

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

IN THE MATTER OF:

Former Excello Plating Co., Inc. site
4057 and 4059 Goodwin Avenue
Los Angeles, CA 90039
APN: 5593-020-020

SETTLING RESPONDENTS:

Glendale/Goodwin Realty I, LLC, an Ohio limited liability company, **The Kroger Co.**, an Ohio corporation, and **Ralphs Grocery Company**, an Ohio corporation

LARWQCB SCP File No. 113.5243

**PROSPECTIVE PURCHASER AGREEMENT
AND COVENANT NOT TO SUE**

Pursuant to the Porter-Cologne Water Quality Control Act, California Water Code § 13000 *et seq.*

**Article I
INTRODUCTION**

1.1 Parties. This Prospective Purchaser Agreement and Covenant Not to Sue (“**Agreement**”) is made and entered into by and between the **California Regional Water Quality Control Board, Los Angeles Region** (“**LARWQCB**”), **Glendale/Goodwin Realty I, LLC**, an Ohio limited liability company (“**GGRI**”), **The Kroger Co.**, an Ohio corporation (“**Kroger**”), and **Ralphs Grocery Company**, an Ohio corporation (“**RGC**”). GGRI and RGC are subsidiaries of Kroger. GGRI, Kroger, and RGC are collectively referred to herein as the “**Settling Respondents**.” The LARWQCB and Settling Respondents are collectively referred to herein as the “**Parties**.”

1.2 Site. This Agreement pertains to the former Excello Plating Co., Inc. real property (“**Property**”) located at 4057 and 4059 Goodwin Avenue, in the City of Los Angeles, County of Los Angeles, State of California, and referenced as Assessor Parcel Number 5593-020-020. The Property is more particularly described in Exhibit A (Legal Description of Property) and Exhibit B (Assessor’s Parcel Map of Property) attached hereto.

1.3 Jurisdiction. The LARWQCB enters into this Agreement pursuant to California Water Code § 13000 *et seq.* (the “**Porter-Cologne Water Quality Control Act**”). The LARWQCB has authority to enter into agreements whereby the LARWQCB covenants not to sue, or to assert claims against, prospective purchasers in enforcement actions or other administrative actions for environmental remediation of environmentally impacted properties, if such agreements are sufficiently in the public interest.

1.4 Purpose. GGRI proposes to purchase the Property and remediate it as herein contemplated. Thereafter, RGC, as further described below, intends to use the Property to expand the operations of its existing warehouse and distribution facility located on adjacent property that it owns. Each of the Parties agrees to undertake all actions required of such Party by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Article XII (Covenants Not to Sue) and Article XI (Certification), the potential liability of the Settling Respondents for the Existing Contamination (hereinafter defined in Article II) at the Property that would otherwise result from any of the Settling Respondents becoming the owners of the Property.

1.5 The Parties intend and believe that, based upon competent engineering and other data previously considered and the actions to be taken by the Settling Respondents in accordance with this Agreement, the intended uses of the Property (and all activities anticipated to be undertaken in connection therewith) will not exacerbate or contribute to the Existing Contamination or pose health risks to persons present at the Property.

1.6 The Parties agree that the Settling Respondents' entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondents.

1.7 Settling Respondents will establish, and agree to maintain, adequate financial assurances to ensure completion of actions undertaken by the Settling Respondents in accordance with this Agreement.

1.8 The resolution of this potential liability, in exchange for provision by the Settling Respondents to the LARWQCB of a substantial benefit in the form of investigation and remediation of hazardous substances, pollutants or contaminants in the onsite soils at the Property, as more particularly described below, is in the public interest. The LARWQCB has determined that this Agreement is fair, reasonable and in the public interest. This Agreement benefits the public interest by ensuring the timely completion of response actions covered under this Agreement, by removing onsite soil contamination that is contributing to and exacerbating groundwater contamination, by revitalizing an underutilized site, and by enhancing the economic value of the Property and its surrounding areas.

1.9 This Agreement shall be subject to the acquisition of title to the Property by one or more of Settling Respondents. If one or more of Settling Respondents fail to acquire title to the Property, this Agreement shall be null and void and the LARWQCB reserves all rights it may otherwise have against Settling Respondents.

Article II DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement that are defined in the Water Code or in regulations promulgated under the Water Code shall have the meaning assigned to them in the Water Code or in such regulations, including any amendments thereto.

2.1 "Agreement" means this Prospective Purchaser Agreement and Covenant Not to Sue and all exhibits and appendices attached hereto (listed in Section 15.26 below). In the event of conflict between this Agreement and any exhibit or appendix, this Agreement shall control.

2.2 "Article" means a portion of this Agreement identified by a Roman numeral.

2.3 "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* and any amendments thereto.

2.4 "Conditional Approval Letter" means the letter attached hereto as Exhibit C, dated November 1, 2010, by which Samuel Unger, Executive Officer of the LARWQCB, communicated to Ms. Alice C. Clarno in her capacity as Trustee of The Spirito Family Trust, current owner of the Property, the conditional approval of the Remedial Action Plan in reference to the Property, attached hereto as Exhibit D.

2.5 "Effective Date" means the date upon which this Agreement is fully executed by the Parties.

2.6 "Existing Contamination" means any contamination or pollution caused by any hazardous substances, pollutants, or contaminants released or disposed of at the Property that:

- (a) are present or existing at, on, or under (including within the groundwater beneath) the Property as of the Effective Date of this Agreement;
- (b) originated or migrated from the Property prior to the Effective Date of this Agreement; and
- (c) migrate onto or under or originate from the Property after the Effective Date of this Agreement.

The Remedial Action Plan attached hereto as Exhibit D, in its Section 4, more particularly describes the Existing Contamination, including reference to the Existing Contamination as described in the following sources:

- 1) AeroVironment Inc., 1993. Letter report with subject "Soil Vapor Survey Report, Excello Plating." December 9, 1993.
- 2) AeroVironment Inc., 1994. *Phase II Soil Vapor Survey Report for Excello Plating Inc., 4057 Goodwin Avenue, Los Angeles, California, LARWQCB File No. 113.5243.* September 1994.
- 3) ATC Associates, Inc., 2004. *Work Plan.* October 14, 2004.
- 4) Caporale Consultants Inc., 2007. *Remedial Action Plan.* August 28, 2007.
- 5) Caporale Consultants Inc., 2008a. *Environmental Database Report Review and Regulatory Agency Research, Ralphs Distribution Facility.* February 29, 2008.
- 6) Caporale Consultants Inc., 2008b. *Revised Remedial Action Plan.* March 28, 2008.
- 7) Caporale Consultants Inc., 2008c. *Groundwater Monitoring Report Third Quarter 2008, Former Excello Plating Company, 4057 Goodwin Avenue, Los Angeles, California 90039, RWQCB File No. 113.5243.* October 15, 2008.
- 8) Caporale Consultants Inc., 2009. *Groundwater Monitoring Report First Semi-Annual 2009, Former Excello Plating Company, 4057 Goodwin Avenue, Los Angeles, California 90039, RWQCB File No. 113.5243.* June 30, 2009.
- 9) Caporale Consultants Inc., 2010a. *Groundwater Monitoring Report Second Semi-Annual 2009, Former Excello Plating Company, 4057 Goodwin Avenue, Los Angeles, California 90039, RWQCB File No. 113.5243.* January 15, 2010.
- 10) Caporale Consultants Inc., 2010b. *Groundwater Monitoring Report First Semi-Annual 2010, Former Excello Plating Company, 4057 Goodwin Avenue, Los Angeles, California 90039, RWQCB File No. 113.5243.* July 28, 2010.
- 11) Caporale Consultants Inc., 2010c. *Groundwater Monitoring Report Second Semi-Annual 2010, Former Excello Plating Company, 4057 Goodwin Avenue, Los Angeles, California 90039, RWQCB File No. 113.5243.* December 31, 2010.
- 12) Ceres Associates, 2006a. *Soil and Groundwater Sampling Report, Excello Plating Company, 4057 Goodwin Avenue, Los Angeles, California 90039, RWQCB File No. 113.5243.* April 4, 2006.
- 13) Ceres Associates, 2006b. *Report of Additional Soil Sampling, Excello Plating Company, 4057 Goodwin Avenue, Los Angeles, California 90039, RWQCB File No. 113.5243.* November 9, 2006.

- 14) Ceres Associates, 2008. *Monitoring Well Installation and 2nd Quarter 2008 Monitoring Report, Excello Plating Company, 4057 Goodwin Avenue, Los Angeles, California 90039, RWQCB File Number 113.5243*. July 30, 2008.
- 15) Environmental Recovery Services, Inc., 2006. Above Ground Facility Cleanup Documentation. March 2006.
- 16) Kleinfelder, 2008a. *Workplan for Supplemental Site Assessment, The Spirito Family Trust Parcel, 4057 Goodwin Avenue, Los Angeles, California 90039*. August 22, 2008.
- 17) Kleinfelder, 2008b. *Supplemental Site Assessment, The Spirito Family Trust Parcel, 4057 Goodwin Avenue, Los Angeles, California 90039*. November 26, 2008.
- 18) LARWQCB, 2008. Letter to Ms. Alice C. Clarno of The Spirito Family Trust. September 15, 2008.

“Existing Contamination” shall not include any contamination or pollution caused by any hazardous substances, pollutants or contaminants released or disposed of at portions of the Superfund Site other than the Property regardless of whether such hazardous substances, pollutants, or contaminants migrated to, under, or from the Property.

2.7 “Interest” will be calculated at the rate of return earned on investment in the Surplus Money Investment Fund pursuant to § 16475 of the California Government Code.

2.8 “Land Use Controls” means recorded instruments that help minimize the potential for human exposure to hazardous substances, pollutants, or contaminants and/or protect the integrity of the remedy by restricting the present and future uses of the Property. Land Use Controls include, but are not limited to, recorded covenants, easements, restrictions, servitudes, special building permit requirements, and well drilling prohibitions, or any combination thereof. Land Use Controls run with the land from the date of recordation, bind all of the owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees, and shall be enforceable by the LARWQCB.

2.9 “LARWQCB” means the California Regional Water Quality Control Board, Los Angeles Region, and includes any successor agencies or departments of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement.

2.10 “Oversight Costs” includes all direct or indirect costs incurred by the LARWQCB in preparing this Agreement, and in monitoring, supervising or overseeing Settling Respondents’ performance of the Work, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Agreement or pursuant to the requirements of USEPA, as well as costs incurred in overseeing implementation of the Work, including attorneys costs.

2.11 “Parties” mean the LARWQCB and Settling Respondents.

