



ORDINANCE 2024-37

AN ORDINANCE AUTHORIZING THE CITY OF POWELL TO ENTER INTO A COMMUNITY REINVESTMENT AREA AGREEMENT WITH THE KROGER CO. AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Powell (hereinafter "Council") desires to pursue all reasonable and legitimate incentive measures to assist and encourage development in areas of the City of Powell that have not enjoyed reinvestment from remodeling or new construction; and

WHEREAS, by Ordinance No. 2024-33 effective September 17, 2024, the Council created the Powell Northern Community Reinvestment Area (the "CRA Ordinance"); and

WHEREAS, The Kroger Co. (the "Developer"), is currently the sole owner of property located at on Home Road, Powell, Ohio 43065, which real property currently has been assigned tax parcel numbers 31924001011005, 31924001029001, 31924001028000, 31924001027000, and 31924001026000 in the Delaware County Auditor's Office (the "Project Site"); and

WHEREAS, the Project Site is within the boundaries of the aforementioned Community Reinvestment Area established by the CRA Ordinance; and

WHEREAS, the Developer desires to participate in the Community Reinvestment Area program; and

WHEREAS, the Developer wishes to enter into a community reinvestment area agreement (the "CRA Agreement") to receive an exemption from taxation for the new construction on the Project Site, which will include a 123,000 square foot retail store and fueling station(the "Project"); and

WHEREAS, the Project Site is located within the Olentangy Local School District (the "School District") and the and the Delaware Area Career Center (the "JVSD") and the Boards of Education of each of the School District and the JVSD has been notified of the proposed approval of the CRA Agreement in accordance with Sections 3735.671 and 5709.83 of the Ohio Revised Code, or has waived such notice, and has been given a copy of the Application and a draft of the CRA Agreement; and

WHEREAS, pursuant to R.C. Section 3735.67(A), the Council and the Developer desire to formalize the agreement with respect to matters hereinafter contained.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

SECTION 1: Grant of Exemption. That the Council of the City of Powell hereby grants a tax exemption for real property improvements consisting of the Project pursuant to R.C. 3735.67 which exemption shall be in the amount of 75% for a period of 15 years commencing in the first year for which the Project would first be taxable were that property not exempted from taxation.

SECTION 2: CRA Agreement. That the CRA Agreement in the form presently on file with the City Clerk, providing for, among other things, the provision of the real property tax exemption for the Project, is hereby approved and authorized with changes therein and completions thereto not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute and deliver that CRA

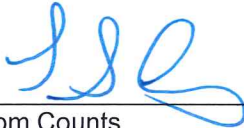
Agreement and any amendments thereto that do not increase the percentage or number of years of the tax exemption, provided further that the approval of changes, completions or amendments thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the City Manager's execution thereof.

SECTION 3. Open Meetings. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and any of its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Ohio Revised Code.

SECTION 4. Further Authorizations. This Council authorizes the Director of Community Development or his designee to sign those certificates, and instruments; submit or file any documents or materials as necessary or appropriate; make those arrangements; and take any other actions as are necessary or appropriate to carry out the purposes of this Ordinance and the CRA Agreement and facilitate the tax exemption described herein.

SECTION 5. Non-Discriminatory Hiring Policy. In accordance with Section 5709.832 of the Ohio Revised Code, this Council hereby determines that no employer located upon any Parcel shall deny any individual employment based solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

SECTION 6: This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that this Ordinance must be immediately effective so that the work can begin on the construction of commercial structures within the Powell Northern Community Reinvestment Area; WHEREFORE, this Ordinance shall take effect and be in force from and immediately after its adoption.



