Store 424-A

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this “Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2024 (the “Effective Date”), by and between Kroger Limited Partnership I, an Ohio limited partnership, as Seller, and Boone County School District Finance Corporation, a Kentucky non-profit corporation, as Purchaser.

RECITALS:

A. Seller is the owner of that certain real property located in the City of Union, County of Boone and Commonwealth of Kentucky, together with all improvements located thereon and all rights and appurtenances thereunto appertaining, if any (the "Property"), more particularly described in Exhibit A attached hereto and made a part hereof; and

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

NOW, THEREFORE, in consideration of $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 Earnest Money. Within five business days after the Effective Date, Purchaser shall deliver to First American Title Insurance Company, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Attn: Sarah Pena (“Title Company”), the sum of $50,000.00 (the “Earnest Money”). The Earnest Money shall be applied to the Purchase Price at Closing (as hereinafter defined) or otherwise released in accordance with the provisions of this Agreement. The Earnest Money shall be held by the Title Company in a non-interest bearing account. The Earnest Money shall be non-refundable except as expressly provided in this Agreement.

1.2 Purchase Price. The purchase price (the “Purchase Price”) for the Property shall be $4,750,000.00, to be adjusted as set forth herein.

1.3 Agreement Consideration. As independent consideration for the rights and benefits granted to Purchaser hereunder, Purchaser, in addition to the Earnest Money, shall, contemporaneously with the execution hereof, deliver to Seller (and not to the Title Company) the sum of $100.00 in cash (the "Agreement Consideration"). The Agreement Consideration shall be nonrefundable. Under no circumstances shall Seller be required to pay or give a credit to Purchaser for interest on the Agreement Consideration.

 ARTICLE II - TITLE

2.1 Survey. Within 90 days after the Effective Date (the “Title Review Period”), Purchaser, at its sole cost and expense, shall obtain and deliver to Seller a current certified ALTA/ACSM survey (the "Survey") of the Property. The indemnity set forth in Section 3.1 hereof shall be applicable to the surveying of the Property.

2.2 Title Commitment. During the Title Review Period, Purchaser shall obtain and shall furnish to Seller a title insurance commitment (the “Title Commitment”) issued by the Title Company through its agent, Adams Law, PLLC, 40 W. Pike Street, Covington, KY 41011, Attn: Corey T. Gamm, for an Owner’s Policy of Title Insurance (ALTA form, last revised), insuring title to the Property in Purchaser. The Title Commitment shall list as exceptions all easements, restrictions, encumbrances, reservations, liens and other matters, including those shown on the Survey, affecting the Property (the “Exceptions”), and shall include legible copies of all instruments creating such Exceptions.

2.3 Purchaser’s Objections. Purchaser shall have 30 days after expiration of the Title Review Period to notify Seller of any Exceptions in the Title Commitment or any matter disclosed by the Survey that makes the Property unsuitable for Purchaser’s purposes (the “Title Objections”). Seller shall have 30 days after receipt of the Title Objections 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”). If Seller is unable or unwilling to effect such Cure, then Purchaser may (a) terminate this Agreement by providing written notice to Seller within seven days after the end of Seller’s 30-day cure period, whereupon the Earnest Money paid shall be returned to Purchaser, and Seller and Purchaser shall have no further obligations hereunder except for any obligation hereunder which, by its express terms, survives any termination of this Agreement, or (b) waive such Title Objections and proceed to Closing, as set forth in Article VII hereof. If Purchaser does not elect to terminate this Agreement as described in clause (a) of the immediately preceding sentence by the end of such seven-day period, then Purchaser shall be deemed to have waived all Title Objections and shall be obligated to proceed to Closing as described in clause (b) of the immediately preceding sentence. All Exceptions with respect to which Purchaser fails to timely deliver Title Objections and all Title Objections subsequently waived in writing or deemed waived pursuant to the immediately preceding sentence shall hereinafter be deemed to be “Permitted Exceptions”. If Purchaser elects to proceed to Closing, Permitted Exceptions shall also include (i) the lien of all ad valorem real estate taxes and assessments not yet due and payable; (ii) liens, encumbrances or other items created by Purchaser or its agents; (iii) local, state and federal laws, ordinances or governmental regulations, including, without limitation, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property; (iv) easements, right-of-ways, conditions, covenants, restrictions and other documents of record; (v) legal highways; (vi) the Declaration Amendment (as hereinafter defined), (vii) the Naming Rights Agreement (as hereinafter defined); and (viii) matters that an accurate survey and/or investigation of the Property would disclose.