2.12 “Property” means the real property located at 4057 and 4059 Goodwin Avenue, in the City of Los Angeles, County of Los Angeles, State of California, and referenced as Assessor Parcel Number 5593-020-020. The Property is more particularly described in Exhibit A (Legal Description of Property) and Exhibit B (Assessor’s Parcel Map of Property) attached hereto. The Property encompasses approximately .96 acres.

2.13 “Remedial Action Plan” or “RAP” means the *Remedial Action Plan, The Spirito Family Trust Parcel 4057 and 4059 Goodwin Avenue (including the Former Excello Plating Co., Inc. Facility), City of*

Los Angeles, California, LARWQCB Reference: *Excello Plating Co., Inc., CAO NO. R4-2003-0038-R, LARWQCB Site ID no. 2040209, LARWQCB File no. 113.5243*, dated September 30, 2010, submitted by Kleinfelder West, Inc. on behalf of Settling Respondents to the LARWQCB, object of the Conditional Approval Letter, and attached hereto as Exhibit D. “Remedial Action Plan” or “RAP” does not include the schedule contained in Section 13 of the RAP, which has been superseded by the Schedule contained in Exhibit E to this Agreement.

2.14 “Section” means a portion of this Agreement identified by an Arabic numeral or a lower case letter.

2.15 “Settling Respondents” means GGRI, Kroger, and RGC.

2.16 “Superfund Site” means the San Fernando Valley (all areas) Superfund Site, of which Area 2 (also known as the Glendale North and South Operable Units) encompasses approximately 9,726 acres, located generally in the area of Glendale, California. The Superfund Site includes, but is not limited to, the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located at or from the Superfund Site. The Superfund Site includes, but is not limited to, the Glendale North and South Operable Units and the Glendale Chromium Unit.

2.17 “USEPA” means the United States Environmental Protection Agency and any successor agencies or departments of the United States.

2.18 “Work” includes all activities that Settling Respondents, or any of them, are required to perform at the Property pursuant to this Agreement or to the requirements of the USEPA.

Article III FINDINGS OF FACT

3.1 The Property is within the Superfund Site.

3.2 The Superfund Site was added to the National Priorities List (“NPL”) on June 10, 1986. After conducting a Remedial Investigation and Feasibility Study, USEPA established two operable units within the Superfund Site: Glendale North and Glendale South. On June 18, 1993, USEPA signed Records of Decision in which USEPA selected interim remedial actions for the Glendale North and South Operable Units. The interim remedial actions required the construction of two (north and south) extraction well fields, extraction and treatment of groundwater at a combined treatment plant for volatile organic compounds (“VOCs”), and delivery of the treated water to the City of Glendale’s potable water system, for twelve years. On August 2, 2000, USEPA entered into a consent decree in the United States District Court for the Central District of California, entitled *United States v. ITT Industries, Inc.*, (Docket No. CV 99-000442 MR) (ANx), with potentially responsible parties (“PRPs”) to implement the interim remedial actions for the Glendale North and South Operable Units (“Consent Decree”).

3.3 The interim remedial actions for the Glendale North and South Operable Units were selected primarily to respond to VOC contamination in area groundwater. In July 2007, USEPA established the Glendale Chromium Operable Unit to respond to increasing levels of hexavalent chromium in the area groundwater. Hexavalent chromium has been detected in certain of the Glendale North and South Operable Units extraction wells and in the treatment system, where it must be addressed before the treated water can be delivered to the City of Glendale potable water system.

3.4 The Spirito Family Trust, Alice C. Clarno, Trustee (the “Trust”), currently owns the Property in fee simple absolute.

3.5 A business known as Plating Engineering Company, Inc. (“PECI”) began metal plating operations at the northern portion of the Property on or before 1946. PECI’s building was destroyed by a fire in 1955,

and a new building was built on the southern portion in 1956. Commencing from at least 1963, Excello Plating Co., Inc. (“**Excello**”), a now suspended California corporation, occupied this building, and continued plating-related activities, which included plating, anodizing and painting of metal components at the Property. Chemicals used at the Property by Excello included various acids, solvents, and metals. Excello ceased operations in December 2004 and abandoned the Property. Tanks and other plating equipment were removed from the site in December 2005 by a contractor hired by the Trust. The Excello facility, currently vacant, comprises an approximately 13,800-square foot building (the “**Excello Building**”), which housed office space, a decorative chrome plating department, an anodized plating process area, a hard chrome process area, a paint booth, and a plating supply storage area. The abandoned building, drum storage areas, and a wastewater clarifier remain at the Property.

3.6 Various environmental assessments performed on the Property, as more particularly described in the Remedial Action Plan set forth as Exhibit D, have found soil and groundwater contamination resulting from the Property’s use for plating activities. The chemicals of concern include hexavalent chromium, perchloroethylene (PCE), trichloroethylene (TCE), asbestos, and lead. These chemicals and materials present potential human health risks, including cancer and/or development risks, as indicated in the Proposition 65 list. Threats to surroundings exist until cleanup and redevelopment are performed.

3.7 USEPA issued a General Notice on May 21, 1995 and a Special Notice on October 12, 1995 to Excello for liability for metals and VOC contamination at the Property.

3.8 Certain agencies of the State of California have taken action to require the site-specific cleanup of the Property.

- (a) On June 20, 2003, the LARWQCB issued Cleanup and Abatement Order (“**CAO**”) No. R4-2003-0038 to Excello, ordering Excello to assess, clean up, and abate the effects of discharges to onsite soil and groundwater at the Property.
- (b) On June 2, 2005, the LARWQCB issued a Revised CAO No. R4-2003-0038-R that required Excello and the Trust to conduct further onsite soil and groundwater investigations.
- (c) On October 7, 2005, the California Department of Toxic Substances Control issued to the Trust an Imminent and Substantial Endangerment Determination and Order, Docket No. HWCA SRPD 05/06 SAEP-4346.
- (d) On September 25, 2007, the LARWQCB issued a Second Amendment to CAO No. R4-2003-0038-R, in which it determined that the primary source of the elevated chromium concentrations at the Glendale South Operable Unit Extraction Well GS-3 originated from the Property and identified Excello as a responsible party.
- (e) On November 1, 2010, the LARWQCB issued the Conditional Approval Letter to the Trust, conditionally approving the Remedial Action Plan set forth in Exhibit D and ordering its implementation. Page 8 of the Remedial Action Plan set forth in Exhibit D recites:

“The goal of the RAP [Remedial Action Plan] is to prevent, by achieving proposed cleanup goals, future migration of the COCs [Contaminants of Concern, identified as PCE, TCE and hexavalent chromium] present in Site vadose-zone soil to underlying groundwater. This RAP is not intended to address groundwater contamination. In particular, it is not intended to address the regional volatile organic compound and hexavalent chromium (Cr6+) groundwater contamination. USEPA is addressing such contamination through Federal Superfund proceedings that include the Glendale South Operable Unit (GSOU) of the San Fernando Valley Superfund Site.”

3.9 The Trust has reported that its remaining assets consist chiefly of the Property and limited liquid assets. The Trust contends that its remaining assets are insufficient to fund the remediation of the Property. An economist from the State Water Resources Control Board's Office of Research, Planning, and Performance Economics Unit conducted an Ability-to-Pay analysis based on financial documentation submitted by the Trust. Based on the information provided, the economist concluded that the Trust does not have the liquidity required or the ability to raise funds to pay the remediation costs of the Property, which is estimated to be between \$1,276,000 to \$2,270,000.

3.10 USEPA is addressing the groundwater contamination under and in the vicinity of the Property as part of its conduct of proceedings through the Superfund Site.

3.11 RGC owns and operates the adjacent RGC facility, located at 4841 San Fernando Road in the City of Los Angeles, California, which it operates as a warehouse and distribution center. RGC received General and Special Notice on May 2, 1995 and October 12, 1995, respectively, as a PRP for the Glendale Operable Units, and is a party to the Consent Decree.

3.12 Settling Respondents propose to purchase the Property, in order potentially to expand the existing RGC warehouse and distribution operation that has been conducted on the adjacent property owned by RGC.

3.13 After purchase of the Property, Settling Respondents will perform Work at the Property to remove the sources of hazardous substances, pollutants and contaminants in the onsite soil at the Property, in order to prevent the ongoing and future release from onsite soils at the Property to the groundwater of hazardous substances, pollutants and contaminants, including but not limited to VOCs and hexavalent chromium. Settling Respondents will not remediate the groundwater under the Property, which may continue to be contaminated by upgradient sources. There will, however, be a significant public benefit in removing the sources of contamination in the onsite soils at the Property and returning the Property to commercial use in the community.

3.14 The Settling Respondents represent, and for the purposes of this Agreement, LARWQCB relies on those representations, that Settling Respondents' involvement with the Property has been limited to the following:

- (a) Settling Respondent RGC holds the right to use, and has used, the paved northern portion of the Property to park empty delivery trailers pursuant to a License from the Trust that continues on a month-to-month basis in extension of a license most recently extended in writing to September 30, 2007 by an agreement dated September 12, 2005, between the Trust and RGC. The license was first granted pursuant to an agreement dated July 14, 1980 between Federated Department Stores, Inc., dba Ralphs Grocery Company and the Trust. The area licensed is described in the 1980 agreement as "the most northerly approximately 216.16 feet of the Property, measured along and at a 90° angle to the westerly property line thereof." The 1980 agreement further describes the "most southerly approximately 215.5 feet" of the Property "measured along and at a 90° angle to the westerly property line thereof" as "leased by Licensor [the Trust] to Excello Plating Co."
- (b) At various times, one or more of Settling Respondents have explored potential interest in acquisition of the Property. In particular, Settling Respondents in furtherance of their evaluation of their potential interest in purchase of the Property have taken the following actions pertinent to the remediation of the Property: They have paid the fees of Kleinfelder West, Inc. to provide (i) characterization of the Property directed by the LARWQCB to be performed by the Trust so

as to address data gaps remaining after previous investigations and (ii) technical assistance pertinent to the formulation of the Remedial Action Plan attached as Exhibit D and related estimations of feasibility and costs of implementation. The work product of Kleinfelder West, Inc. is embodied in submittals to the LARWQCB, commencing in 2008 and responsive to LARWQCB communications addressed to the Trust, by Kleinfelder West, Inc., on behalf of the Trust, of a Proposed Limited Phase II Environmental Site Assessment Technical Scope of Services, a Work Plan for a Supplemental Site Assessment, a Supplemental Site Assessment, and various documentation preparatory of the formulation, and estimation of the feasibility and costs of implementation, of the Remedial Action Plan attached as Exhibit D, including such plan.