Tom Counts
Mayor

10/15/24

Date

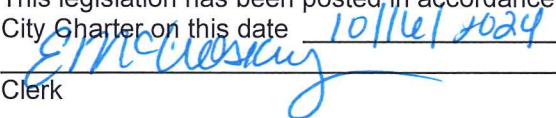


Elaine McCloskey
City Clerk

10/15/2024

Date

EFFECTIVE DATE: October 15, 2024

This legislation has been posted in accordance with the City Charter on this date 10/16/2024


City Clerk

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**COMMUNITY REINVESTMENT AREA AGREEMENT
CITY OF POWELL and THE KROGER CO.**

This Agreement made and entered into by and between the City of POWELL, Ohio (“City”), a political subdivision and municipal corporation, with its main offices located at **47 Hall Street, POWELL, Ohio 43065**, and **THE KROGER CO.** (“Kroger”), with a mailing address of **1014 Vine Street, Cincinnati, Ohio 45202**. The City and Kroger may be referred to individual as a “Party” or together as the “Parties”.

WITNESSETH:

WHEREAS, the City has encouraged the development of real property and the acquisition of personal property located in the area designated as the Powell Northern CRA (“CRA - - ”); and

WHEREAS, Kroger desires to construct approximately 123,000 sq. ft. of commercial retail structures on approximately 20 acres on parcels nos. 31924001011005, 31924001029001, 31924001028000, 31924001027000, and 31924001026000 (“Project”). The Project will take place within the boundaries of CRA - - provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, the Powell City Council adopted Ordinance No. 24- on [Month, Day, Year] which designated the area as a “Community Reinvestment Area” pursuant to Ohio Revised Code Chapter 3735; and

WHEREAS, the City having the appropriate authority for the stated type of Project desires to provide Kroger with incentives available for the development of the Project in CRA - - under Ohio Revised Code Chapter 3735; and

WHEREAS, Kroger submitted a proposed agreement application (“Application”) to the City (herein attached as “Exhibit A,” and incorporated herein by reference); and

WHEREAS, City staff have investigated Kroger’s Application and recommended to the City Council that Kroger is qualified by financial responsibility and business experience to create and preserve employment opportunities in said Community Reinvestment Area and improve the economic climate of the City; and

WHEREAS, the Project site as proposed by Kroger is located in the Olentangy Local School District (“School District”) and the Delaware Area Career Center District (“JVSD”) (the School District together with JVSD being referred to as the “School Districts”) and both School Districts have been notified in accordance with R.C. Section 5709.83 and have been given a copy of the Application; and

WHEREAS, the City Council, pursuant to Ordinance No. , adopted on , 202 , has approved the terms of this Agreement and authorized its execution; and

WHEREAS, pursuant to R.C. Section 3735.67(A) and in conformance with the format required under R.C. Section 3735.671(B), the parties hereto desire to set forth their agreement with respect to matters hereinafter contained.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the/ execution hereof, the parties herein agree as follows:

1. Kroger expects to construct or cause to be constructed approximately 123,000 sq. ft. of commercial retail structures on approximately 18.839 acres on Delaware County parcels nos. 31924001011005 and 31924001029001. The cost of investments to be made in connection with the Project is estimated to be approximately \$36 million for acquisition of land and construction of new buildings (exclusive of any amounts for acquisition of machinery and equipment, furniture and fixtures, and inventory).

The Project is estimated to begin on December 1, 2024, and all construction is estimated to be completed by December 31, 2026.

The assumptions and estimates provided in this Section 1 are good faith estimates provided pursuant to R.C. Section 3735.671(B). These assumptions and estimates are based on forward-looking assessments of market conditions for commercial development in the central Ohio area and on assumed increases in assessed value that may occur as a result of the Project. The Parties agree that the assumptions and estimates are not a guarantee of future performance by Kroger.