2.4 Title and Survey Updates. Purchaser may update the Title Commitment and/or Survey from time to time until the Closing (each, an “Update”). To the extent one or more of the Updates shows matter(s) not disclosed in the original Title Commitment or Survey or a prior Update, but only if such matters were either not of record at the time of the original Title Commitment and/or Survey or arose after the original Title Commitment and/or Survey, then Purchaser may provide additional Title Objections to Seller as to any newly discovered matters within seven days following receipt of such Update. In the event of such an objection, the newly discovered matter shall be treated as set forth above in Section 2.3, whereby the procedures set forth above for a title or survey objection shall then be applicable (including Purchaser’s right to terminate this Agreement and receive a refund of the Earnest Money).

ARTICLE III - ADDITIONAL CONDITIONS PRECEDENT

3.1 Tests, Studies and Inspections. Purchaser shall have 180 days after the Effective Date (the “Examinations Period”) 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 Property for Purchaser’s purposes. Purchaser shall promptly provide Seller with a copy of all reports or other documents obtained in the course of Purchaser’s Examinations. If the Examinations disclose matters that make the Property unsuitable for Purchaser’s purposes, then Purchaser may terminate this Agreement by giving written notice within the Examinations Period to Seller, in which event the Earnest Money paid by Purchaser shall be returned to Purchaser, and Seller and Purchaser shall have no further obligations hereunder except for any obligation hereunder which, by its express terms, survives any termination of this Agreement. Before Purchaser enters the Property to perform Examinations, Purchaser shall give Seller reasonable advance written notice via email to brian.folmer@kroger.com and, at Seller’s option, a representative of Seller may accompany Purchaser and/or Purchaser’s representative. Purchaser shall be solely responsible for the conduct of Purchaser’s representatives on and adjacent to the Property and shall assume and pay for all expenses incurred in connection with the Examinations. Purchaser shall not conduct any physically invasive testing of, on, or under the Property without first obtaining Seller’s written consent. Only to the extent permitted by applicable law, Purchaser shall indemnify and save harmless Seller from and against all costs, claims, expenses or damages, including reasonable attorneys’ fees and cost of suit arising out of or related to the Examinations or the entry upon the Property for the conducting of same. Purchaser’s obligations under the immediately preceding sentence shall survive the Closing and the expiration or earlier termination of this Agreement. Furthermore, Purchaser shall, at its sole expense, keep and maintain a policy of comprehensive public liability insurance with a contractual liability endorsement that covers Purchaser’s indemnity obligation set forth above. This insurance policy shall name Seller as an additional insured and afford protection in limits of not less than $2,000,000.00 per occurrence for bodily injury or death in any one accident, and not less than $2,000,000.00 per occurrence for property damage. All insurance shall be issued on an “occurrence” basis and effected under standard form policies, issued by insurers of recognized responsibility authorized to do business in the state in which the Property is located and having a national rating of A-XI or better. Prior to entry onto the Property, Purchaser shall provide Seller with appropriate documentation evidencing such insurance.

 Purchaser shall be entitled to extend the Examination Period for a period of 60 days by providing written notice to Seller prior to the expiration of the Examination Period, and by depositing an additional $20,000.00 of Earnest Money with the Title Company, which additional Earnest Money, together with the initial Earnest Money deposit of $50,000.00, shall be non-refundable upon expiration of the extended Examination Period but applicable to the Purchase Price.

