

**D: DEED B: 1864 P: 501 COVE**

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Hattie Holmes Sullivan

Clerk of Superior Court, Augusta-Richmond County, GA

eFile Participant IDs: 5686114505,7067927936

Prepared by:

Susan Kibler

Georgia Department of Natural Resources

Environmental Protection Division

2 Martin Luther King, Jr. Drive

Suite 1456, East Tower

Atlanta, Georgia 30334

## Environmental Covenant

Electronically Recorded by:

**Fidelity National Title Insurance Company**

4111 Executive Parkway, Suite 304

Westerville, Ohio 43081

File No: *01LW2100599B*

**After Recording Return to:**  
The Kroger Co. / Marty Cristo  
Attn: Environmental Compliance Department  
1014 Vine Street  
Cincinnati, Ohio 45202-1100

**CROSS-REFERENCE:**  
County:  
Deed Book:  
Page(s):

### Environmental Covenant

This instrument is an Environmental Covenant executed pursuant to the Georgia Uniform Environmental Covenants Act, O.C.G.A. § 44-16-1 *et seq.*, as may be amended from time to time (hereinafter "Act"). This Environmental Covenant is entered into by the entities executing this Environmental Covenant and subjects the property identified below to the activity and/or use limitations and other requirements as set forth herein. This Environmental Covenant further grants such other rights in favor of Georgia Environmental Protection Division (EPD) and The Kroger Co. as set forth herein.

**Fee Simple Owner(s)/Grantor(s):**

The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100

**Grantee/Holder with the express power to enforce:**

The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100

**Grantee/Entity with express power to enforce:**

State of Georgia  
Department of Natural Resources  
Environmental Protection Division  
2 Martin Luther King Jr. Drive, SE  
Suite 1456 East Tower  
Atlanta, Georgia 30334

**Persons with Interests other than Fee Simple:**

See attached Exhibit "C"

### Subject Property

The property subject to this Environmental Covenant is a tract of approximately 20.05 acres of real property located at 2801 Washington Road, in Augusta, Richmond County, Georgia, which is further identified by the tax parcel ID number(s) below (hereinafter "Property"). The Property was (1) conveyed on May 17, 2007 to The Kroger Co.; such conveyance is recorded in Deed Book 1122, Page 2014 as affected by Affidavit at Book 1159, Page 2097 and in Deed Book 1122, Page 2018, as affected by Affidavit at Book 1159, Page 2099, and (2) conveyed on August 27, 2017 to The Kroger Co.; such conveyance is recorded in Deed Book 1144, Page 1040 as affected by Corrective Deed recorded in Deed Book 1150, Page 1223, of the Richmond County deed records. The Property is located in Land Lot N/A of the 2nd District of Richmond County, Georgia, City of

Augusta and being more fully shown and designated as Tract "A" on a plat for The Kroger Company by Cranston Engineering Group dated November 3, 2006 and recorded in the Office of the Clerk of the Superior Court of Richmond County, Georgia in Book 3, Page 177.

The tax parcel(s) of the Property are 0124029000 and 0130013000 of Richmond County, Georgia.

A complete legal description of the Property is attached as Exhibit A and a map of the Property is attached as Exhibit B.

### **Environmental Covenant Runs with the Land and is Perpetual**

Pursuant to the Act, this Environmental Covenant shall run with the land and shall be perpetual unless terminated or amended pursuant to terms herein or in accordance with provisions of the Act. This Environmental Covenant shall be binding upon The Kroger Co. and all successors, assigns and transferees of any interest in the Property or any portion thereof.

### **Administrative Records**

This Environmental Covenant imposes activity and/or use limitations and other requirements on the Property that arise under corrective action performed and/or being performed at the Former Lucky Cleaners facility. Records pertaining to this corrective action are available at the following EPD location(s):

Georgia Environmental Protection Division  
Response and Remediation Program  
2 MLK Jr. Drive, SE  
Suite 1054 East Tower  
Atlanta, GA 30334  
M-F 8:00 AM to 4:30 PM excluding state holidays

**Notice:** This Property has been listed on the State's Hazardous Site Inventory at HSI #10845 and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the Property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act.