2. Kroger currently estimates that the Project will create or cause to be created approximately 75 new full-time equivalent (FTE) jobs at the Project Site with an estimated new (not from an existing company currently located in the City) annual payroll of \$6 million at the Project Site by approximately December 31, 2029. As of the Effective Date, Kroger has zero (0) full-time equivalent permanent employees at the Project. Therefore, no employee positions are expected to be retained by Kroger due to construction of the Project. The estimates provided in this Section 2 are good faith estimates provided pursuant to Section 3735.671(B) of the Ohio Revised Code and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement. The Parties to this Agreement recognize that the employment and payroll estimates associated with the Project may increase or decrease significantly and that all employees at the Project will be hired by Kroger, an affiliate of Kroger, or their respective lessees.
3. Based on new job and payroll creation levels, the City estimates an annual new employee income tax revenue amount of \$120,000 (\$6 million payroll times the current income tax rate of 2%) for the Project. The estimates provided in this Section 3 are good faith estimates provided pursuant to Section 3735.671(B) of the Ohio Revised Code and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement. The Parties to this Agreement recognize that the employment and payroll estimates associated with the Project may increase or decrease significantly.

4. Kroger shall provide to the proper Tax Incentive Review Council any information reasonably required by the council to evaluate the enterprise's compliance with the Agreement, including but not limited to the annual report form, and returns filed pursuant to R.C. Sections 5711.02 and 5727.08 if requested by the council (See R.C. 3735.671(C)(7)).
5. The City hereby grants a fifteen (15) year, 75% real property tax exemption pursuant to R.C. Section 3735.67 for the assessed value of new structures at the Project Site and a fifteen (15) year, 100% real property tax exemption pursuant to R.C. Section 3735.67 for the increase in the assessed value attributable to remodeling at the Project Site.

For each separately identifiable real property improvement, the exemption commences the first full taxable year such real property improvement would first be taxable were that property not hereby exempted from taxation. No exemption shall commence after tax year 2027 (i.e., tax lien date January 1, 2027), nor extend beyond tax year 2041 (i.e., tax lien date January 1, 2041). Said abatement shall apply to the assessed valuation of new structures.

6. Kroger may terminate this Agreement for any reason or no reason by delivering written notice to the City at least thirty (30) days prior to the desired termination date.
7. Kroger shall pay such real and tangible personal property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. If Kroger fails to pay such taxes or file such returns and reports, and such failure is not corrected within sixty (60) days of written notice thereof to Kroger all incentives granted under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter (See R.C. 3735.671(C)(2)).
8. The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.
9. If for any reason the Community Reinvestment Area designation expires, the Director of the Ohio Department of Development revokes certification of the area, or the City revokes the designation of the area, entitlements granted under this Agreement shall continue for the number of years specified under this agreement, unless Kroger materially fails to fulfill its obligations under this Agreement and such failure is not corrected in accordance with Section 10 of this Agreement and, consequently, the City terminates or modifies the exemptions from taxation granted under this Agreement.
10. If Kroger materially fails to fulfill its obligations under this Agreement and such failure is not corrected within sixty (60) days of written notice thereof to Kroger or if the City determines that the certification as to delinquent taxes required by this agreement is fraudulent, the City may terminate or modify the abatements from taxation granted

under this Agreement and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement.

11. Kroger hereby certifies that at the time this Agreement is executed, Kroger does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio and does not owe delinquent taxes for which Kroger is liable under R.C. Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 or, if such delinquent taxes are owed, Kroger currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against Kroger. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.
12. Kroger affirmatively represents that it does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.
13. Kroger and the City acknowledge that this Agreement must be approved by formal action of the legislative authority of the City, and executed by the Parties as conditions for the Agreement to take effect.
14. The City has developed a policy to ensure recipients of a Community Reinvestment Area tax benefits practice non-discriminating hiring in its operations. By executing this Agreement, Kroger **and its tenants** are committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
15. Kroger affirmatively represents that it has made no false statements to the State or local political subdivision in the process of obtaining approval for the Community Reinvestment Area incentives. If any representative of Kroger has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, Kroger shall be required to immediately return all benefits received under the Community Reinvestment Area Agreement pursuant to R.C. Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to R.C. Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to R.C. Section 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

