annual basis, if the premises are occupied for a full year, or if not occupied for a full year,
 201. shall be calculated on the basis of a pro rata portion of the minimum sales base above stated corresponding to the pro-
 202. portionate part of the year during which rent is paid for the premises by Tenant. Payment in such case shall be made
 203. within 30 days after the end of any year of such tenancy or other earlier termination of such tenancy.

204. Nothing herein contained shall be construed to indicate that percentage payments are rentals and Tenant shall at no
 205. time be liable for any percentage payments except those specified herein resulting from actual sales (as defined herein) by
 206. Tenant.

207. Any payments made by Tenant to Landlord under Paragraph(s) 3, 19, / Additions to and 24 hereof shall be a credit for the year in
 208. which paid against any percentage payment which may become due for such year.

(A Rider, consisting of 122 numbered, typewritten lines, is attached hereto and made a part hereof.)

IN WITNESS WHEREOF, this Lease Agreement has been duly executed as of the day and year first above written.

Signed and acknowledged in
 triplicate in presence of:
 Witnesses for Landlord:

Don H. Nichols
Henry Williams



Landlord: KING HOLDING COMPANY (Seal)
 _____ (Seal)
H. G. King, President (Seal)
 _____ (Seal)

Witnesses for Tenant:

Sara C. Pate
Henry Williams

Tenant:
 THE KROGER CO.
 By Walter R. Dwyer
Walter R. Dwyer, Vice-President

STATE OF _____ } SS
COUNTY OF _____ }

This day, before me, a Notary Public of the State and County aforesaid, personally appeared _____

, with whom I am personally acquainted

and who upon oath acknowledged himself to be the Landlord in the foregoing Lease Agreement and acknowledge the signing to be voluntary act.

Witness my hand and official seal this _____ day of _____, 19 ____ .

My commission expires _____ Notary Public

STATE OF TENNESSEE } SS
COUNTY OF BLOUNT }

This day, before me, a Notary Public of the State and County aforesaid, personally appeared H. G. King - - - - -

, with whom I am personally acquainted

and who upon oath acknowledged himself/~~themselves~~ to be President - - - - -

of King Holding Company - - - - -

the Landlord in the foregoing Lease Agreement, and that as such officer(s) being duly authorized so to do they executed the foregoing instrument for the purposes therein contained by signing in the name of the corporation as such officer(s).

Witness my hand and official seal this 4th day of FEBRUARY, 19 80 .

Laura J. McQueen Notary Public

My commission expires 10-18-81

STATE OF TENNESSEE } SS
COUNTY OF BLOUNT }

This day, before me, a Notary Public of the State and County aforesaid, personally appeared Walter R. Dryden - - - - -

, Vice President, Southland Marketing Area, The Kroger Co.,

with whom I am personally acquainted and who upon oath acknowledged himself to be such officer of The Kroger Co., Lessee in the foregoing Lease Agreement, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing in the name of the corporation as such officer.

Witness my hand and official seal this 5th day of March, 19 80 .

Gay D. Recall Notary Public

My commission expires 10-17-82

R I D E R

1. This Rider, consisting of 122 numbered, typewritten lines, is hereby attached
2. to and made a part of this Lease Agreement between KING HOLDING COMPANY, a
3. Tennessee corporation, as Landlord, and THE KROGER CO., an Ohio corporation, as
4. Tenant.

ADDITION TO PARAGRAPH 3:

5. Except for structural items such as (but not limited to) paving, drainage,
6. curbs, and gutters, which are the responsibility of the Landlord during the
7. first five (5) years of the Lease, Tenant agrees to pay its pro rata share of
8. Landlord's actual expenditures for Common Area Maintenance, which shall include
9. among other things such items as lighting, cleaning, snow removal, landscaping,
10. and striping. Commencing with the sixth year of the Lease, the Landlord's cost
11. of maintaining the paving, drainage, curbs, and gutters shall be included in
12. the aforementioned expenditures for Common Area Maintenance. Tenant's propor-
13. tionate share shall be in the ratio which the number of square feet of the
14. first floor area in the storeroom leased to it bears to the total number of
15. square feet of all rentable area included in the buildings comprising the com-
16. plete Shopping Center. Landlord agrees to invoice Tenant annually, not later
17. than thirty (30) days after the end of each lease year, and Tenant agrees to
18. pay the same within thirty (30) days of receipt of the invoice. Tenant shall
19. have no obligation to pay any invoice not properly supported with copies of
20. all bills constituting Landlord's total expenses together with a computation of
21. Tenant's proportionate share thereof. (See Lease Agreement, Paragraph 31,
22. Lines 207-208.)