- (c) RGC and the Trust entered into an Exclusive Negotiation Agreement, dated April 8, 2009 and subsequently amended, pursuant to which the Trust granted RGC an exclusive right to negotiate the purchase of the Property for the term there set forth, which rights RGC subsequently assigned to GGRI.
- (d) GGRI and the Trust have entered into an Agreement for the Purchase and Sale of Real Property and Joint Escrow Instructions, dated February 3, 2011 and setting forth the terms and conditions on which GGRI would acquire ownership of the Property from the Trust, subject to conditions that include the effectiveness of this Agreement and of a Prospective Purchaser Agreement among Settling Respondents and USEPA that, like this Agreement, is intended to shield Settling Respondents, in exchange for completion of the Work comprised of implementation of the Remedial Action Plan as hereunder set forth (that does not include remediation of groundwater contamination), from liability for Existing Contamination, including in particular Existing Contamination of groundwater, by virtue of the acquisition of ownership of the Property.

3.15 Settling Respondents have sought, and the California Department of Toxic Substances Control has provided, a “comfort letter” dated April 4, 2011 in respect of the subject matter of this Agreement.

3.16 Remediation of contaminated onsite soil at the Property is necessary to remove the sources of VOC and metals contaminants in the onsite soil at the Property and prevent the ongoing and potential future release from onsite soil at the Property of such contaminants to the groundwater.

3.17 The entry by the LARWQCB into this Agreement with Settling Respondents is necessary to achieve the timely implementation of the Remedial Action Plan attached as Exhibit D.

3.18 The LARWQCB has authority to enter into agreements that provide covenants not to sue or to assert claims for environmental remediation against the purchaser of contaminated properties, if such agreements are sufficiently in the public’s interest.

3.19 The LARWQCB has determined that this Agreement is fair, reasonable and in the public interest, and is further consistent with the goals and purposes of the Porter-Cologne Water Quality Control Act, in view of the fact that Settling Respondents have agreed to perform the Work regarding the Existing Contamination at the Property. A substantial benefit will be received by the public as a result of this Agreement, which would otherwise not be available due to the Trust’s financial condition. This Agreement benefits the public interest by ensuring the timely completion of response actions covered under this Agreement, by removing hazardous substances, pollutants, and contaminants in onsite soil that is contributing to and exacerbating groundwater contamination, by revitalizing an underutilized site, and by enhancing economic value to the Property and its surrounding areas. Further, it allows USEPA’s conduct of the proceedings relative to the Superfund Site, in particular with reference to the regional groundwater contamination, to proceed more effectively.

3.20 Settling Respondents are also financially viable and willing to provide instruments of financial assurance as detailed in Article VI (Financial Assurance). Financial assurance is needed to ensure that: a) Settling Respondents have sufficient funds to complete the agreed upon remediation; b) any existing site condition is not exacerbated due to lack of action; and c) the LARWQCB is reimbursed for its oversight.

3.21 Prior to execution by the Parties, this Agreement was subject to a thirty-day comment period whereby known PRPs and other interested persons were invited to submit written comments on a tentative version of this Agreement. The LARWQCB, Settling Respondents, and USEPA also hosted a community meeting in the vicinity of the Property during the thirty-day comment period to receive oral comments.

Article IV AGREEMENT

4.1 In consideration of and in exchange for the LARWQCB's Covenant Not to Sue in Article XII, Settling Respondents agree to comply with all provisions of this Agreement, including, but not limited to, all attachments to this Agreement and all documents incorporated by reference into this Agreement. Settling Respondents shall perform all actions required by this Agreement in accordance with all applicable local, state, and federal laws and regulations.

4.2 The LARWQCB will provide review and oversight of the response activities conducted by the Settling Respondents in accordance with the Remedial Action Plan. The LARWQCB shall review and provide Settling Respondents with written comments on all Settling Respondents' deliverables as described in the Remedial Action Plan and other documents applicable to the performance and completion of Settling Respondents' obligations under this Agreement, including issuance of a Notice of Completion, or other appropriate documents used by the LARWQCB, upon Settling Respondents' completion of performance of the Remedial Action Plan for onsite soils at the Property. The LARWQCB shall provide oversight of field activities, including sampling and remedial activities, as appropriate. The LARWQCB's completion of the activities described above shall constitute the LARWQCB's complete performance under this Agreement.

Article V WORK TO BE PERFORMED

5.1 GGRI shall conduct all response activities described in the Remedial Action Plan in the manner specified herein and in accordance with the schedule specified in Exhibit E to this Agreement.

5.2 Work shall be performed as follows:

- (a) GGRI shall submit a final report to LARWQCB to summarize the results and findings from the implementation of the Remedial Action Plan, conditioned upon satisfaction of the premises set forth in Exhibit E, no later than 1650 calendar days of acquisition of title to the Property by one or more of Settling Respondents;
- (b) The LARWQCB's Case Manager must receive a 1-week notification prior to the commencement of field activities in order to provide regulatory oversight;
- (c) All work must be performed in accordance with State Water Resources Control Board Resolution No. 92-49, and under California Water Code § 13304, which sets forth, among other terms, the policy for determining cleanup levels and the requirement that all fieldwork related to implementing the required work plan (technical report) such as soil borings, soil gas borings,

and/or well installation(s) must be conducted by, or under the direct responsible supervision of, a registered geologist or licensed civil engineer;

- (d) All documents submitted to the LARWQCB must be reviewed, signed, and stamped by a California registered geologist, or a California registered civil engineer with at least five years hydrogeologic experience;
- (e) All work associated with the Remedial Action Plan must be performed by or under the direction of a California Professional Geologist or Professional Civil Engineer, as required by California Business and Professions Code §§ 6735, 7835, and 7835.1;
- (f) Each report submitted to the LARWQCB shall contain a statement that the registered professional in responsible charge actually supervised or personally conducted all the work associated with the project;
- (g) The final report should be developed following the LARWQCB *Guidelines for Report Submittals (March 1991, Revised June 1993)* and shall be submitted in the form of two (2) hardcopies and one (1) electronic copy in Adobe “PDF” format;
- (h) Laboratory Quality Assurance/Quality Control (QA/QC) data must be included with each final report A link to a Quality Assurance Project Plan (QAPP) can be found at the following link: http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/Board_SGV-SFVCleanupProgram_Sept2008_QAPP.pdf;
- (i) All work shall be performed consistent with the Porter-Cologne Water Quality Control Act, as amended; Health and Safety Code § 25300 *et seq.*, as amended; the National Contingency Plan (40 Code of Federal Regulations (CFR) Part 300), as amended; State Water Resources Control Board Resolution 92-49, and LARWQCB, State Water Resources Control Board, and USEPA guidance documents regarding site investigation and remediation;
- (j) A perjury statement, to be signed by a senior manager or officer of GGRI (not a consultant) shall be included in each report, which statement shall be in the following format:

“I [name] do hereby declare under penalty of perjury under the laws of the State of California, that I am [title] for GGRI, that I am authorized to attest to the veracity of the information contained in the reports described herein, and that the information contained in [title and date of the report] is true and correct, and that this declaration was executed in [City and State] on [date].”

Article VI FINANCIAL ASSURANCE

6.1 GGRI agrees to demonstrate and maintain adequate financial assurances to ensure completion of all response actions undertaken by the Settling Respondents after the Effective Date of, and in accordance with, this Agreement. The financial assurance mechanism shall be approved by the LARWQCB, and shall be in place within thirty (30) days of any of Settling Respondents’ acquisition of fee title to the Property. Acceptable financial assurance mechanisms are set forth in the California Code of Regulations, title 22, § 66264.143. The Settling Respondents shall use a mechanism that meets the criteria set forth in the regulations for the mechanism used or as otherwise approved by the LARWQCB. The mechanism chosen by the Settling Respondents and the amount of the financial assurance provided may be changed with the written approval of the LARWQCB.

6.2 Documentation substantially in the form of Exhibit G (Corporate Guarantee) and Exhibit H (Letter from Chief Financial Officer), accompanied by periodic timely delivery, on at least an annual basis, to the LARWQCB of Kroger’s annual report on Form 10-K as filed with the United States Securities and Exchange Commission in demonstration of the satisfaction of the requirements set forth in Exhibit H, embodies a financial assurance mechanism approved by the LARWQCB as contemplated in Section 6.1.

Article VII
COSTS AND PAYMENT OF COSTS

7.1 Cost Recovery. In consideration of and in exchange for the LARWQCB’s Covenant Not to Sue in Section 12.1 herein, Settling Respondents are liable for all of the LARWQCB’s costs incurred in responding to the contamination at the Property including costs of overseeing response work performed by the Settling Respondents for matters addressed by this Agreement, including costs incurred by LARWQCB in association with preparation of this Agreement, and costs to be incurred in the future, including legal costs. Cost recovery may be pursued by LARWQCB under the Porter-Cologne Water Quality Control Act, Health and Safety Code § 25360, CERCLA, or any other applicable state or federal statute or common law. The State of California reserves the right to bring an action against Settling Respondents under the Porter-Cologne Water Quality Control Act, Health and Safety Code Section 25360, CERCLA, or any other applicable state or federal statute or common law, for recovery of all response and oversight costs incurred by the State of California related to this Agreement and not reimbursed by Settling Respondents, as well as any other unreimbursed past and future costs incurred by the State of California in connection with response activities at the Property.

7.2 Future Costs. With respect to the LARWQCB’s review of response activities performed by the Settling Respondents pursuant to this Agreement, the Settling Respondents shall pay all costs of LARWQCB’s review of activities by Settling Respondents or Settling Respondents’ agents under this Agreement and/or related to this Agreement, as such costs are incurred. Costs of LARWQCB’s review of Settling Respondents’ activities include all direct and indirect costs. Under all circumstances, Settling Respondents shall remain liable for all costs incurred by LARWQCB for matters addressed by this Agreement as specified by Health and Safety Code § 25360, including interest thereon as provided by law.

7.3 Billing. LARWQCB shall bill Settling Respondents on a quarterly basis for response and oversight costs incurred by the LARWQCB during the previous quarter. LARWQCB shall provide Settling Respondents with a summary description of LARWQCB’s oversight activities for which it seeks oversight costs. Settling Respondents shall maintain the right to review and make copies of documentation supporting the costs claimed by LARWQCB.

7.4 Payment. Settling Respondents shall remit payment as specified in the billing statement within thirty days of the date of the billing. All payments made by the Settling Respondents pursuant to this Agreement shall be by cashier’s or certified check made payable to the “State Water Resources Control Board”, referencing the name and address of Settling Respondents, the site identification number for the Property (“LARWQCB Site ID No. 2040209”), and the Site Cleanup Program file number for the Property (“LARWQCB SCP File No. 113.5243”). Payments shall be sent to:

State Water Resources Control Board
SCP Program
P.O. Box 944212
Sacramento, CA 94244-2120

A photocopy of the check shall be sent concurrently to the LARWQCB's Case Manager.