16. This Agreement is not transferable or assignable without the express, written approval of the City; provided, however, the City agrees not to withhold its approval of such transfer or assignment, in whole or in part, to any one or more entities that control, are controlled by, or are under common control with Kroger.
17. Kroger acknowledges that if any person that is party to an agreement granting an exemption from taxation discontinues operations at the structure to which that exemption applies prior to the expiration of the term of the agreement, that person, any successor to that person, and any related member shall not enter into an agreement under ORC Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with such a person, successor, or related member, prior to the expiration of five years after the discontinuation of operations. As used in this provision, 'successor' means a person to which the assets or equity of another person has been transferred, which transfer resulted in the full or partial non-recognition of gain or loss, or resulted in a carryover basis, both as determined by rule adopted by the tax commissioner. 'Related member' has the same meaning as defined in ORC 5733.042 without regard to Division (B) of that section (See ORC 3735.671(C)).
18. Kroger hereby represents that it has full authority to act, negotiate, and execute this agreement.
19. This Agreement may be signed in one or more counterparts or duplicate signature pages (including electronically executed or transmitted counterparts) with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.
20. If any provision of this Agreement or the application of any such provision to any such person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, all of which other provisions shall remain in full force and effect and interpreted to the extent legally possible to effectuate the intentions of the parties. If any provision of this Agreement is capable of two constructions one of which would render the provision valid, then such provision shall have the meaning which renders it valid. The captions and headings in this Agreement are for convenience only and in no way define, limit, prescribe or modify the meaning, scope or intent of any provisions hereof.
21. Upon request of Kroger, the City of POWELL shall execute and deliver to Kroger or any proposed purchaser, mortgagee or lessee a certificate stating: (a) that the Agreement is in full force and effect, if the same is true; (b) that Kroger is not in default under any of the terms, covenants or conditions of the Agreement, or if Kroger is in default, specifying same; (c) such other matters as Kroger reasonably requests; and (d)

Powell City Council passes an Assignment and Assumption agreement of the abatement to a new owner.

22. This Agreement constitutes the entire agreement between Kroger and the City of POWELL pertaining to the subject matter contained herein and therein and supersede all other prior or contemporaneous agreements or understandings between Kroger and the City of POWELL in connection with such subject matter.
23. Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of any party to this Agreement shall be made in writing addressed as follows and sent by registered or certified mail, return receipt requested, and shall be deemed delivered when the return receipt is signed, refused or unclaimed:

If to the City of POWELL, to:

City of POWELL, Ohio
47 Hall Street
POWELL, Ohio 43065
Attention: Economic Development Administrator

If to Kroger, to:

THE KROGER CO.
1014 Vine Street
Cincinnati, Ohio 45202
Attention: Danielle Polak, Director, Economic Development

or to any such other persons or addresses as may be specified by any Party, from time to time, by prior written notification.

[Signature Page Follows]

IN WITNESS WHEREOF, the City of POWELL, Ohio, by Andrew D. White, its City Manager, and pursuant to **Ordinance** __ - __ adopted on _____, **2024**, has caused this instrument to be executed this __ day of _____ 2024, and **THE KROGER CO.** has caused this instrument to be executed on this _____ day of _____ 2024.

CITY OF POWELL

By: _____
Andrew D. White
City Manager

THE KROGER CO.

By: _____

Lisa Helton
Assistant Treasurer
THE KROGER CO.