3.2 Declaration Amendment. Seller shall prepare and submit to Purchaser an amendment (the “Declaration Amendment”) to that certain Declaration of Reciprocal Easements, Covenants and Restrictions dated as of March 17, 1999 and recorded in Book 749, Page 170, Office of the Clerk, Boone County, Kentucky, as subsequently amended (collectively, the “Declaration”), which shall include, without limitation, (a) certain use exclusives benefitting Seller’s remaining property adjoining the Property (“Seller’s Remaining Property”), (b) modification of certain requirements and restrictions on the development and use of Seller’s Remaining Property, (c) modification and/or elimination of certain easement rights currently affecting the Property and Seller’s Remaining Property, and (d) modification of maintenance and repair obligations with respect to the Property and Seller’s Remaining Property. The Declaration Amendment shall be executed and recorded on or before Closing. Seller shall submit a draft of the Declaration Amendment to Purchaser for Purchaser’s approval within 90 days following the Effective Date. If, before the expiration of the Examination Period, Purchaser and Seller are unable to agree upon the terms of the Declaration Amendment, either party shall be entitled to terminate this Agreement by providing written notice of such termination to the other party, whereupon the Earnest Money 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.

3.3 Naming Rights Agreement. Seller shall prepare and submit to Purchaser a naming rights agreement that will grant the naming rights to the Property to Purchaser for a period of 30 years following the Closing Date (the “Naming Rights Agreement”) upon the terms and conditions set forth in the Naming Rights Agreement. Seller shall submit a draft of the Naming Rights Agreement to Purchaser for Purchaser’s approval within 90 days following the Effective Date. If, before the expiration of the Examination Period, Purchaser and Seller are unable to agree upon the terms of the Naming Rights Agreement, either party shall be entitled to terminate this Agreement by providing written notice of such termination to the other party, whereupon the Earnest Money 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.

3.4 Documents. Within fifteen days after the Effective Date, Seller will provide Purchaser with copies of the following (the “Documents”), if they are available in the electronic database file for the Property that is maintained by Seller’s Real Estate Department:

1. Any contracts or agreements (excluding matters of record) that affect the Property and have a term that will continue following Closing;
2. Copies of each report or assessment with respect to soils, ground water, underground tanks, subsurface conditions, asbestos, hazardous substances or environmental conditions on or about the Property, if any;
3. Any and all existing title reports, commitments or polices concerning the Property; and
4. Any surveys of the Property and building plans or architectural drawings associated with the Property.

ARTICLE IV - REPRESENTATIONS

4.1 Seller Representations. Seller represents and warrants to Purchaser, to its present actual knowledge and belief, 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) There is no pending or contemplated claim, litigation, condemnation, administrative action or other legal proceeding involving or affecting any portion of the Property.

(ii) There is no oral or written lease, agreement or contract in any way affecting or related to the Property that would materially affect the Property, other than recorded instruments, as disclosed as an Exception or on the Survey.

(iii) No default exists under any agreement to which Seller is a party that materially affects the Property.

(iv) 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.

(v) Except for Seller, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers. There are no contracts for or material to the maintenance, development or operation of the Property to which the Seller is a party except those which may be terminated by Seller or its successors in interest without cost upon not more than 30 days’ written notice.

(vi) Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of all or substantially all of its assets, admitted Seller’s inability to pay debts as they come due, or made an offer of settlement, extension or composition to Seller’s creditors generally.

4.2 Purchaser Representations. Purchaser represents and warrants to Seller that both Purchaser and the individual executing this Agreement on behalf of Purchaser 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 Purchaser.