ADDITION TO PARAGRAPH 6:

23. In the event of delays in construction of the demised premises caused by
24. strikes, war, acts of God, or other causes beyond the control of Landlord, the
25. commencement and expiration dates of the Lease will be extended for a period
26. of time equal to the time of any such delays, provided such extension shall not
27. be longer than 180 days.

ADDITION TO PARAGRAPH 9:

28. Landlord's rights under this paragraph shall be in addition to any other remedy
29. available to Landlord at law or in equity.

ADDITION TO PARAGRAPH 11:

30. In the event Tenant replaces heating and/or air conditioning equipment or
31. water heaters within the last five (5) years of the term herein provided, Land-
32. lord agrees to reimburse Tenant for one-half the cost of such replacement;
33. provided, however, that should Tenant exercise its option to renew for a term
34. of five years as provided herein, Tenant shall in that event return to Landlord
35. Landlord's 50% contribution toward the cost of said replacement.

36. Landlord shall not be responsible for any damage to Tenant's property unless
37. Tenant has first notified Landlord, in writing, emergency situations excepted,
38. of the need for any repair or maintenance of the premises and Landlord has had
39. a reasonable time, emergency situations excepted, from receipt of such notice
40. to commence such repair or maintenance.

ADDITION TO PARAGRAPH 15:

41. Tenant shall repair any damage to the demised premises resulting from Tenant's
42. removal of such property, normal wear and tear excepted.

ADDITION TO PARAGRAPH 16:

43. Tenant agrees that if restoration is started but not completed within the
44. ninety (90) days provided for in Line 107 hereof, Tenant shall not have the
45. right to terminate if Landlord is diligently proceeding to restore the prem-
46. ses, and such restoration is completed within an additional ninety (90) days.

Should said replacement take place during the renewal option,
the provisions of lines 30 through 32 will apply.

CHANGE
APPROVED

JHK

RIDER (Cont'd)

MODIFICATION OF PARAGRAPH 17:

47. If any street, adjoining right-of-way, or all or any part of the Common Area is
48. obstructed or blocked for repairs, reconstruction, or otherwise to the extent
49. the operation of Tenant's business is adversely affected by 10% or more compared
50. to Tenant's average weekly sales for the ninety (90) days immediately prior to
51. the blockage, a proportionate reduction of rent shall be made. IF CUSTOMER NORMAL
52. access to Tenant's store is blocked, rent shall totally abate.

ADDITION TO PARAGRAPH 19:

53. Tenant agrees to pay its pro rata share of Landlord's cost of fulfilling its
54. insurance obligations as provided for in Paragraphs 3 and 19 hereof. Landlord
55. agrees to provide Tenant with a receipted copy of the insurance premium and
56. Tenant agrees to reimburse Landlord for same within thirty (30) days after
57. receipt of said statement. Any payment due hereunder shall be prorated as of
58. the termination or expiration date of this Lease Agreement. (See Lease Agree-
59. ment, Paragraph 31, Lines 207-208.)

ADDITION TO PARAGRAPH 20:

60. Tenant agrees to hold Landlord harmless from any and all public liability
61. claims which may arise from, on, in, or about the demised premises when such
62. claims arise out of or are caused, in whole or in part, by negligence of
63. Tenant in the operation of its business in the demised premises, or its
64. employees or agents while engaged in services for Tenant. It is further under-
65. stood that Landlord shall not be held harmless from any and all public lia-
66. bility claims when Landlord is contributorily negligent.