- (a) If any bill is not paid by Settling Respondents within thirty days after it is sent by the LARWQCB, the Settling Respondents shall pay Interest as defined in Section 2.7 on the unpaid balance. In such event, Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment.
- (b) If any bill is not paid by the Settling Respondents within sixty days after it is sent by the LARWQCB, the Settling Respondents may be deemed to be in material default of this Agreement.

7.5 Pursuant to Article XVI (Dispute Resolution), Settling Respondents may dispute all or part of a bill if Settling Respondents determine that the LARWQCB has made a mathematical error or included a cost item that is outside the scope of this Agreement. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Settling Respondents shall pay the full amount of the uncontested costs to LARWQCB as specified in Section 7.4 on or before the due date. Within the same time period, Settling Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Settling Respondents shall ensure that the prevailing party in the dispute receives the amount upon which it prevailed from the escrow funds plus any interest accrued within twenty (20) calendar days after the dispute is resolved.

Article VIII DUE CARE/COOPERATION

8.1 Settling Respondents shall exercise due care at the Property with respect to the Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations.

8.2 Settling Respondents shall exercise appropriate care with respect to hazardous substances found at the Property by taking reasonable steps to:

- (a) stop any continuing release;
- (b) prevent any threatened future release; and
- (c) present or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

8.3 Settling Respondents shall: (a) comply with all obligations needed to maintain the final remedy, including any Land Use Controls established or relied on in connection with the response action at the Property; and (ii) not impede the effectiveness or integrity of any Land Use Control employed at the Property in connection with any response actions.

8.4 Settling Respondents shall comply with any request for information or administrative subpoena issued by LARWQCB.

8.5 Settling Respondents recognize that the implementation of response actions contemplated by this Agreement at the Property may interfere with the Settling Respondents' use of the Property, and may require closure of its operations or a part thereof. Settling Respondents agree to cooperate fully with LARWQCB and USEPA in the implementation of response actions at the Property and further agree not to interfere with such response actions. LARWQCB agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondents' operations by such entry and response.

8.6 In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under the Porter-Cologne Water Quality Control Act and Health and Safety Code, or any other law, immediately notify LARWQCB of such release or threatened release.

Article IX

ACCESS AND NOTICE TO SUCCESSORS IN INTEREST

9.1 Commencing upon the date that any of Settling Respondents acquires fee title to the Property, and thereafter, Settling Respondents that have fee title to the Property agree to provide to LARWQCB, its authorized officers, employees, representatives, and all other persons performing response actions contemplated by this Agreement under LARWQCB oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Property, to the extent access to such other property is controlled by any of Settling Respondents. Until completion of implementation of the Remedial Action Plan, LARWQCB and its authorized representatives shall have the authority to enter and move freely about all areas at the Property at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to the Property; reviewing the progress of Settling Respondents in carrying out the terms of this Agreement; conducting such tests as LARWQCB may deem necessary; and verifying the data submitted to LARWQCB by Settling Respondents. Nothing in this Section is intended or shall be construed to limit in any way the right of entry or inspection that LARWQCB or any other agency may otherwise have by operation of any law.

9.2 For so long as any of Settling Respondents are owner(s) or operator(s) of the Property, Settling Respondents shall ensure that assignees, successors in interest, lessees, sublessees, and other parties with rights to use the Property shall provide the same access and cooperation to the LARWQCB, its authorized officers, employees, representatives, and all other persons performing response activities under LARWQCB oversight. Settling Respondents shall require that assignees, successors in interest, lessees, sublessees, and other parties with rights to use the Property implement and comply with any Land Use Controls on the Property in connection with a response action, and not contest LARWQCB's authority to enforce any Land Use Controls on the Property.

9.3 Upon sale or other conveyance of the Property or any part thereof, Settling Respondents shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to LARWQCB, its authorized officers, employees, representatives, and all other persons performing response actions under LARWQCB oversight. Settling Respondents shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any Land Use Controls on the Property in connection with a response action and not contest LARWQCB's authority to enforce any Land Use Controls on the Property.

9.4 Settling Respondents shall provide a copy of this Agreement to any current lessee or sublessee on the Property, and any other party with rights to use the Property, as of the date any Settling Respondent acquires fee title to the Property. Settling Respondents shall also ensure that any subsequent leases, subleases, assignments or transfers of the Property are consistent with this Agreement including, but not limited to, this Article, Article V (Work to be Performed) and Section 15.1 (Parties Bound).

Article X
NOTICE OF COMPLETION

10.1 When LARWQCB determines, after LARWQCB’s review of Settling Respondents’ final report, that all Work has been fully performed in accordance with this Agreement, with the exception of any continuing obligations required by this Agreement, including compliance with Land Use Controls, applicable laws, availability of documents, or document retention as set out in Sections 15.8 through 15.10 of this Agreement, LARWQCB will provide written notice to Settling Respondents. If LARWQCB determines that any such Work has not been completed in accordance with this Agreement, LARWQCB will notify Settling Respondents, provide a list of the deficiencies, and require that Settling Respondents modify the applicable work plan if appropriate in order to correct such deficiencies. Settling Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the LARWQCB notice. Failure by Settling Respondents to implement the approved modified Work Plan shall be a violation of this Agreement.

Article XI
CERTIFICATION

11.1 By entering into this Agreement, the Settling Respondents certify that to the best of their knowledge and belief, they have fully and accurately disclosed to LARWQCB all information known to Settling Respondents and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property and to their qualification for this Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property. If LARWQCB determines that information provided by Settling Respondents is not materially accurate and complete, the Agreement, within the sole discretion of the LARWQCB, shall be null and void and the LARWQCB reserves all rights it may otherwise have against the Settling Respondents.

Article XII
COVENANTS NOT TO SUE

12.1 LARWQCB’s Covenant Not to Sue. Subject to Sections 12.2 (LARWQCB’s Reservation of Rights) and 12.7 (LARWQCB’s Reservation of Rights as to Unknown Conditions or New Information) of this Agreement, and upon completion of the work specified in Article V (Work to be Performed) and Exhibit D (Remedial Action Plan Approved by LARWQCB) to the satisfaction of the LARWQCB, the LARWQCB covenants not to sue or take any civil, judicial or administrative action, to pursue any claim, enter any order or make any demand against Settling Respondents for claims pursuant to the Porter-Cologne Water Quality Control Act (commencing with § 13000 of the California Water Code); § 107 of CERCLA, 42 U.S.C. § 9607; § 7003 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6973; or chapters 6.5 (commencing with § 25100) and 6.8 (commencing with § 25301), division 20 of the California Health and Safety Code, or pursuant to other applicable laws, regulations or civil, judicial or administrative authorities, with respect to the Existing Contamination at the Property and arising solely from the ownership, operation or possession of the Property, or any portion thereof. This Covenant shall inure to the benefit of, and pass with each and every portion of the Property and shall benefit any respective successors and assignees thereof, subject to fulfilling the requirements of Section 15.23 (Notice of Transfer) of this Agreement.

12.2 LARWQCB's Reservation of Rights. The covenant not to sue set forth in Section 12.1 above does not pertain to any matters other than those expressly specified in Section 12.1 (LARWQCB Covenant Not to Sue). LARWQCB reserves and this Agreement is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

- (a) claims based on a failure by a Settling Respondent to meet any requirement of this Agreement;
- (b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Property caused or contributed to by Settling Respondents, its successors, assignees, lessees or sublessees;
- (c) any liability resulting from exacerbation by a Settling Respondent, its successors, assignees, lessees, or sublessees, of Existing Contamination;
- (d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property after the Effective Date of this Agreement, not within the definition of Existing Contamination;
- (e) criminal liability;
- (f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by agencies other than the LARWQCB;
- (g) liability for transportation and disposal of hazardous substances or wastes after the Effective Date of this Agreement by Settling Respondents or its successors or assignees;
- (h) liability for violations of local, state or federal law or regulations;
- (i) liability for any costs associated with any response activities conducted by Settling Respondents pursuant to this Agreement; and
- (j) liability to respond to hazardous substances, pollutants or contaminants released or disposed of at portions of the Superfund Site other than the Property and that affect the operation or maintenance of the Glendale Operable Units extraction and treatment system or any subsequent interim or final remedy selected by USEPA for the Glendale Operable Units.

12.3 With respect to any claim or cause of action asserted by the LARWQCB, the Settling Respondent(s) and/or its successors and assignees shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

12.4 If any of Settling Respondents and/or any successor or assignee is determined, through adjudication or the administrative or the regulatory processes, to have committed an act or omission after the Effective Date for which the LARWQCB has specifically reserved its rights in Section 12.2(a) through (j) above, such Settling Respondent (if it was so determined to have committed the act or omission), or the particular successor or assignee that was determined to have committed the act or omission, shall be liable for all enforcement costs including, but not limited to, litigation costs, incurred by the LARWQCB in conjunction with that act or omission.

12.5 Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the LARWQCB may have against any person, firm, corporation or other entity not a party to this Agreement.

12.6 Nothing in this Agreement is intended to limit the right of LARWQCB to undertake future response actions at the Property or to seek to compel parties other than the Settling Respondents and/or any successor and assignee to perform or pay for response actions at the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by LARWQCB in exercising its authority under state and federal law. Settling Respondents acknowledge that GGRI is purchasing property where response actions may be required.

12.7 LARWQCB's Reservation of Rights as to Unknown Conditions or New Information. The covenant not to sue set forth in Section 12.1 does not apply (and LARWQCB reserves the right to seek modification of this Agreement or to institute an action under federal or state law, or to take administrative action against any person), if previously unknown conditions are discovered or information is received, in whole or in part, after the Effective Date, and these previously unknown conditions or this new information demonstrate that Settling Respondents or a particular successor or assignee is liable for the Existing Contamination for reasons other than that liability that may be incurred solely by virtue of holding or acquiring an interest in the Property (as is expressly contemplated in Section 12.1 above). This reservation shall apply only to that successor or assignee with respect to whom such unknown conditions discovered hereunder pertain.

12.8 Settling Respondents' Covenant Not to Sue. In consideration of the LARWQCB's Covenant Not to Sue set forth in Section 12.1 of this Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the LARWQCB, its authorized officers, employees, or representatives with respect to the Property or this Agreement, including but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Waste Control Account, Hazardous Substance Account, or Hazardous Substance Cleanup Fund through California Health and Safety Code § 25375 or any other provision of law; (ii) any claim against the State of California, including any department, agency, or instrumentality of the State of California, under §§ 107 or 113 of CERCLA or § 7003 of RCRA related to the Property; or (iii) any other claims arising out of response activities at the Property, including but not limited to nuisance, trespass, takings, equitable indemnity and indemnity under California law, or strict liability under California law, based on LARWQCB's oversight activities or approval of plans for such activities. This Covenant is made and given, effective upon execution by Settling Respondents of this Agreement and of a Notice by each successor and assignee, and does not extend to or bind any other persons.