ARTICLE V - LOSS

5.1 Risk of Loss. If between the Effective Date and the Closing Date the Property or any portion thereof is damaged by casualty, force majeure or other cause and the cost of repair or restoration, as reasonably estimated by Seller’s engineer, exceeds $200,000.00, Purchaser may terminate this Agreement by providing written notice to Seller within ten calendar days of Purchaser's receipt of written notice of such damage from Seller, in which event the Earnest Money paid shall be returned to Purchaser, and Seller and Purchaser shall have no further obligations hereunder except for any obligation hereunder which, by its express terms, survives any termination of this Agreement. The Closing Date shall be extended in order to allow the running of said ten-day period. If Purchaser does not terminate this Agreement pursuant to this paragraph, then Seller and Purchaser shall proceed to Closing, and Seller shall assign to Purchaser any insurance claims (or pay to Purchaser any such amount previously received by Seller), upon the written consent of the applicable insurer, and the amount of any deductible or self-insured retention shall be subtracted from the Purchase Price (or Seller may elect to cover the cost of the deductible without a reduction in the Purchase Price) and Purchaser shall acquire the Premises pursuant to this Agreement without any other reduction in the Purchase Price; provided, however, the total dollar amount assigned or paid to Purchaser pursuant to this sentence shall under no circumstances exceed the amount of the Purchase Price less the value of the land component of the Property as determined by a qualified appraiser of commercial real property in the Cincinnati Metropolitan Area reasonably acceptable to Purchaser and Seller, the cost of such appraisal being evenly divided between the parties.

ARTICLE VI - CONDEMNATION

6.1 Condemnation. If condemnation proceedings are commenced prior to Closing, then the parties shall proceed to Closing, in which event the Purchase Price (i) 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 to Seller prior to Closing, or (ii) shall remain unchanged and such award shall be deemed assigned to Purchaser at Closing.

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 Seller, on or before 30 days following the expiration of the Examination Period, but no later than 30 days after the earlier to occur of (a) expiration of the Examinations Period or (b) the satisfaction or waiver of all contingencies to Closing as set forth in Article III of this Agreement (the “Closing Date”). Seller shall notify Purchaser of the actual date set for Closing.

7.2 Seller’s Obligations. At Closing, Seller shall deliver the following to the Title Company:

(i) A special warranty deed (“Deed”), in the form attached as Exhibit B and made a part hereof, fully executed and acknowledged by Seller, and in proper form for recording, conveying the Property to Purchaser, subject to the Permitted Exceptions.

(ii) The Declaration Amendment, executed and acknowledged by Seller, and in proper form for recording.

(iii) The ROFR, together with a memorandum thereof if requested by Seller, executed and acknowledged by Seller, and in proper form for recording.

(iv) The Naming Rights Agreement, executed and acknowledged by Seller.

(v) Seller’s counterpart of a settlement statement (“Settlement Statement”), prepared by the Title Company and approved by Seller.

(vi) “Non‑Foreign Affidavit,” executed by Seller, certifying that Seller is not a “foreign person” as such term is defined in Section 1445 of the Internal Revenue Code.

(vii) Possession of the Property to Purchaser, subject to the Permitted Exceptions.

(viii) A standard owner’s affidavit in form and substance acceptable to the Title Company and Seller so as to permit standard exceptions to be removed from the Purchaser’s title insurance policy.

(ix) Such other documents, affidavits, resolutions, certificates, and evidence of authority as are reasonably requested by the Title Company.

7.3 Purchaser’s Obligations. At Closing, Purchaser shall deliver the following to the Title Company:

1. In immediately available funds either by wire transfer or other method acceptable to Seller, the Purchase Price less the Earnest Money, adjusted in accordance with the terms of this Agreement.
2. The Declaration Amendment, executed and acknowledged by Purchaser, and in proper form for recording.
3. The ROFR, together with a memorandum thereof if requested by Seller, executed and acknowledged by Purchaser, and in proper form for recording.
4. The Naming Rights Agreement, executed and acknowledged by Purchaser.
5. Bill of Sale, in form and substance acceptable to Seller, conveying any interest of Purchaser in the monument sign located on Seller’s Remaining Property to Seller.
6. Purchaser’s counterpart of the Settlement Statement.