ADDITION TO PARAGRAPH 21:

67. Should a total of less than twenty (20) feet in all condemnations be taken
68. along the right-of-way lines of Hall Road and/or Rankin Road to be measured at
69. right angles to the property lines as those right-of-way lines now exist and
70. are shown on the attached plot plan, the cancellation and rental reduction
71. provisions of this Lease shall not operate as a result of said condemnation,
72. provided vehicular access for ingress and egress between the Common Area and
73. said streets remains during and after such taking in equal numbers and in com-
74. parable ^{widths and} locations. The condemnation limit line is shown on the attached plot
75. plan in green. The effect of loss of land and/or building area on Tenant's
76. business as referred to in Paragraph 21 shall be determined by comparing the
77. sales in the premises for the 12 weeks immediately preceding such loss to the
78. sales in the premises for the 12 weeks immediately following such loss, and if
79. the sales for the 12 weeks following such loss are less than the sales for the
80. 12 weeks preceding such loss, then the monthly rental shall be reduced in
81. proportion to the sales loss.

ADDITION TO PARAGRAPH 24:

82. Commencing on the date Tenant opens for business in the demised premises,
83. Tenant shall pay its pro rata share of the general real estate taxes on the
84. Shopping Center. Tenant's proportionate share shall be in the ratio which the
85. number of square feet of the first floor area in the storeroom leased to it
86. bears to the total number of square feet of all rentable area included in the
87. buildings comprising the complete Shopping Center. Landlord will furnish
88. Tenant photostatic copies of any tax bills paid by him and records reasonably
89. necessary to calculate the obligation of Tenant or Landlord hereto, and Land-
90. lord further agrees to join Tenant in appealing any unreasonable tax assessment

91. Landlord shall notify Tenant in writing within ten (10) days of receipt of any
92. notice that real estate taxes are to be increased and, in the event Tenant so
93. elects, Landlord shall join with Tenant in proceedings to protest such increase

94. Landlord agrees to pay all taxes before delinquency, and shall further obtain
95. all savings offered for early payment, and Tenant shall not be obligated to pay
96. any portion of any penalty for delinquent payment. Any payment due hereunder
97. shall be prorated as of the termination or expiration date of this Lease Agree-
98. ment. Tenant shall pay any installments of assessments on the demised prem-
99. ses. If Tenant pays such taxes and assessments to Landlord at least seven days

CHANGE APPROVED
[Signature]

CHANGE APPROVED
[Signature]

CHANGE APPROVED
[Signature]

nor for a saving which could have been realized for early payment.

RIDER (Cont'd)

ADDITION TO PARAGRAPH 24 (Cont'd):

100. prior to their due date or such later date which is within fifteen (15) days
101. after the date Landlord has furnished Tenant the information necessary to
102. calculate the obligation of Tenant, Tenant shall not be responsible for any
103. penalties for delinquencies relating thereto. (See Lease Agreement, Paragraph
104. 31, Lines 207-208.)

ADDITION TO PARAGRAPH 25:

105. In the event of any assignment or subletting as herein provided, Tenant shall
106. remain primarily liable under the terms of the Lease and Lease Agreement.

RIGHT OF FIRST REFUSAL:

107. It is understood that Landlord's right to enter into this Lease is acquired by
108. a certain Lease dated November 10, 1979, between Landlord (King Holding Company)
109. as Lessee, and Clyde Peery, Sr. and wife Marceil H. Peery of Blount County,
110. Tennessee, as Lessor, and that said lease contains the following provision:
111. "V. (a) At the end of the term of this agreement, Lessee shall have
112. a right of first refusal to renew this Lease upon the same terms and
113. conditions as contained in any proposal of a third party, made to
114. Lessor, by giving Lessor written notice of that election to renew
115. within sixty (60) days after written notice to Lessee by Lessor of
116. that proposal."
117. Upon being informed by Tenant (The Kroger Co.) that it wishes to extend its lease
118. term beyond that available in this Lease Agreement, Landlord will avail itself
119. of the above-mentioned option contained in the aforesaid agreement, and either
120. continue as Landlord (with rent adjustment to be made in proportion to any
121. increase in Landlord's ground lease payments), or immediately transfer its
122. rights and interest under said lease to Tenant (The Kroger Co.).