### **Activity and Use Limitations**

The Property is subject to the following activity and/or use limitations:

- A. Real Property: The Property shall be used only as non-residential property as defined in Rule 391-3-19-.02(2)(i). Use of the Property as residential property, as defined in Rule 391-3-19-.02(2)(r), is prohibited.
- B. Groundwater: The use or extraction of groundwater beneath the Property for drinking water or any other non-remedial purpose is prohibited.

**Other Requirements.** The Property is subject to the following additional requirements.

- A. Notice of Limitations and Requirements in Future Conveyances. Each instrument hereafter conveying any interest in the Property or any portion thereof that may affect the activity and use limitations described herein shall include a statement that the Property is subject to this Environmental Covenant (and any amendments thereto), the location (County, Deed Book and Page) in the deed records where this Environmental Covenant (and any amendments thereto) is recorded and a copy of this Environmental Covenant (and any amendments thereto).
- B. Notice to EPD of Future Conveyances. Within thirty (30) days after each conveyance of a fee simple interest in the Property or any portion thereof, a notice shall be sent to EPD. The notice shall include the new owner's name, address, telephone number and other pertinent contact information, the date of the conveyance and the location (County, Deed Book and Page) where the conveyance is recorded, and, if the conveyance is a portion of the Property, a survey map showing the boundaries of the real property conveyed.
- C. Notice of Change of Use. If such activity will materially adversely affect any required monitoring or maintenance of any institutional or engineering controls described herein, the owner of the Property must provide to EPD thirty (30) days' advance written notice of the owner's intent to change the use of the Property, to apply for a building permit for construction at the Property, or to perform any site work.

### **Environmental Covenant Does Not Authorize Use Otherwise Prohibited**

Pursuant to the Act, this Environmental Covenant shall not be construed to authorize a use of the Property that is otherwise prohibited by zoning, ordinance, local law or general law or by a recorded instrument that has priority over this Environmental Covenant.

### **Rights of Access and Enforcement**

Authorized representatives of EPD and The Kroger Co. shall have the right to enter the Property at reasonable times in connection with implementation, compliance, or enforcement of this Environmental Covenant, including but not limited to the right to conduct inspections, examine related records, or to take samples.

This Environmental Covenant shall be enforceable by EPD, The Kroger Co., and other parties as provided in the Act. Such rights of access and enforcement herein shall not limit EPD's authority under other applicable law.

### **No Interest in Real Property by EPD**

EPD's rights under this Environmental Covenant and the Act shall not be considered an interest in real property.

### **Recording of Environmental Covenant and Service on Other Persons**

Within thirty (30) days after execution of this Environmental Covenant by the Director of EPD, The Kroger Co. shall record the Environmental Covenant in every county in which any portion of the Property is located in accordance with the law governing the recording and priority of interests in real property. Upon recording of the Environmental Covenant, The Kroger Co. shall provide in a manner deemed acceptable by EPD a copy of the executed, recorded Environmental Covenant to each of the persons or entities identified in O.C.G.A. § 44-16-7.

**Representations and Warranties by Grantor(s).**

The Kroger Co. represents and warrants that all of the following are true and correct:

- A. The Kroger Co. holds fee simple title to the Property.
- B. The Kroger Co. has the authority to enter into this Environmental Covenant, has the authority to grant any rights granted by it within, has the ability to carry out the obligations described within and, based upon information and belief after reasonable inquiry, does not know of any anticipated material change in the practices, ownership, or authority of The Kroger Co. that will alter this representation and warranty.
- C. The execution and delivery of this Environmental Covenant and carrying out the obligations described within will not conflict with any of the provisions of the organizational documents, operating agreement of The Kroger Co. nor will it violate, contravene and/or constitute a breach or default under any agreement, contract, order or instrument to which The Kroger Co. is a party or by which The Kroger Co. may be bound.
- D. There are no persons with existing interests other than fee simple in the Property, except as set forth in Exhibit C.
- E. This Environmental Covenant does not authorize a use of the Property that is otherwise prohibited by zoning, ordinance, local law or general law or by a recorded instrument that has priority over this Environmental Covenant.
- F. At least thirty (30) days prior to presenting this Environmental Covenant to EPD for execution, The Kroger Co. served a copy of the proposed final text of this Environmental Covenant on all persons or entities required to be noticed in accordance with O.C.G.A. § 44-16-7.