(vii) Such other documents, affidavits, resolutions, certificates, and evidence of authority as reasonably requested by Title Company.

7.4 Closing Costs, Adjustments and Prorations. Rents, if any, and ad valorem taxes and general assessments relating to the Property 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 Property 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 Survey charges, title insurance premiums, title examination charges and related attorneys’ fees, if any, escrow charges, recording costs, special assessments and other costs of Closing shall be borne by Purchaser. Transfer taxes shall be paid by Seller. Seller shall also pay all delinquent ad valorem taxes, penalties and interest and all general and special assessments then a lien. Each party shall be responsible for its own attorneys’ fees.

7.5 Utilities. If any utilities servicing the Property 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, as its sole and exclusive remedy, may rescind this Agreement, receive back the Earnest Money paid by it for this Agreement, and Seller shall reimburse Purchaser for all of Purchaser’s actual documented out of pocket third party costs and expenses incurred in connection with the performance of this Agreement, including all of Purchaser’s due diligence investigations and inspections, up to a maximum amount of $100,000.00. If Purchaser fails to perform its obligations hereunder, then Seller, as its sole and exclusive remedy, may terminate this Agreement and retain the Earnest Money as liquidated damages and not as a penalty, whereupon 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 IX – DISCLAIMER OF WARRANTIES AND REPRESENTATIONS

9.1 Disclaimer of Warranties and Representations. PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT EXCEPT AS AND TO THE EXTENT EXPRESSLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, (a) SELLER HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, EXPRESS OR IMPLIED, PAST, PRESENT, OR FUTURE, OF, AS TO, OR CONCERNING (i) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, AND THE SUITABILITY THEREOF, FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY ELECT TO CONDUCT THEREON, (ii) EXCEPT FOR ANY WARRANTIES CONTAINED IN THE DEED, THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHERWISE, AND (iii) THE COMPLIANCE OF THE PROPERTY OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY GOVERNMENTAL ENTITY OR OTHER BODY; (b) SELLER MAKES AND HAS MADE NO WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO THE ACCURACY OF ANY INFORMATION FURNISHED TO PURCHASER, AND SELLER SHALL NOT BE BOUND BY ANY STATEMENT OF ANY BROKER, EMPLOYEE, AGENT OR OTHER REPRESENTATIVE OR AFFILIATE OF SELLER, AND THAT NO REPRESENTATIONS HAVE BEEN MADE BY SELLER, ITS AGENTS, EMPLOYEES OR AFFILIATES IN ORDER TO INDUCE PURCHASER TO ENTER INTO THIS TRANSACTION OTHER THAN AS EXPRESSLY STATED HEREIN; (c) SELLER DOES NOT REPRESENT OR WARRANT THAT ANY GOVERNMENT APPROVAL HAS BEEN GIVEN FOR DEVELOPMENT OF, REDEVELOPMENT OF OR ALTERATIONS TO THE PROPERTY, AND PURCHASER SHALL BE SOLELY RESPONSIBLE FOR MAKING APPLICATION, OBTAINING AND PAYING FOR THE COST OF ALL PERMITS, LICENSES, AUTHORIZATIONS AND APPROVALS FROM THE APPROPRIATE GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITIES HAVING JURISDICTION OVER THE PROPERTY, THAT ARE NECESSARY OR DESIRABLE FOR PURCHASER TO DEVELOP, REDEVELOP OR ALTER THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY ELECT TO CONDUCT THEREON; (d) PURCHASER IS RELYING SOLELY UPON ITS OWN INVESTIGATIONS AND INSPECTIONS MADE DURING THE EXAMINATION PERIOD TO MAKE A COMPLETE AND THOROUGH EXAMINATION OF ALL PORTIONS OF THE PROPERTY AND, ON THE BASIS OF ITS INSPECTION, (i) PURCHASER WILL BE THOROUGHLY FAMILIAR WITH ALL PORTIONS OF THE PROPERTY INCLUDING, WITHOUT LIMITATION, WHETHER OR NOT HAZARDOUS OR TOXIC MATERIALS ARE OR HAVE HERETOFORE BEEN LOCATED ON OR UNDER OR GENERATED FROM ANY PORTION OF THE PROPERTY, ZONING, LAND USE, DEVELOPMENT RESTRICTIONS AND REQUIREMENTS, UTILITY AVAILABILITY AND HOOK-UP COSTS, AND ALL OTHER MATTERS RELEVANT TO PURCHASER, AND (ii) PURCHASER WILL DETERMINE THAT THE CONDITION OF ALL PORTIONS OF THE PROPERTY IS SATISFACTORY TO PURCHASER; (e) PURCHASER SHALL PURCHASE AND ACCEPT EVERY PORTION OF THE PROPERTY IN ITS “AS IS” CONDITION WITH ALL FAULTS, WITHOUT REQUIRING ANY ACTION, EXPENSE OR OTHER THING OR MATTER ON THE PART OF SELLER TO BE PAID OR PERFORMED AND, UPON ACCEPTANCE OF THE DEED AT CLOSING, PURCHASER SHALL BE CONCLUSIVELY DEEMED TO HAVE ACCEPTED THE PROPERTY IN ITS “AS IS” CONDITION WITH ALL FAULTS; AND (f) EXCEPT AS OTHERWISE SPECIFIED IN THE DEED OR IN THIS AGREEMENT, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, CONCERNING ANY PORTION OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR RELATING TO THE ABSENCE OF LATENT, PATENT OR OTHER DEFECTS. TO THE EXTENT REQUIRED TO BE OPERATIVE, THE DISCLAIMERS OF WARRANTIES, GUARANTIES AND REPRESENTATIONS CONTAINED IN THIS SECTION 9.1 ARE “CONSPICUOUS” DISCLAIMERS FOR PURPOSES OF ANY APPLICABLE LAW, RULE, REGULATION OR ORDER. THE PROVISIONS OF THIS SECTION SHALL SURVIVE CLOSING.