12.9 Settling Respondents' Reservation of Rights. The Settling Respondents reserve, and this Agreement is without prejudice to, actions against the LARWQCB based on gross negligence or willful misconduct taken directly by LARWQCB, not including oversight or approval of the Settling Respondents' plans or activities, that are brought pursuant to the Porter-Cologne Water Quality Control Act, Hazardous Waste Control Account, Hazardous Substance Account, or Hazardous Substance Cleanup Fund through California Health and Safety Code § 25375, CERCLA, or RCRA.

Article XIII INDEMNIFICATION

13.1 The State of California, which is defined to include the LARWQCB and all other state agencies, shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Settling Respondents, or related parties specified in Section 15.1 (Parties Bound), in carrying out activities pursuant to this Agreement.

13.2 Settling Respondents shall indemnify, save and hold harmless the State of California, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of

action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Agreement. In addition, Settling Respondents agree to pay the State of California all costs incurred by the State of California, including but not limited to attorneys fees and other expenses of litigation, arising from or on account of claims made against the State of California based on negligent or other wrongful acts or omissions of Settling Respondents, Settling Respondents' officers, directors, employees, agents, contractors, subcontractors and any persons acting on Settling Respondents' behalf or under Settling Respondents' control, in carrying out activities pursuant to this Agreement. The State of California shall not be held out as a party to any contract entered into by or on behalf of Settling Respondents or its agents in carrying out activities pursuant to this Agreement. Neither Settling Respondents nor any such contractor shall be considered an agent of the State of California.

13.3 The LARWQCB shall give Settling Respondents notice of any claim for which the LARWQCB plans to seek indemnification pursuant to this Article and shall consult with Settling Respondents prior to settling such claim. Settling Respondents waive all claims against the LARWQCB for damages or reimbursement or for setoff of any payments made or to be made to the LARWQCB, arising from or on account of any contract, agreement, or arrangement between Settling Respondents and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays. In addition, Settling Respondents shall indemnify and hold harmless the LARWQCB with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Respondents and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays.

Article XIV FORCE MAJEURE

14.1 Settling Respondents agree to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Settling Respondents, or of any entity controlled by Settling Respondents, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement and such effects could not have been prevented or avoided by the exercise of due care or foresight. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

14.2 If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, Settling Respondents shall notify LARWQCB orally within twenty-four (24) hours of when Settling Respondents first knew that the event might cause a delay. Within two (2) days thereafter, Settling Respondents shall provide to LARWQCB in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Respondents' rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Settling Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure. If LARWQCB agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time

for performance of the obligations under this Agreement that are affected by the *force majeure* event will be extended by LARWQCB for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If LARWQCB agrees that the delay is attributable to a *force majeure* event, LARWQCB will notify Settling Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event. If LARWQCB does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, LARWQCB will notify Settling Respondents in writing of its decision.

14.3 If Settling Respondents elect to invoke the dispute resolution procedures set forth in Article XVI (Dispute Resolution), Settling Respondents shall do so no later than fifteen (15) days after receipt of LARWQCB's notice. In any such proceeding, Settling Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Respondents complied with the requirements of Sections 14.1 and 14.2 above. If Settling Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Settling Respondents of the affected obligation of this Agreement.

Article XV GENERAL PROVISIONS

15.1 Parties Bound. This Agreement shall apply to and be binding upon the LARWQCB, and shall apply to and be binding upon the Settling Respondents and their officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. The LARWQCB's Covenant Not to Sue in Section 12.1 shall apply to Settling Respondents' officers, directors, or employees, to the extent that the alleged liability of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of a Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondents.

15.2 Project Coordinator. The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site cleanup. The Settling Respondents shall submit: a) the name and address of the project coordinator; and b) in order to demonstrate expertise in hazardous substance site cleanup, the resume of the coordinator. The Settling Respondents shall promptly notify LARWQCB of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code §§ 6735 and 7835.

15.3 Disclaimer. This Agreement in no way constitutes a finding by LARWQCB as to the risks to human health and the environment which may be posed by contamination at the Property or the Superfund Site nor constitutes any representation by LARWQCB that the Property or the Superfund Site is fit for any particular purpose.

15.4 Payment of Costs. If Settling Respondents fail to comply with the terms of this Agreement, including, but not limited to, Article V (Work to be Performed) and Article VII (Costs and Payment of Costs) of this Agreement, they shall be liable for all litigation and other enforcement costs incurred by the LARWQCB to enforce this Agreement or otherwise obtain compliance.

15.5 Notices and Submissions. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or communication such as certified mail, overnight delivery service, facsimile transmission or courier hand delivery service:

LARWQCB: Los Angeles Regional Water Quality Control Board
Attention: Executive Officer
320 West 4th Street, Suite 200
Los Angeles, California 90013

With a copy to: Jennifer L. Fordyce, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, California 95814

Settling Respondents

GGRI: Glendale/Goodwin Realty I, LLC
c/o Ralphs Grocery Company
Attention: Legal Department
1100 West Artesia Boulevard
Compton, California 90220

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

RGC: Ralphs Grocery Company
Attention: Legal Department
1100 West Artesia Boulevard
Compton, California 90220

In each instance as to Settling Respondents, with a copy to: Zuber & Taillieu LLP
777 S. Figueroa Street, 37th Floor
Los Angeles, California 90017
Attention: Patrick Del Duca, Esq.

USEPA: Lisa Hanusiak
Remedial Project Manager
Superfund Division, California Site Cleanup Section 3, Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street (SFD-7-3)
San Francisco, California 94105

15.6 Communications. All approvals and decisions of LARWQCB made regarding submittals and notifications will be communicated to Settling Respondents in writing by the Executive Officer of the LARWQCB, or her/his designee. No informal advice, guidance, suggestions or comments by LARWQCB regarding reports, plans, specifications, schedules or any other writings by Settling Respondents shall be construed to relieve Settling Respondents of the obligation to obtain such formal approvals as may be required.

15.7 LARWQCB Review and Approval. If LARWQCB determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, LARWQCB may:

- (a) modify the document as deemed necessary and approve the document as modified; or
- (b) return comments to Settling Respondents with recommended changes and a date by which Settling Respondents must submit to LARWQCB a revised document incorporating the recommended changes.

Any modifications, comments or other directive issued pursuant to (a) above, are incorporated into this Agreement. Any noncompliance with these modifications or directives shall be deemed a failure or refusal to comply with this Agreement.

15.8 Compliance with Applicable Laws. Settling Respondents shall carry out this Agreement in compliance with all applicable state, local, and federal laws, regulations and requirements including, but not limited to, requirements to obtain permits and to assure worker safety.

15.9 Sampling, Data and Document Availability. Settling Respondents shall permit LARWQCB and its authorized representatives to inspect and copy all sampling, testing, monitoring or other data generated by Settling Respondents or on Settling Respondents' behalf in any way pertaining to work undertaken pursuant to this Agreement. Settling Respondents shall submit all such data upon the request of LARWQCB. Copies shall be provided within seven (7) days of receipt of LARWQCB's written request. Settling Respondents shall inform LARWQCB at least seven (7) days in advance of all field sampling under this Agreement, and shall allow LARWQCB and its authorized representatives to take duplicates of any samples collected by Settling Respondents pursuant to this Agreement. Settling Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Agreement.

15.10 Document Retention. Settling Respondents agree to retain and make available to LARWQCB all business and operating records, contracts, data, studies, investigations, reports and other documents relating to the Work to be performed at the Property pursuant to Article V (Work to be Performed) of this Agreement for a minimum of ten (10) years after the conclusion of all activities under this Agreement. If LARWQCB requests that some or all of these documents be preserved for a longer period of time, Settling Respondents shall either comply with that request or deliver the documents to LARWQCB, or permit LARWQCB to copy the documents prior to destruction. Settling Respondents shall notify LARWQCB in writing, at least six (6) months prior to destroying any documents prepared pursuant to this Agreement, and shall provide LARWQCB with an opportunity to copy any documents at the expense of LARWQCB.

15.11 Additional Actions. By entering into this Agreement, LARWQCB does not waive the right to take any further actions authorized by law.

15.12 Extension Requests. If Settling Respondents are unable to perform any activity or submit any document within the time required under this Agreement, Settling Respondents may, prior to expiration

of the time, request an extension of the time in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due.

15.13 Extension Approvals. If LARWQCB determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing. Settling Respondents shall comply with the new schedule incorporated in this Agreement.

15.14 Severability. The requirements of this Agreement are severable, and Settling Respondents shall comply with each and every provision hereof, notwithstanding the effectiveness of any other provision.

15.15 Incorporation of Plans, Schedules and Reports. All plans, schedules, reports, specifications and other documents that are submitted by Settling Respondents pursuant to this Agreement are incorporated in this Agreement upon LARWQCB's approval or as modified pursuant to Section 15.7 (LARWQCB Review and Approval) and shall be implemented by Settling Respondents. Any noncompliance with the documents incorporated in this Agreement shall be deemed a failure or refusal to comply with this Agreement.

15.16 Modifications. This Agreement may be amended in writing by mutual agreement of the Parties. Any amendment to this Agreement shall be effective upon the date the modification is signed by LARWQCB and shall be deemed incorporated in this Agreement.

15.17 Time Periods. Unless otherwise specified, time periods begin from the Effective Date of this Agreement and "days" means calendar days.

15.18 Effective Date. The Effective Date of this Agreement is the date when this Agreement is fully executed by all the Parties.

15.19 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

15.20 Third Party Actions. In the event that the Settling Respondents are a party to any suit or claim for damages or contribution relating to the Property to which LARWQCB is not a party, the Settling Respondents shall notify LARWQCB in writing within ten (10) days after service of the complaint in the third-party action. Settling Respondents shall pay all costs incurred by LARWQCB relating to such third-party actions, including but not limited to responding to subpoenas.

15.21 Governing Law. This Agreement shall be construed and governed by the laws of the State of California.

15.22 Transfer. Notwithstanding any other provisions of this Agreement, all of the rights and benefits conferred upon Settling Respondents under this Agreement may be assigned or transferred to any person pursuant to Section 15.23 (Notice of Transfer). In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the Settling Respondents shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement.