**Submission of Required Documents and Communications**

Documents and communications required by this Environmental Covenant shall be submitted to:

Georgia Environmental Protection Division  
Branch Chief  
Land Protection Branch  
2 Martin Luther King Jr. Drive SE  
Suite 1054 East Tower  
Atlanta, GA 30334

With a copy to:

The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100  
Attention: Environmental Compliance Department

**EPD's Environmental Covenants Registry**

This Environmental Covenant and any amendment thereto or termination thereof may be included in EPD's registry for environmental covenants.

**Severability**

Should any provision of this Environmental Covenant be found by a court of competent jurisdiction to be invalid and/or unenforceable in any respect, the remaining provisions shall continue in full force and effect.

**Effective Date**

This Environmental Covenant shall be effective on the date the fully executed Environmental Covenant is recorded in accordance with O.C.G.A. § 44-16-8(a).

[Signatures begin on the following page]

Grantor

The Kroger Co.,  
an Ohio corporation

Name: Christine S. Wheatley

Signed in the presence of:

Title: GVP, Secretary & General Counsel

Unofficial Witness (signature)

Lauren Riser-Green

Unofficial Witness (print name)

State of Ohio  
County of Hamilton

This instrument was signed, or attested  
before me this 2nd day of August, 2022  
~~2021~~, by Christine S. Wheatley, GVP, Secretary  
~~and General Counsel~~ of The Kroger Co., an  
Ohio corporation, on behalf of the  
corporation.

Personally Known  
 Produced Identification

  
Notary Public (Signature)

My Commission Expires: February 24, 2025

(NOTARY SEAL) \_\_\_\_\_



CHRISTINA L. RICE  
Notary Public, State of Ohio  
My Commission Expires:  
February 24, 2025

Grantee

The Kroger Co.,  
an Ohio corporation

[Signature]  
Name: Christine S. Wheatley  
Title: GVF, Secretary, General Counsel

Signed in the presence of:

[Signature]  
Unofficial Witness (signature)  
Lauren Riser-Green  
Unofficial Witness (print name)

State of Ohio  
County of Hamilton

This instrument was signed or attested  
before me this 2nd day of August, 2022,  
2021, by Christine S. Wheatley, GVF, Secretary  
General Counsel of The Kroger Co., an  
Ohio corporation, on behalf of the  
corporation.

Personally Known  
 Produced Identification

[Signature]  
Notary Public (Signature)

My Commission Expires: February 24, 2025

(NOTARY SEAL)



CHRISTINA L. RICE  
Notary Public, State of Ohio  
My Commission Expires:  
February 24, 2025



For the Environmental Protection Division, Department of Natural Resources, State of Georgia,  
this 11th day of October, 2022:

[Signature]  
(Signature)

Name: [Signature]  
Director, Environmental Protection Division

Signed in the presence of:

[Signature]  
Unofficial Witness (signature)

Vashti Lawson  
Unofficial Witness (print name)

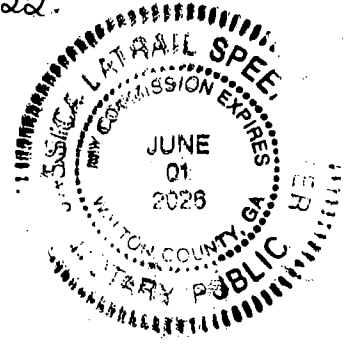
State of Georgia  
County of Fulton

This instrument was signed or attested  
before me this 11th day of October, 2022.  
2021, by Richard Dunn.