ARTICLE X - MISCELLANEOUS

10.1 Brokerage Commissions. Seller and Purchaser represent to each other that they have not contacted, contracted with or entered into any agreement with any real estate broker or agent in connection with the sale of the Property other than CBRE, Inc. (“Broker”) who represents Seller, and that they have 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 pay the commission due to Broker pursuant to a separate agreement. Seller and Purchaser shall each indemnify and save harmless the other 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, by the indemnifying party. The obligations under the immediately preceding sentence shall survive the expiration, consummation or earlier termination of this Agreement.

10.2 Notice. 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 Purchaser: Boone County School District Finance Corporation

 8330 U.S. Hwy 42

 Florence, KY 41042

 Attn: Dr. Jeff Hauswald, Superintendent

 With a copy to: Adams Law, PLLC

 40 W. Pike Street

 Covington, KY 41011

 Attn: Corey T. Gamm

 If to Seller: Kroger Limited Partnership I

 1014 Vine Street

 Cincinnati, Ohio 45202-1100

 Attn: Brian Folmer, Real Estate Dept. (Store 424-A)

 And to: The Kroger Co.

 1014 Vine Street

 Cincinnati, Ohio 45202-1100

 Attn: Paul W. Parmele, Law Dept. (Store 424-A)

 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 FedEx), receipt requested.

10.3 Integration. This Agreement constitutes the entire agreement between the parties related to the purchase and sale of the Property and shall be deemed to be a full, final and complete integration of all prior or contemporaneous understandings or agreements between the parties related thereto.

10.4 Additional Documentation. Seller and Purchaser shall execute such additional documentation as reasonably may be required to effectuate this Agreement.

10.5 Amendments. This Agreement may be amended or supplemented only by a written instrument signed by both parties hereto.