15.23 Notice of Transfer. Prior to or simultaneous with any assignment or transfer of fee title to the Property, occurring after the date Settling Respondents acquire fee title to the Property, the assignee or transferee shall as a precondition to receiving the benefit of the LARWQCB's Covenant Not to Sue, execute a written instrument in the form attached hereto as Exhibit F (Notice of Property Transfer and Covenant Not to Sue) which shall accompany each purchase relating to the Property.

15.24 Article and Section Headings. Headings at the beginning of each Article or Section of this Agreement are solely for the convenience of the Parties and are not a part of the Agreement.

15.25 Representative Authority. Each undersigned representative of the Parties to this Agreement certifies and represents that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this Agreement.

15.26 Exhibits. All exhibits attached to this Agreement are incorporated herein by this reference. The Exhibits include: Exhibit A (Legal Description of Property), Exhibit B (Assessor's Parcel Map of Property), Exhibit C (Conditional Approval Letter), Exhibit D (Remedial Action Plan Approved by LARWQCB), Exhibit E (Schedule), Exhibit F (Notice of Property Transfer and Covenant Not to Sue), Exhibit G (Corporate Guarantee), and Exhibit H (Letter from Chief Financial Officer).

Article XVI DISPUTE RESOLUTION

16.1 Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article shall be the exclusive mechanism for resolving disputes arising under this Agreement. LARWQCB and Settling Respondents shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally. If LARWQCB contends that Settling Respondents are in violation of this Agreement, LARWQCB shall notify Settling Respondents in writing, setting forth the basis for its position. Settling Respondents may dispute LARWQCB's position pursuant Section 16.2.

16.2 If Settling Respondents dispute LARWQCB's position with respect to Settling Respondents' compliance with this Agreement or object to any LARWQCB action taken pursuant to this Agreement, including billings for Oversight and/or Response Costs, Settling Respondents shall notify LARWQCB in writing of their position unless the dispute has been resolved informally. LARWQCB may reply, in writing, to Settling Respondents' position within thirty (30) days of receipt of Settling Respondents' notice. LARWQCB and Settling Respondents shall have thirty (30) days from LARWQCB's receipt of Settling Respondents' written statement of position to resolve the dispute through formal negotiations (the "**Negotiation Period**"). The Negotiation Period may be extended at the sole discretion of LARWQCB. Such extension may be granted orally but must be confirmed in writing.

16.3 Any agreement reached by the Parties pursuant to this Article shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, a LARWQCB management official at the Assistant Executive Officer level or higher will review the dispute on the basis of the Parties' written statements of position and issue a written decision on the dispute to Settling Respondents. LARWQCB's decision shall be incorporated into and become an enforceable part of this Agreement. Settling Respondents' obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Article. Following resolution of the dispute, as provided by this Article, Settling Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with LARWQCB's decision, whichever occurs.

In witness whereof, the Parties execute this Agreement. The Effective Date of this Agreement shall be the last date set forth below.

IT IS SO AGREED:

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
LOS ANGELES REGION**

By: _____ Date: _____

Name: Samuel Unger
Title: Executive Officer, LARWQCB

IT IS SO AGREED:

SETTLING RESPONDENTS

Glendale/Goodwin Realty I, LLC,
an Ohio limited liability company

By: _____ Date: _____

Name:
Title:

The Kroger Co., an Ohio corporation

By: _____ Date: _____

Name:
Title:

Ralphs Grocery Company, an Ohio corporation

By: _____ Date: _____

Name:
Title:

Exhibit A Legal Description of Property

The land situated in the City of Los Angeles, County of Los Angeles, State of California, as follows:

THAT PORTION OF LOT 16 OF THE RIVERDALE TRACT, AS PER MAP RECORDED IN BOOK 54 PAGE 41, MISCELLANEOUS RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF GOODWIN AVENUE (FORMERLY OAK DRIVE), AS NOW ESTABLISHED 50 FEET WIDE, AS SHOWN ON MAP OF TRACT NO. 644, AS PER MAP RECORDED IN BOOK 15 PAGES 198 AND 199 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DISTANT THEREON WEST PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 16, 555.04 FEET FROM THE EASTERLY LINE OF SAID LOT 16, SAID EASTERLY LINE BEING THE SOUTHWESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT OF WAY; THENCE FROM SAID POINT OF BEGINNING NORTH 22° 50' WEST PARALLEL WITH SAID EASTERLY LINE OF SAID LOT AND SAID RIGHT OF WAY LINE 431.97 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF THAT CERTAIN 17 FOOT STRIP OF LAND CONVEYED TO SAID SOUTHERN PACIFIC RAILROAD COMPANY BY DEED RECORDED IN BOOK 4036 PAGE 102, OFFICIAL RECORDS OF SAID COUNTY; THENCE WEST ALONG SAID SOUTHERLY LINE 109 FEET; THENCE SOUTH 22° 50' EAST PARALLEL WITH SAID EASTERLY LINE OF SAID LOT AND SAID SOUTHWESTERLY RIGHT OF WAY LINE 431.97 FEET, MORE OR LESS, TO SAID NORTHERLY LINE OF GOODWIN AVENUE; THENCE EAST THEREON 109 FEET TO THE POINT OF BEGINNING.

Exhibit B Assessor's Parcel Map of Property

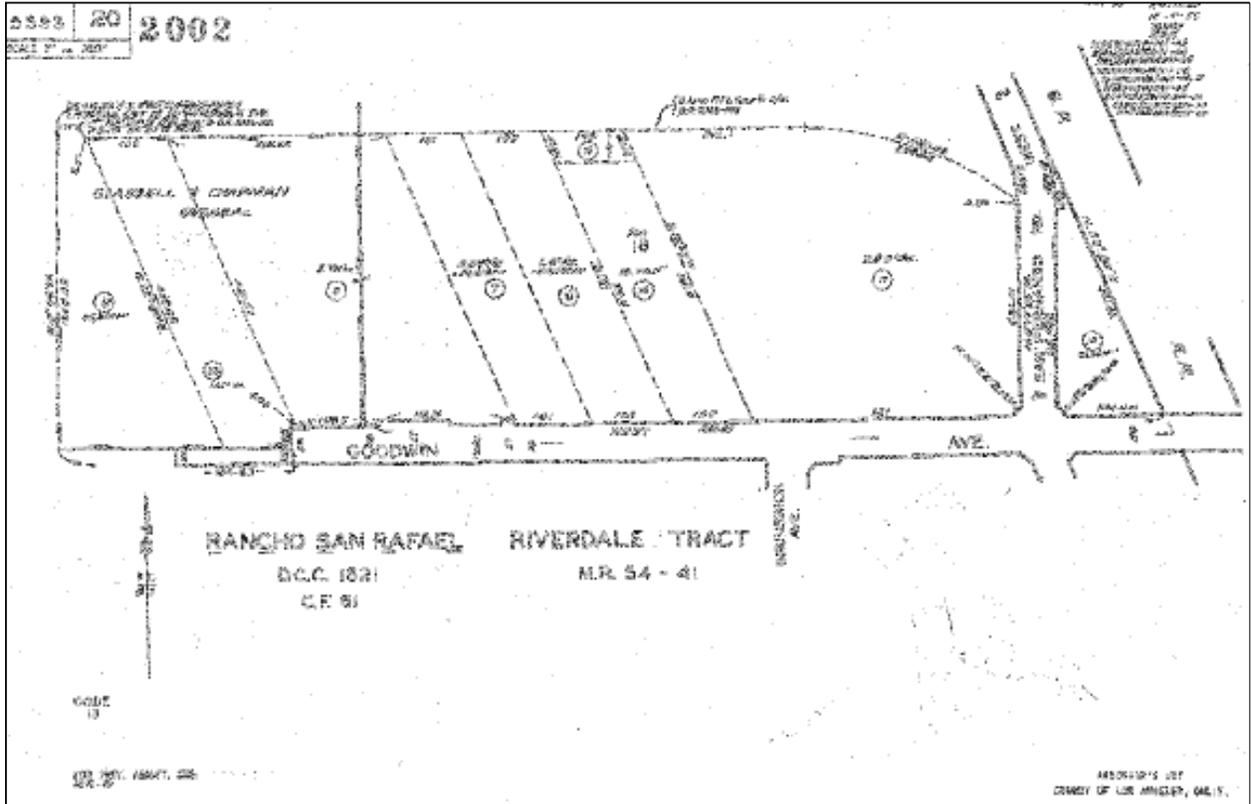


Exhibit C Conditional Approval Letter



**California Regional Water Quality Control Board
Los Angeles Region**



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

November 1, 2010

Ms. Alice C. Clarno, EA, ATA
The Spirito Family Trust
1801 South Myrtle Avenue, Suite H,
Monrovia, California 91016-4800

CONDITIONAL APPROVAL OF RALPHS REMEDIAL ACTION PLAN - CLEANUP AND ABATEMENT ORDER NO. R4-2003-0038-R FOR EXCELLO PLATING COMPANY INC., 4057 GOODWIN AVENUE, LOS ANGELES, CALIFORNIA (SITE ID NO. 2040209; FILE NO. 113.5243)

Dear Ms. Clarno:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of groundwater and surface water quality for all beneficial uses within major portions of Los Angeles and Ventura Counties, including the referenced site.

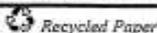
On September 30, 2010 the Regional Board received a technical report [Remedial Action Plan (RAP)] entitled "*Remedial Action Plan The Spirito Family Trust Parcel, 4057 and 4059 Goodwin Avenue, (Including The Former Excello Plating Co., Inc., Facility), City of Los Angeles, County of Los Angeles, California.*" The RAP was prepared and submitted by Kleinfelder (Kleinfelder), the environmental consultant to the Ralphs Grocery Company (Ralphs).

The RAP was reviewed by the Regional Board and the United States Environmental Protection Agency Region IX (USEPA) and a list of comments was provided to you in a letter dated April 29, 2010. On July 14, 2010, Kleinfelder submitted a "draft" matrix table of responses to this list of comments. And on July 29, 2010 and August 24, 2010 conference calls were conducted between the Regional Board, USEPA, and Kleinfelder to resolve the list of comments. All comments were resolved and on September 16, 2010 the final matrix table of responses was submitted to the Regional Board and USEPA. This final matrix table was approved by the Regional Board and USEPA; therefore the final RAP was submitted on September 30, 2010.

Based on the Regional Board's and USEPA's review the final RAP is conditionally approved provided the work is completed as specified in the final RAP. You are required to submit a final report to the Regional Board to summarize the results and findings from the implementation of the RAP by **January 22, 2014**, which is the date proposed in the schedule depicted in the final RAP.

Regional Board staff must receive a 1-week notification prior to the commencement of field activities in order to provide regulatory oversight.