Personally Known  
 Produced Identification

[Signature]  
Notary Public (Signature)

My Commission Expires: 6/1/2026



(NOTARY SEAL) \_\_\_\_\_

Exhibit A  
Legal Description of Property

Exhibit "A"

PROPERTY DESCRIPTION

DATED July 13, 2007

ALL THAT TRACT OR PARCEL OF LAND SITUATE, LYING AND BEING IN RICHMOND COUNTY, GEORGIA AT THE INTERSECTION OF THE NORTHERN RIGHT-OF-WAY OF WASHINGTON ROAD WITH THE WESTERN RIGHT-OF-WAY OF ALEXANDER DRIVE, CONTAINING 18.77 ACRES AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: POINT OF BEGINNING AT A CONCRETE MONUMENT FOUND AT THE POINT OF INTERSECTION REFERRED TO ABOVE AND RUNNING THENCE ALONG THE NORTHERN RIGHT-OF-WAY OF WASHINGTON ROAD IN A WESTERLY DIRECTION ALONG A CURVE TO THE LEFT, THE RADIUS OF WHICH IS 2921.79 FEET, A DISTANCE OF 123.32 FEET TO A #5 REBAR FOUND (SAID CURVE SUBTENDED BY A CHORD RUNNING NORTH 79°20'50" WEST, 123.31 FEET); THENCE, TURN AND RUN NORTH 07°35'24" EAST A DISTANCE OF 135.22 FEET TO A CONCRETE MONUMENT FOUND; THENCE, TURN AND RUN NORTH 80°35'09" WEST A DISTANCE OF 149.97 FEET TO A #4 REBAR FOUND; THENCE, TURN AND RUN NORTH 07°25'57" EAST A DISTANCE OF 50.40 FEET TO A #4 REBAR FOUND; THENCE, TURN AND RUN NORTH 80°30'08" WEST A DISTANCE OF 59.77 FEET TO A 2" OPEN TOP IRON FOUND; THENCE, TURN AND RUN NORTH 80°26'03" WEST A DISTANCE OF 149.65 FEET TO A #4 REBAR FOUND; THENCE, TURN AND RUN SOUTH 07°49'09" WEST A DISTANCE OF 185.27 FEET TO A #5 REBAR FOUND ON THE NORTHERN RIGHT-OF-WAY OF WASHINGTON ROAD; THENCE, TURN AND RUN ALONG THE NORTHERN RIGHT-OF-WAY OF WASHINGTON ROAD NORTH 80°22'02" WEST A DISTANCE OF 161.88 FEET TO A #4 REBAR FOUND; THENCE, TURN AND RUN NORTH 08°10'48" EAST A DISTANCE OF 185.42 FEET TO A #5 REBAR FOUND; THENCE, TURN AND RUN NORTH 80°28'38" WEST A DISTANCE OF 109.43 FEET TO A #5 REBAR FOUND; THENCE, TURN AND RUN NORTH 07°16'42" EAST A DISTANCE OF 374.76 FEET TO A #5 REBAR FOUND; THENCE, TURN AND RUN NORTH 80°41'26" WEST A DISTANCE OF 143.72 FEET TO A 1" CRIMP TOP IRON FOUND; THENCE, TURN AND RUN NORTH 79°57'18" WEST A DISTANCE OF 242.31 FEET TO A #4 REBAR FOUND; THENCE, TURN AND RUN NORTH 88°27'35" WEST A DISTANCE OF 11.43 FEET TO A 1" OPEN TOP IRON FOUND; THENCE, TURN AND RUN NORTH 25°09'29" EAST A DISTANCE OF 184.81 FEET TO A #5 REBAR FOUND; THENCE, TURN AND RUN NORTH 25°16'48" EAST A DISTANCE OF 327.40 FEET TO A 2" OPEN TOP IRON FOUND; THENCE, TURN AND RUN SOUTH 66°09'30" EAST A DISTANCE OF 299.45 FEET TO A #4 REBAR FOUND; THENCE, TURN AND RUN SOUTH 65°57'00" EAST A DISTANCE OF 893.01 FEET TO A #5 REBAR SET ON THE WESTERN RIGHT-OF-WAY OF ALEXANDER DRIVE; THENCE, TURN AND RUN SOUTH 25°14'40" WEST ALONG THE WESTERN RIGHT-OF-WAY OF ALEXANDER DRIVE A DISTANCE OF 58.59 FEET TO A POINT ON A MANHOLE; THENCE, CONTINUE IN A SOUTHERLY DIRECTION ALONG SAID RIGHT-OF-WAY ALONG A CURVE TO THE LEFT, THE RADIUS OF WHICH IS 607.96 FEET, A DISTANCE OF 214.99 FEET, TO A #4 REBAR FOUND (SAID CURVE SUBTENDED BY A CHORD RUNNING SOUTH 14°55'42" WEST, 213.87 FEET); THENCE, CONTINUE ALONG SAID RIGHT-OF-WAY SOUTH 05°10'37" WEST A DISTANCE OF 104.36 FEET TO A