10.6 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. Facsimile signatures or signatures transmitted by email or other electronic means shall be sufficient to bind the parties.

10.7 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 Kentucky.

10.8 Successors and Assigns. This Agreement shall be binding upon the parties hereto, their respective heirs, administrators, personal representatives, successors and assigns. Purchaser shall not assign Purchaser’s rights under this Agreement without the prior written consent of Seller. No assignment by Purchaser of Purchaser’s rights hereunder shall relieve Purchaser of its liabilities and obligations under this Agreement.

10.9 Captions. The captions or paragraph headings are for convenience and ease of reference only and shall not be construed to limit, modify or alter the terms of this Agreement.

10.10 No Recordation. It is expressly agreed and understood that upon the filing for record of this Agreement by or through the act or effort of Purchaser, its successors or assigns, in any manner whatsoever, as an exhibit or attachment to any other instrument so filed, or otherwise, in the real estate records of the jurisdiction in which the Property are located, then, and in such event, at the option of Seller, Purchaser shall be in default hereunder and Seller shall be entitled to the remedies available to Seller under Article VIII hereof.

10.11 Confidentiality. *Intentionally deleted*.

10.12 Jury Waiver. IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY HEARING OF ANY DISPUTE, EACH OF PURCHASER AND SELLER HEREBY EXPRESSLY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER AND ANY RIGHTS TO A TRIAL BY JURY UNDER ANY STATUTE, RULE OF LAW OR PUBLIC POLICY IN CONNECTION WITH ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO THIS CONTRACT. Although such jury waiver is intended to be self-operative and irrevocable, Purchaser and Seller each further agree, if requested, to confirm such waivers in writing at the time of commencement of any such action, proceeding or counterclaim.

10.13 Severability. If any provision of this Agreement or its application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

10.14 Calculation of Time. Time is of the essence to this Agreement. If 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.

10.15 Title Company and Earnest Money. The parties agree that the duties of Title Company with respect to the Earnest Money are only ministerial in nature, and that Title Company shall incur no liability whatsoever with respect to holding or disbursing the Earnest Money deposited pursuant to this Agreement, unless arising out of its willful misconduct or gross negligence. If any dispute(s) arise with regard to the Earnest Money, the Title Company is authorized to interplead such dispute(s) in a court of competent jurisdiction. Title Company, upon interpleading funds pursuant hereto, shall thereafter be relieved of any further responsibility with respect to the Earnest Money.

10.16 Tax-Deferred Exchange. Seller and Purchaser shall each reasonably cooperate with the other if the other elects to either acquire the Property or convey the Property in connection with a tax-deferred exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, provided that (a) either party's election to effect a tax-deferred exchange shall not create any additional conditions to Closing or extend the Closing Date; and (b) Seller shall not be obligated in any event to take or receive title to any other real property in connection with such exchange. Any such exchange shall be accomplished by supplemental instructions, exchange documents and an exchange accommodator, if any, reasonably acceptable to both parties. The party electing to enter into a tax-deferred exchange shall indemnify and hold the other party harmless from and against any and all liens, claims, damages, liabilities, losses, costs and expenses, including reasonable attorneys' fees, arising out of or relating to the cooperating party's participation in the tax-deferred exchange contemplated by this Paragraph. Closing shall not be conditioned on the closing of any proposed tax-deferred exchange, and if such proposed tax-deferred exchange is not in a position to close concurrently with Closing, Purchaser shall nevertheless be obligated to complete the purchase of the Property from Seller on the Closing Date on the terms and conditions of this Agreement.

[Remainder of page is blank; signatures follow]**Signature Page for Purchase and Sale Agreement**

**Store 424-A, Union, KY**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**PURCHASER:**

Boone County School District Finance Corporation

a Kentucky non-profit corporation

By:

Name: \_\_\_\_\_\_

Title:

**SELLER:**

Kroger Limited Partnership I, an Ohio limited partnership

By: KRGP LLC, an Ohio limited liability company

 general partner

By:

Name: \_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit A**

Parcel 4A-1 of the Resubdivision of Lot No. 4-A of Section No. 1 - Block "A" of Union Village Subdivision as the same is recorded in Plat Cabinet 4 at Page 357, Group No. 4478, of the Boone County Clerk's Records at Burlington, Kentucky.