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

All work must be performed in accordance to State Water Resources Control Board Resolution No. 92-49, under CWC Section 13304, which states that all fieldwork related to implementing the required work plan (technical report) such as soil borings, soil gas borings, and/or well installation(s) must be conducted by, or under the direct responsible supervision of, a registered geologist or licensed civil engineer. All technical documents submitted to this Regional Board must be reviewed, signed and stamped by a California registered geologist, or a California registered civil engineer with at least five years hydrogeologic experience. Furthermore, the California Business and Professions Code Sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. Therefore, all future work associated with the RAP must be performed by or under the direction of a California Professional Geologist or Professional Civil Engineer. A statement is required in the report that the registered professional in responsible charge actually supervised or personally conducted all the work associated with the project.

The final report should be developed following the Regional Board's *Guidelines for Report Submittals (March 1991, Revised June 1993)* and shall be submitted as a hardcopy and electronic Adobe® "pdf" format. A total of two (2) hardcopies and one (1) electronic copy of each final report shall be submitted. Additionally, laboratory Quality Assurance/Quality Control (QA/QC) data must be included with each final report. Guidance on QA/QC measures and protocols can be found in the QAPP which is located at the Regional Board's website using the following link:

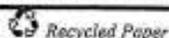
http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/Board_SGV-SFVCleanupProgram_Sept2008_QAPP.pdf

The final report is required to be submitted under the CWC Section 13350. Please note that effective immediately, the Regional Board requires you to include a perjury statement in all reports submitted under the 13350. The perjury statement shall be signed by senior personnel of the Spirito Family Trust (not a consultant). The statement shall be in the following format:

"I [name], do hereby declare under penalty of perjury under the laws of the State of California, that I am [title] for the Spirito Family Trust, that I am authorized to attest to the veracity of the information contained in the reports described herein, and that the information contained in [title and date of report], is true and correct, and that this declaration was executed in [city and State], on [date]."

As a reminder and pursuant to Section 13350 of the California Water Code, failure to submit the required technical reports by the due dates specified may result in administrative civil liability penalties being assessed by the Regional Board, in an amount up to five thousand dollars (\$5,000) per day for each day the technical reports are not received.

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Ms. Alice C. Clarno
The Spirito Family Trust

- 3 -

November 1, 2010

If you have any questions regarding this matter, please call Mr. Larry Moore at (213) 576-6730 or email at lmoores@waterboards.ca.gov or Jeffrey Hu at (213) 576-6736 or email at ghu@waterboards.ca.gov.

Sincerely,



Samuel Ungert, PE
Executive Officer

cc: Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board
Ms. Rita Kimat, State Department of Toxic Substances Control, Chatsworth Office
Mr. Jeff OKeefe, California Department of Public Health
Ms. Kelly Manheimer, USEPA Superfund Division, Region IX, San Francisco
Mr. Fred Schaufler, USEPA Superfund Division, Region IX, San Francisco
Mr. Thomas Butler, USEPA, Superfund Division, Region IX, San Francisco
Ms. Lisa Hanusiak, USEPA Superfund Division, Region IX, Los Angeles
Mr. Robert McKinney, Los Angeles Department of Water & Power
Mr. Thomas Erb, Los Angeles Department of Water & Power
Mr. Leighton Fong, City of Glendale
Mr. Bill Mace, City of Burbank Water Supply Department
Ms. Patricia Bilgin, Los Angeles City Attorney Office
Mr. Vaughn Minassian, Los Angeles City Attorney Office
Mr. Daniel Klier, Law Offices of Daniel Klier, Esq.
Mr. Peter Niemiec, Law Offices of Peter Niemiec, Esq.
Mr. Patrick Del Duca, Zuber & Taillieu LLP

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Exhibit D Remedial Action Plan Conditionally Approved by LARWQCB

[REMEDIAL ACTION PLAN TO BE INSERTED HERE

(OMITTED HERE DUE TO SIZE OF DOCUMENT)]

Click Here For Remedial Action Plan

Exhibit E Schedule

The schedule which follows is subject to the following:

General Premises:

1. Scope of work, assumptions, and goals for remedial activities described in the Remedial Action Plan (RAP) apply.
2. Remediation of the Property is not intended to address groundwater contamination.
3. All groundwater contamination is being addressed by US EPA through Federal Superfund proceedings that include the Glendale South Operable Unit (GSOU) of the San Fernando Valley Superfund Site.
4. Inorganic constituent of concern (COC) addressed by the RAP is hexavalent chromium (Cr6+) in onsite soil.
5. Organic COCs addressed by the RAP are perchloroethylene (PCE) and trichloroethene (TCE) in onsite soil and soil vapor.
6. Waste Discharge Requirements (WDR) permit will be issued prior to acquisition of title to the Property by one or more of Settling Respondents, and at least 6 weeks prior to scheduled start date of the large-diameter auger in-situ chemical reduction (LDA/ISCR) field pilot test.
7. LDA/ISCR Pilot Test Work Plan (WP) will be approved by Los Angeles Regional Water Quality Control Board (LARWQCB) prior to acquisition of title to the Property by one or more of Settling Respondents.
8. Soil Vapor Extraction (SVE) Pilot Test WP will be approved by LARWQCB prior to acquisition of title to the Property by one or more of Settling Respondents.
9. A deed restriction against the Property, referred to as a Covenant and Environmental Restriction on Property (CERP), will limit future use to commercial/industrial.
10. 90-Day Temporary Hazardous Waste Generator Permit will be approved by LARWQCB 6 weeks prior to LDA/ISCR pilot testing.

Well Abandonment Scope and Premises:

1. LARWQCB will approve the Well Abandonment WP at least 2 weeks prior to scheduled field work start date.
2. LARWQCB drilling field work notification process and submittal of HASP for review can be completed within 1 week.
3. County of Los Angeles Department of Public Works, Environmental Health (DEH) to approve well abandonment permits within 1 week of submittal.
4. Two on-site groundwater monitoring wells (MW2 and MW3) at the Property can be abandoned within 2 weeks prior to building demolition.
5. DEH to approve well installation permits within 1 week of submittal.
6. Contingency of 2 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

Hazardous Building Material Abatement and Building Demolition Scope and Premises:

1. South Coast Air Quality Management District (SCAQMD) Notification process can be completed in 2 weeks.
2. Hazardous building materials abatement can be completed within 4 weeks following completion of the above SCAQMD notification period.
3. LARWQCB will approve Building Demolition WP within 4 weeks of receipt (and at least 3 weeks prior to scheduled start date of demolition, to allow for proper notifications).
4. City of Los Angeles will approve the Building Demolition permit application within 1 week of receipt.
5. No additional impacted onsite soils will be encountered in shallow onsite soils during demolition of the building.
7. Hazardous building materials closeout documentation will be completed within 6 weeks of completion of building abatement.
8. Wells MW-2R and MW-3R can be installed and redeveloped within 2 weeks following building demolition.
9. Contingency of 8 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

LDA/ISCR and Cap Installation Scope and Premises:

1. The Property-specific cleanup goal for Cr6+ in onsite soil is 5.6 milligrams per kilogram (United States Environmental Protection Agency [US EPA] Industrial Regional Screening Level [RSL] for Cr6+ in soil).
2. The lateral and vertical extent of Cr6+-impacted onsite soil has a surface area of approximately 3,800 square feet and will be treated with LDA/ISCR.
3. The depth to which LDAs will be advanced will vary, and will be as deep as 45 feet below grade.
4. The approximate volume of onsite soil that will be treated is 5,800 cubic yards, including 20-percent overlap of 8-foot diameter LDAs.
5. LDA/ISCR plans and specifications will only be submitted to LARWQCB for review and approval prior to implementation.
6. LARWQCB will approve LDA/ISCR Implementation Workplan within 4 weeks of submittal (and a minimum of 6 weeks prior to scheduled pilot test).
7. LDA rig and equipment mobilization can be completed within 6 weeks.
8. LDA/ISCR field pilot test can be completed in 4 weeks.
9. LDA/ISCR Field Implementation will achieve cleanup goals within 12 weeks.
10. Swell material will be 20 to 30 percent of the total volume of onsite soil treated (maximum 2,300 tons)
11. Swell material will require offsite disposal.

12. Calcium polysulfide (CaS_x) application rate/reaction time will correlate with bench-scale test results which suggested that reaction of CaS_x with Cr⁶⁺ for conversion to Cr³⁺ in soil would be complete in less than 24 hours.

13. LDA rig and equipment demobilization, and site restoration can be completed within 5 weeks following completion of LDA drilling.

14. LDA/ISCR Closeout Reporting can be completed within 2 months following LDA/ISCR field activities.

15. An engineered cap will be installed subsequent to completion of LDA/ISCR and cement stabilization, which will be performed as part of the site restoration activities.

16. Contingency of 8 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

SVE Pilot Test/O&M/Rebound Testing Scope and Premises:

1. SVE and observation (OBS) wells will not require permits from the DEH.

2. SVE, with adsorption of PCE and TCE by vapor-phase granular activated carbon (VPGAC), will be confirmed as an effective technology (during pilot testing)

3. SVE pilot testing will confirm an effective radius of influence of 60 feet.

4. Contaminated groundwater upgradient of the Property will continue to migrate beneath the Property for many years, and will continue to be a source of impact to the vadose zone beneath the Property until after the off-site sources are remediated

5. Volatile organic compounds (VOCs) will be removed from the shallow vadose zone (less than 25 feet below grade) to the practical limits of the applicable SVE technology,

6. Goals for PCE and TCE in soil vapor are the commercial/industrial California Human Health Screening Levels (CHHSLs) (1.77 µg/L and 0.603 µg/L, respectively).