CONCRETE MONUMENT FOUND; THENCE, CONTINUE IN A SOUTHERLY DIRECTION ALONG SAID RIGHT-OF-WAY ALONG A CURVE TO THE RIGHT, THE RADIUS OF WHICH IS 431.73 FEET, A DISTANCE OF 125.91 FEET TO A CONCRETE MONUMENT FOUND (SAID CURVE SUBTENDED BY A CHORD RUNNING SOUTH 13°25'45" WEST, 125.46 FEET); THENCE, TURN AND RUN SOUTH 21°42'31" WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 236.58 FEET TO A CONCRETE MONUMENT FOUND; THENCE TURN AND RUN SOUTH 61°14'57" WEST ALONG SAID RIGHT-OF-WAY 45.19 FEET TO THE NORTHERN RIGHT-OF-WAY OF WASHINGTON ROAD AND THE POINT OF BEGINNING.

Tax Parcel Nos. :

013-0-010-00-0  
013-0-013-00-0  
012-0-068-00-0  
012-0-067-00-0  
012-0-072-00-0

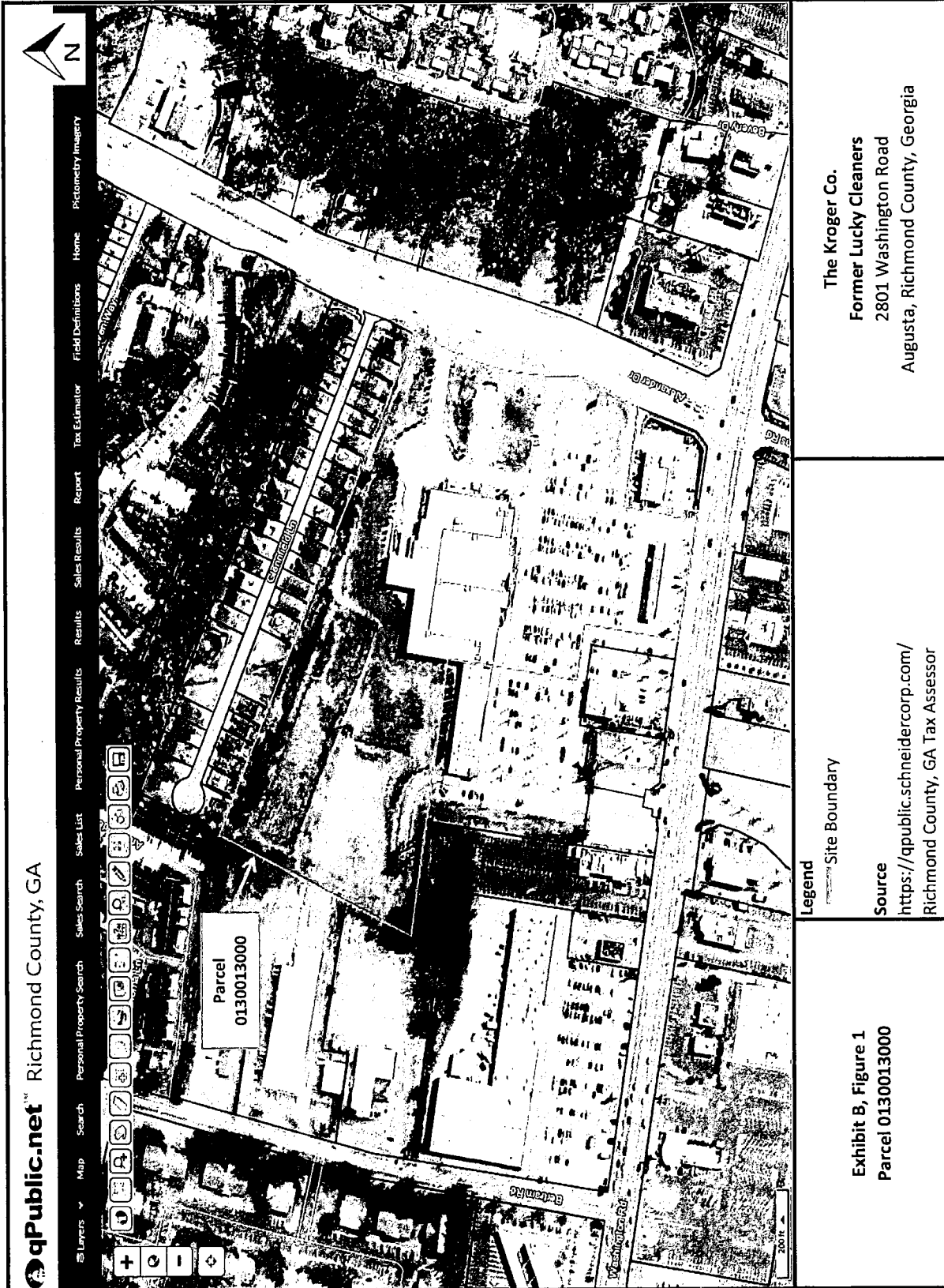
AND ALSO

All that certain piece, parcel or lot of land, lying and being in the City of Augusta, Richmond County, State of Georgia, being more fully shown and designated as Tract "B" on a plat for The Kroger Company by Cranston Engineering Group dated November 3, 2006 and recorded in the Office of the Clerk of the Superior Court of Richmond County, Georgia in Book 3, Page 177, and having the following metes and bounds, to wit:

Commencing at a concrete monument found at the western right of way line of Alexander Drive and the northern right of way line of Washington Road; thence with a tie line of N 81 degrees 22 minutes 13 seconds W a distance of 755.41 feet to a #5 rebar found