**Exhibit B**

SPECIAL WARRANTY DEED

 This DEED is made and entered into on \_\_\_\_\_\_\_\_ \_\_, 202\_, by and between

Kroger Limited Partnership I

an Ohio limited partnership

1014 Vine Street

Cincinnati, Ohio 45202-100

 ("Grantor")

and

 Boone County School District Finance Corporation

 a Kentucky non-profit corporation

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*The In-care of Address for Grantee, to which Tax Bills may be sent* ***(Grantee is tax exempt entity)****:*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

("Grantee").

WITNESSETH

 For a total consideration of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_), the receipt and sufficiency of which are acknowledged, Grantor grants and conveys to Grantee in fee simple with covenant of Special Warranty certain real property in Boone County, Kentucky, and being more particu­larly described in Exhibit A attached hereto and made a part hereof (the "Property").

 Grantor covenants (a) lawful seisin of the Property, (b) full right and power to convey same, and (c) that the Prop­erty is free and clear of all liens and encumbrances, except liens for real property taxes and assess­ments due and payable in 202\_ and thereafter, which Grantee assumes and agrees to pay. This conveyance is made subject to (i) all matters of record, including without limitation easements, restric­tions and stipulations, (ii) all matters of survey, (iii) all matters that an inspection of the Property would reveal, and (iv) governmental laws, ordinances and regulations affecting the Property.

 For purposes of KRS 382.135, Grantor and Grantee, by execu­tion of this Deed, certify that the consideration reflected in this Deed is the full consideration paid for the Property.

 IN WITNESS WHEREOF, Grantor and Grantee, acting by and through its authorized representatives, executed this Deed as of the date first set forth above.

 GRANTOR:

KROGER LIMITED PARTNERSHIP I

By: KRGP LLC, an Ohio limited liability company

 general partner

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF OHIO )

 ) ss:

COUNTY OF HAMILTON )

 Before me, the undersigned, a Notary Public in and for the State and County aforesaid, an officer duly authorized to take acknowledgments, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, known to me to be the person described in and who as \_\_\_\_\_\_\_\_\_\_\_\_ of KRGP LLC, an Ohio limited liability company, general partner of Kroger Limited Partnership I, an Ohio limited partnership (“Grantor”), executed the foregoing instrument on behalf of Grantor; and he/she acknowledged before me that he/she executed this instrument on behalf of Grantor; that this act was done by authority of Grantor for the uses and purposes set forth in the instrument; and that the foregoing instrument is the free act and deed of Grantor.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 202\_\_, in this State and County.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_

 (SEAL)

 GRANTEE:

BOONE COUNTY SCHOOL DISTRICT FINANACE CORPORATION
a Kentucky non-profit corporation

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COMMONWEALTH OF KENTUCKY )

 ) SS

COUNTY OF BOONE )

 Before me, the undersigned, a Notary Public in and for the State and County aforesaid, an officer duly authorized to take acknowledgments, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ known to me to be the person described in and who as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Boone County School District Finance Corporation, a Kentucky non-profit corporation (“Grantee”), executed the foregoing instrument on behalf of Grantee; and he acknowledged before me that he executed this instrument on behalf of Grantee; that this act was done by authority of Grantee for the uses and purposes set forth in the instrument; and that the foregoing instrument is the free act and deed of Grantee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_, in this State and County.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

 My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_

(SEAL)

THIS INSTRUMENT PREPARED WITHOUT TITLE EXAMINATION BY:

Paul W. Parmele

The Kroger Co.

1014 Vine Street

Cincinnati, OH 45202

EXHIBIT A

Legal Description of Property