

SECOND AMENDMENT TO
DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS AND RESTRICTIONS

This Second Amendment to Declaration of Reciprocal Easements, Covenants and Restrictions (this “Amendment”) is made as of the ____ day of July, 2025, by Kroger Limited Partnership I, an Ohio limited partnership (“Declarant”).

WITNESSETH:

WHEREAS, Declarant promulgated 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 amended by First Amendment to Declaration of Reciprocal Easements, Covenants and Restrictions dated as of June 13, 2003, and recorded in MC 955, Page 965, aforesaid records (collectively, the “Declaration”);

WHEREAS, Declarant is the owner of “Parcel I” and “Parcel III”, as defined in the Declaration; and

WHEREAS, Declarant, pursuant to its rights under Section 15 of the Declaration, wishes to amend the Declaration as hereinafter set forth.

NOW THEREFORE, in consideration of these premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby amends the Declaration as follows:

1. All capitalized terms not defined herein shall have the meanings ascribed to them in the Declaration.
2. In addition to the approval rights afforded the Parcel III owner under clause (iii) of Section 1 of the Declaration, the prior approval of the Parcel III owner shall be obtained with respect to any relocation of driveways located on Parcel I and crosshatched in black on the site plan attached as Exhibit A hereto and made a part hereof (collectively, the “Common Driveways”), provided that minor changes to the width or configuration or alignment of said Common Driveways which (a) do not interfere with or prevent the circulatory movement of commercial delivery vehicles, including without limitation fuel tanker trucks, and (b) do not materially adversely impact access between Parcel III and U.S. Hwy. 42 via Braxton Drive or Parcel III and U.S. Hwy. 42 via Richmond Road shall not require the Parcel III owner’s consent.
3. Section 4 of the Declaration is hereby deleted in its entirety and is of no further force or effect, and the easement rights granted thereunder are hereby terminated. In connection therewith, all signs and associated facilities located on Parcel III pursuant to said Section 4 shall be deemed the property of the Parcel III owner.

4. Declarant acknowledges that the restrictions set forth in Section 7 and Section 8 of the Declaration have ceased to be in force and effect in accordance with their terms.
5. Notwithstanding the terms and conditions of Section 10 of the Declaration, the Parcel III owner shall be responsible, at its sole cost and expense, to maintain the Common Area on Parcel III in the manner required by said Section 10. Notwithstanding the terms and conditions of Section 10 of the Declaration, the Parcel III owner shall have no obligation to reimburse the Parcel I owner for the costs and expenses incurred by the Parcel I owner in fulfilling the Parcel I owner's Common Area maintenance obligations other than for such costs and expenses incurred by the Parcel I owner with respect to the Common Driveways.
6. Section 11 shall no longer apply to Parcel III, and as to Parcel III only is terminated and is of no further force or effect.
7. With respect to the responsibility for maintenance, repair and replacement of the Stormwater Facilities pursuant to Section 14 of the Declaration, as between the Parcel I owner and Kroger, the Parcel I owner shall be primarily responsible for such maintenance, repair and replacement, and Kroger shall not be obligated to undertake any such maintenance, repair or replacement except as otherwise required by Section 14 of the Declaration as the Parcel III owner.
8. Declarant hereby imposes the following restriction on Parcel I for the benefit of Parcel III:

Parcel I shall not be used for the commercial or retail sale of automotive fuel, including without limitation gasoline, propane, natural gas, and diesel fuel, or any technological evolution thereof (including without limitation electric vehicle charging), provided that this restriction shall cease to be in force or effect if the operator of any business for the sale of automotive fuel located on Parcel III fails to operate a business for the sale of automotive fuel, and that failure continues for 365 consecutive days or longer subsequent to the date hereof, except when such failure is caused by labor disputes (including without limitation strikes or lockouts), force majeure (including without limitation reconstruction as a result of a fire or other casualty) or conditions beyond the control of the operator.

9. All other terms and conditions of the Declaration are unchanged and remain in full force and effect.

[Signatures begin on the following page]

EXHIBIT A

Common Driveways