on the northern right of way line of Washington Road, said point being the common property corner of property of Richard L. McMurtrey and William F. Franke, Jr.; thence, turning with a tie line along property of William F. Franke, Jr. of S 08 degrees 24 minutes 22 seconds W a distance of 181.03 feet to a #4 rebar set; said point being the Point of Beginning; thence turning and running along said property of Richard L. McMurtrey N 80 degrees 34 minutes 34 seconds W, a distance of 149.76 feet to a #4 rebar set; thence turning and running along said property of Walter N 08 degrees 27 minutes 50 seconds E a distance of 270.20 feet to a #5 rebar found; thence continuing N 07 degrees 39 minutes 16 seconds E a distance of 123.12 feet to a 1" crimped top iron found; thence turning and running along said property of Topvalco, Inc. S 80 degrees 41 minutes 26 seconds E a distance of 143.72 feet to a #5 rebar found; thence turning and running along said property line S 07 degrees 16 minutes 42 seconds W a distance of 374.76 feet to a #5 rebar found; thence continuing along property of William F. Franke, Jr. S 08 degrees 24 minutes 22 seconds W a distance of 19.02 feet to the Point of Beginning, containing 1.32 acres.

Being a portion of the property conveyed to Grantors by deed of RCI Cantina South, LLC, dated May 25, 2000 and recorded in Book 688, Page 1455, Richmond County, Georgia records.