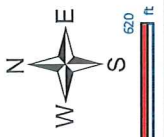
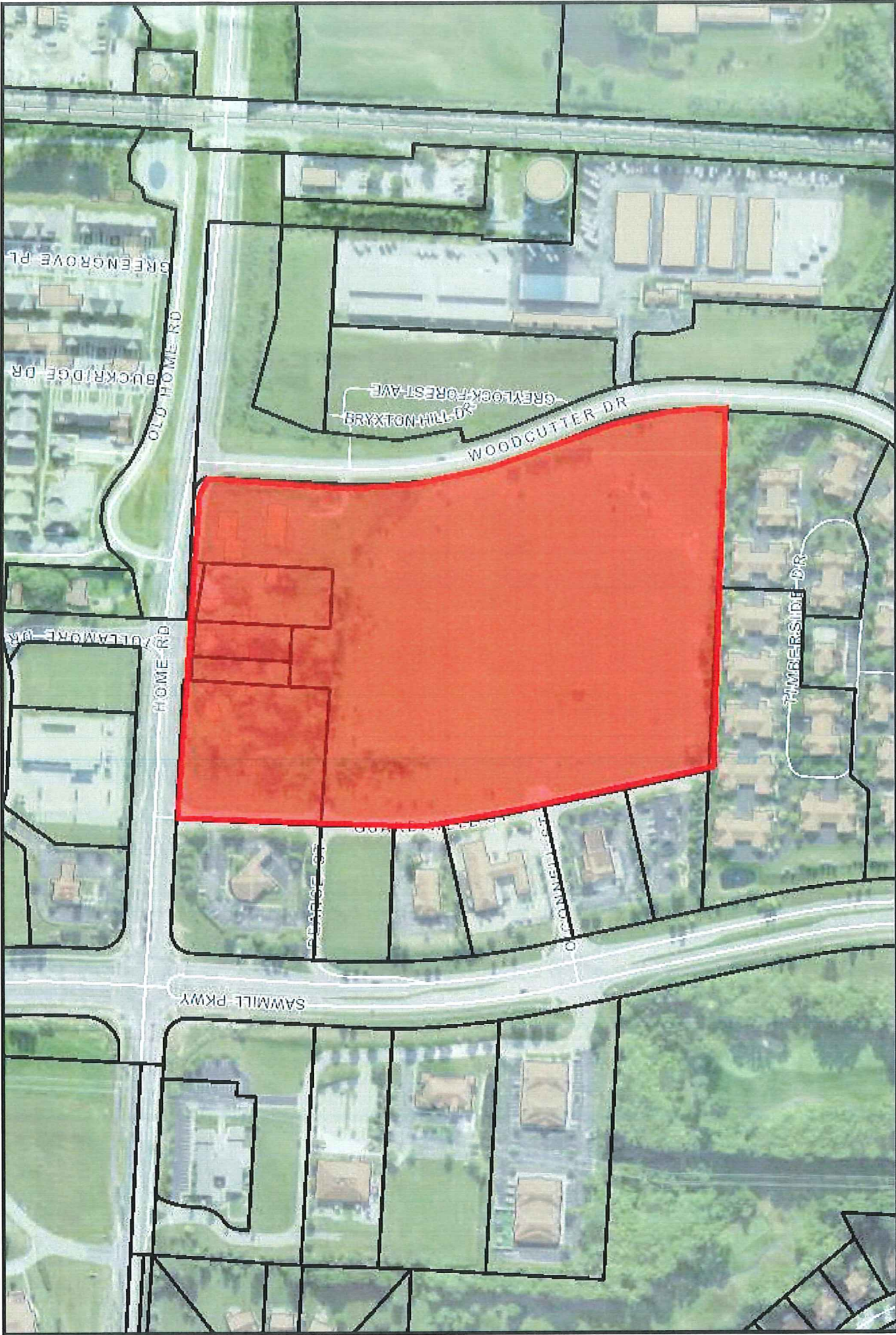
Approved as to form:

By: _____
Yazan Ashrawi
Powell City Attorney

EXHIBIT A TO CRA AGREEMENT

Application

(attached hereto)



Kroger Project CRA

Information contained within this map may be used to generally locate, identify and inventory land parcels within Delaware County. Delaware County cannot warrant or guarantee the information contained herein, including, but not limited to its accuracy or completeness. The map parcel lines shown are approximate and this information cannot be constructed or used as a "legal description" of a parcel. Flood Plain information is obtained from FEMA and is administered by the Delaware County Building Department (740-833-2201). Please report any errors or omissions to the Delaware County Auditor's office at delcogis@co.delaware.oh.us.

Delaware County Auditor
George Kaltsa