Portion of Tax Parcel No. 012-0-066-00-0



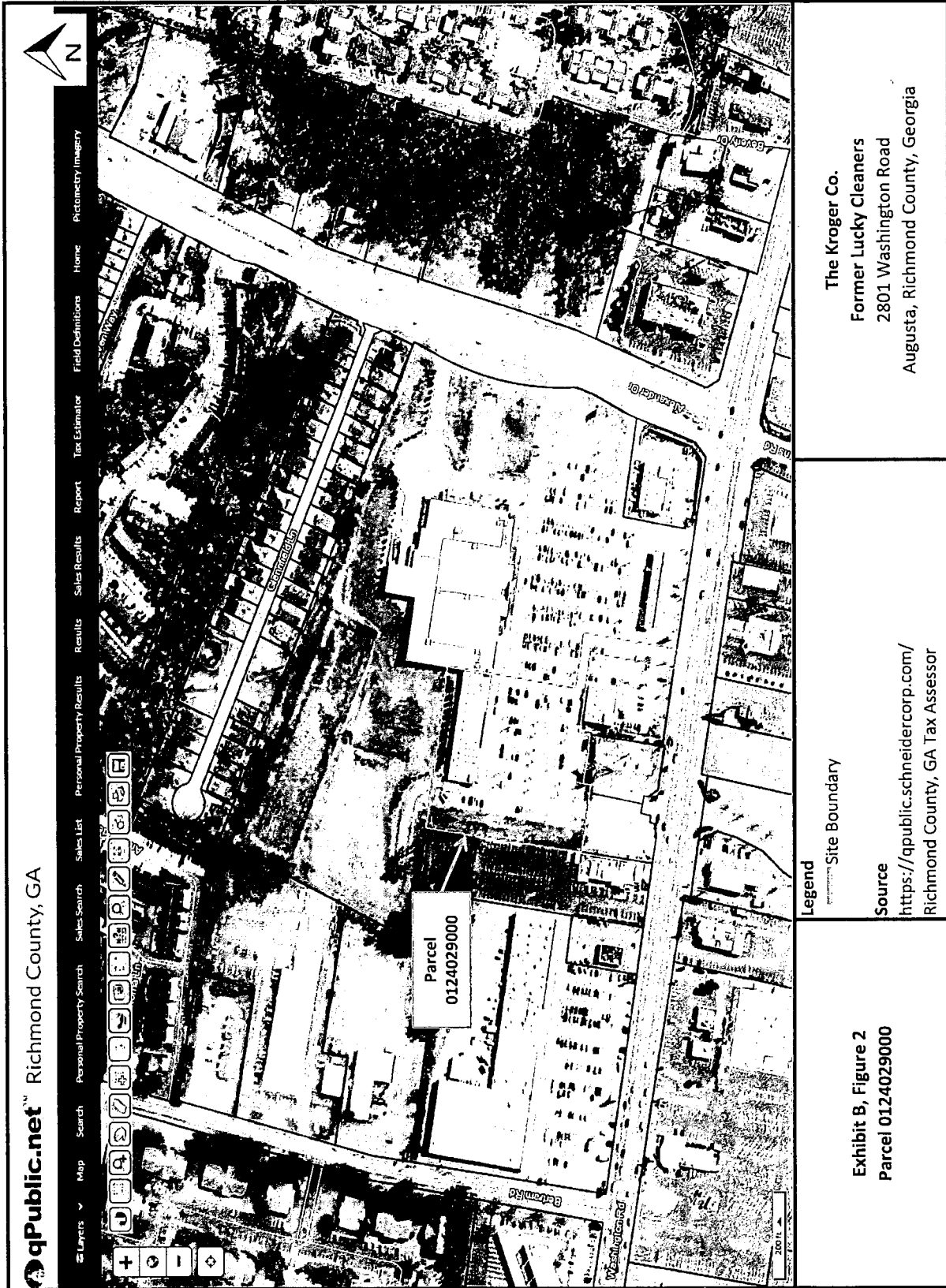


EXHIBIT "C"

1. All matters shown on recorded plat filed May 23, 2007 in Plat Book 3, page 177, Richmond County, Georgia records.
2. Reciprocal Easement Agreement between The Kroger Co., an Ohio corporation and Washington Walkers, LLC, a Georgia limited liability company, dated August 31, 2007, filed September 24, 2007, recorded in Deed Book 1144, page 1057, as affected by the following:
  - a) First Amendment dated November 4, 2013, filed November 5, 2013, recorded in Deed Book 1418, page 966;
  - b) Second Amendment dated October 15, 2015, filed November 2, 2015, recorded in Deed Book 1507, page 750;
  - c) Third Amendment dated June 13, 2016, filed June 17, 2016, recorded in Deed Book 1536, page 715;
  - d) Fourth Amendment dated April 3, 2018, filed May 10, 2018, recorded in Deed Book 1628, page 1061; and,
  - e) Fifth Amendment dated May 14, 2019, filed June 20, 2019, recorded in Deed Book 1677, page 138, aforesaid records.
3. Limited access granted in Right of Way Deed from The Kroger Co., an Ohio corporation to Department of Transportation, dated October 22, 2007, filed October 22, 2007, recorded in Deed Book 1148, page 1600, aforesaid records.
4. Access Easement Agreement from The Kroger Co., an Ohio corporation to Richard L. McMurtrey, Deborah A. McMurtrey, and Ralph L. Mason, as Trustee under Ralph L. Mason Trust U/T/A May 29, 1998, dated May 17, 2007, filed November 5, 2007, recorded in Deed Book 1150, page 1215, aforesaid records.
5. Underground Easement from The Kroger Co. to Georgia Power Company, dated April 6, 2009, filed May 8, 2009, recorded in Deed Book 1216, page 438, aforesaid records.
6. Easement from The Kroger Co. to Georgia Power Company, dated August 13, 2009, filed September 14, 2009, recorded in Deed Book 1231, page 886, aforesaid records.



Property Id	Customer Id	Unit Id	Lease Name (Id)	Lease Type	Expiration Date	Area
15855		100	MIYAKO STEAKHOUSE( 10000240 )	RETAIL LEASE	11/30/2029	5,600.0000
15855		106	CLASSIC NAILS( 10000242 )	RETAIL LEASE	07/31/2023	1,400.0000
15855		108	WORLD FINANCE CORPORATION OF GA( 10000243 )	RETAIL LEASE	12/31/2024	1,400.0000
15855		109	Big Tree Packaging Store( 10000244 )	RETAIL LEASE		1,400.0000
15855		110	QUANTUM RESTAURANTS LLC( 10000245 )	RETAIL LEASE	07/31/2024	1,400.0000
15855		111	GREAT CLIPS( 10000246 )	RETAIL LEASE	12/31/2029	1,400.0000
15855	KROGER		KROGER COMPANY OWNED STORE: GA-676( 10000247 )	INTRACOMPANY	12/31/2050	78,879.0000
15855		104	American Deli ( 10002785 )	RETAIL LEASE	01/31/2024	1,400.0000
15855		107	The UPS Store #6995 ( 10002818 )	RETAIL LEASE	05/31/2024	1,400.0000
15855	KROGFUEL		KROGER FUEL ( 10003072 )	INTRACOMPANY	06/30/2050	0.0000
15855		105	XIVUE LIN( 10003549 )	RETAIL LEASE	11/30/2029	1,400.0000

11. Memorandum of Understanding by and among The Kroger Co., Granite Peak Property Investments, L.P. and Niki Limited Investors, LP, dated June 13, 2016, filed June 17, 2016, recorded in Deed Book 1536, page 723, aforesaid records.

12. Memorandum of Understanding by and among The Kroger Co., Granite Peak Property Investments, L.P. and Niki Limited Investors, LP, dated June 13, 2016, filed June 17, 2016, recorded in Deed Book 1536, page 735, aforesaid records.

13. Easement from The Kroger Co. to Georgia Power Company, dated January 16, 2018, filed April 20, 2018, recorded in Deed Book 1625, page 1550, aforesaid records.