7. A mobile SVE system, having a various locations permit from SCAQMD, will be used to perform the SVE pilot test.

8. SVE pilot test wells can be installed within 3 weeks.

9. An SVE pilot test, vacuum step test, and constant rate test can be performed in 1 day.

10. SVE pilot test and calculations can be completed in 3 weeks.

11. SVE system design can be completed in 3 weeks.

12. Installation of SVE wells, piping, and SVE system can be completed in 2 months.

13. Normal SVE system startup and normal operations and maintenance (O&M) will be performed for 52 weeks.

14. A site-specific SCAQMD permit will be approved prior to the end of 12 months normal O&M.

15. Duration of SVE system rebound testing O&M will not exceed 2 months.

16. Electrical service will be provided by local service provider for within 12-weeks of application for service.

17. Closeout reporting can be completed within 2 months following completion of field activities.

18. Contingency of an additional 2 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

Post-Remedial Fieldwork and Risk Assessment Scope and Premises:

1. One baseline groundwater monitoring and analyses event, per LARWQCB General WDR Permit No. R4-2007-0019, will be performed following installation of monitoring wells MW-2R and MW-3R.
2. One year of quarterly groundwater monitoring, analyses, and four quarterly reports, per LARWQCB General WDR Permit No. R4-2007-0019, will be performed during and following completion of LDA/ISCR field activities.
3. Soil Vapor Survey (SVS) WP can be prepared and submitted within 4 weeks after initiation.
4. LARWQCB will review and approve SVS WP within 4 weeks of submittal.
5. LARWQCB SVS field work notification process and submittal of HASP can be completed within 1 week.
6. SVS field work can be completed within 4 weeks.
7. Preparation of an HHRA based on SVS results for residual concentrations of PCE and TCE in soil vapor can be completed in 9 weeks.
8. Abandonment of 7 SVE/OBS wells and 6 GW monitoring wells will be completed in 4 weeks. The abandonment of the 6 GW monitoring wells will be determined by USEPA.
9. SVS residual risk assessment and report can be prepared in 6 weeks following field activities.
10. Contingency of 2 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

Post-Remedial Closeout Documents Scope and Premises:

1. A Property-specific HHRA for residual concentrations of Cr6+ in onsite soil is not included in the RAP because it is assumed that risk-based cleanup goals will be achieved during LDA/ISCR field implementation.
2. A closeout report will be prepared and submitted to LARWQCB upon completion of RAP implementation.
3. Contingency of 6 weeks included in the schedule for delays to receipt of analytical data reports, and preparation of attachments to the closeout document.

Post-Escrow Conceptual Remedial Action Plan Implementation Schedule

Task Name	Start Date	Duration (Business Days)	Month														
			MOU1	MOU2	MOU3	MOU4	MOU5	MOU6	MOU7	MOU8	MOU9	MOU10	MOU11	MOU12			
Escrow Closes	Day 1	1 day															
TASK 1 - WELL ABANDONMENT	Day 10	70 days	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
TASK 2 - HAZARDOUS BUILDING MATERIALS SAMPLING AND BUILDING DEMOLITION	Day 10	120 days	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
TASK 3 - LEASTOCK AND CAP INSTALLATION	Day 85	372 days		■	■	■	■	■	■	■	■	■	■	■	■	■	■
TASK 4 - SVE PLOT TESTING / O&M / REBOUND TESTING	Day 108	540 days				■	■	■	■	■	■	■	■	■	■	■	■
TASK 5 - POST-REMEDIATION FIELDWORK AND RISK ASSESSMENT	Day 1121	211 days													■	■	■
TASK 6 - POST-REMEDIATION CLOSURE DOCUMENTS	Day 1359	198 days														■	■

Activities the following have been approved by Agency prior to close of escrow:

1. Cap Installation and Maintenance Plan
2. SVE Plot and SVE Plot Test Schedule
3. Well Permit Application
4. Temporary No-Work Order (to Permit Approval)

Exhibit F Notice of Property Transfer and Covenant not to Sue

On _____, 2011, _____ (the “**Undersigned**”) became an Owner [Holder of a Property Interest] of the real property described in Annex A (Legal Description of Property), located in the City of Los Angeles, County of Los Angeles, State of California, bearing the street addresses 4057 and 4059 Goodwin Avenue and referenced as Assessor Parcel Number 5593-020-020 (the “**Property**”). Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement (hereinafter defined).

1. The Undersigned, by signing below, verifies that it has read the Prospective Purchaser Agreement and Covenant Not to Sue (the “**Agreement**”), LARWQCB SCP File No. 113.5243.
2. The Undersigned understands and agrees that Section 12.1 of the Agreement contains a LARWQCB Covenant not to pursue enforcement actions against the Owner of the Property (the “**LARWQCB Covenant**”).
3. The Undersigned also understands and agrees that it may enjoy the benefits of the LARWQCB Covenant only if the Undersigned covenants not to sue the LARWQCB pursuant to the covenant set forth in Section 12.4 of the Agreement.
4. The Undersigned further understands and agrees that its right to rely upon and benefit from the LARWQCB Covenant is expressly subject to and conditional upon its own, and only its own, compliance with its obligations under the Agreement, including all exhibits, attachments, and appendices thereto.

Submittals to the Undersigned, pursuant to Section 15.5 of the Agreement, shall be addressed as follows:

[Company, Street Address, City, County, State, Zip Code]
[Telephone/Fax/Email]

The Undersigned, by signing below, verifies that: (i) it is aware that hazardous substances have been found within the boundaries of the Property, and (ii) such condition renders its interest in the Property subject to the Agreement and to all applicable laws and regulations of the State of California.

The Undersigned, by signing below, certifies that she or he is fully authorized to enter into the terms and conditions of this Notice and to execute and legally bind the Owner to this Notice.

[Name of person authorized to sign on behalf of Owner]
[Title]

Date

To become effective, this Notice must be sent by United States mail, postage paid, certified, return receipt requested to:

Los Angeles Regional Water Quality Control Board
Attention: Executive Officer
320 West 4th Street, Suite 200
Los Angeles, California 90013

This Notice shall be effective three (3) business days after deposit in the mail if mailed by United States mail, postage paid, certified mail return receipt requested.

ANNEX A: LEGAL DESCRIPTION OF PROPERTY

The land situated in the City of Los Angeles, County of Los Angeles, State of California, as follows:

THAT PORTION OF LOT 16 OF THE RIVERDALE TRACT, AS PER MAP RECORDED IN BOOK 54 PAGE 41, MISCELLANEOUS RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF GOODWIN AVENUE (FORMERLY OAK DRIVE), AS NOW ESTABLISHED 50 FEET WIDE, AS SHOWN ON MAP OF TRACT NO. 644, AS PER MAP RECORDED IN BOOK 15 PAGES 198 AND 199 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DISTANT THEREON WEST PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 16, 555.04 FEET FROM THE EASTERLY LINE OF SAID LOT 16, SAID EASTERLY LINE BEING THE SOUTHWESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT OF WAY; THENCE FROM SAID POINT OF BEGINNING NORTH 22° 50' WEST PARALLEL WITH SAID EASTERLY LINE OF SAID LOT AND SAID RIGHT OF WAY LINE 431.97 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF THAT CERTAIN 17 FOOT STRIP OF LAND CONVEYED TO SAID SOUTHERN PACIFIC RAILROAD COMPANY BY DEED RECORDED IN BOOK 4036 PAGE 102, OFFICIAL RECORDS OF SAID COUNTY; THENCE WEST ALONG SAID SOUTHERLY LINE 109 FEET; THENCE SOUTH 22° 50' EAST PARALLEL WITH SAID EASTERLY LINE OF SAID LOT AND SAID SOUTHWESTERLY RIGHT OF WAY LINE 431.97 FEET, MORE OR LESS, TO SAID NORTHERLY LINE OF GOODWIN AVENUE; THENCE EAST THEREON 109 FEET TO THE POINT OF BEGINNING.

Exhibit G CORPORATE GUARANTEE

Corporate Guarantee of Performance of Obligations pursuant to Prospective Purchaser Agreement and Covenant Not to Sue (the “Agreement”) made and entered into by and between the California Regional Water Quality Control Board, Los Angeles Region (“LARWQCB”), Glendale/Goodwin Realty I, LLC, an Ohio limited liability company (“GGRI”),
The Kroger Co., an Ohio corporation (“Kroger”), and
Ralphs Grocery Company, an Ohio corporation (“RGC”)

[Letterhead of The Kroger Co.]

Los Angeles Regional Water Quality Control Board
Attention: Executive Officer
320 West 4th Street, Suite 200
Los Angeles, California 90013

Guarantee made this **[insert date]** by The Kroger Co. (“**Kroger**”), an Ohio corporation, herein referred to as Guarantor, to the California Regional Water Quality Control Board, Los Angeles Region (“**LARWQCB**”), obligee, on behalf of its subsidiary Glendale/Goodwin Realty I, LLC, an Ohio limited liability company (“**GGRI**”).

The address of Kroger is The Kroger Co., Attention: Law Department, 1014 Vine Street, Cincinnati, Ohio, 45202-1100, to the LARWQCB.

The address of GGRI is Glendale/Goodwin Realty I, LLC, c/o Ralphs Grocery Company, Attention: Legal Department, 1100 West Artesia Boulevard, Compton, California 90220.

RECITALS

1. This guarantee is provided in satisfaction of the requirements of Section 6.1 of the Prospective Purchaser Agreement and Covenant Not to Sue (“**Agreement**”) dated **[insert date]** made and entered into by and between the LARWQCB, GGRI, Kroger, and Ralphs Grocery Company, an Ohio corporation (“**RGC**”), relating to the former Excello Plating Co., Inc. real property (“**Property**”) located at 4057 and 4059 Goodwin Avenue, in the City of Los Angeles, County of Los Angeles, State of California, and referenced as Assessor Parcel Number 5593-020-020. The Property is more particularly described in Exhibit A (Legal Description of Property) and Exhibit B (Assessor’s Parcel Map of Property) attached to the Agreement.

2. Guarantor meets or exceeds the financial test criteria found in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), and section 66264.145, subsection (f). Periodic timely delivery to the LARWQCB of Guarantor’s annual report on Form 10-K as filed with the United States Securities and Exchange Commission in demonstration of the satisfaction of the requirements set forth in Exhibit H to the Agreement constitutes compliance with such reporting requirements.

3. The Kroger Co. owns, directly or indirectly, at least 50 percent of the voting membership interest of GGRI, which owns and operates the Property.

4. For value received from GGRI, Guarantor guarantees to LARWQCB that in the event that GGRI fails to satisfy GGRI's obligations pursuant to the Agreement in respect of the above Property in the name of GGRI, the Guarantor shall do so or establish a trust fund in the amount of the Guarantee Amount, as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable. The Guarantee Amount shall initially be \$3,412,950, and shall be reduced as set forth in Appendix A hereto as the Milestones there referenced are achieved.

5. Guarantor agrees that if, at any time during or at the end of any fiscal year before the termination of this guarantee, the Guarantor fails to meet the financial test criteria, Guarantor shall send within 90 days, by certified mail, notice to LARWQCB and to GGRI that Guarantor intends to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8 as applicable, in the name of GGRI. Within 120 days after the end of such fiscal year or other occurrence, the Guarantor shall establish such alternate financial assurance unless GGRI has done so.

6. Guarantor agrees to notify LARWQCB by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming Guarantor as debtor within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by LARWQCB of a determination that Guarantor no longer meets the financial test criteria or that it is disallowed from continuing as a guarantor of the remediation costs, it shall establish alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, in the name of GGRI unless GGRI has done so.

8. Guarantor agrees to remain bound under this Guarantee notwithstanding any modification of the Agreement.

9. Guarantor agrees to remain bound under this guarantee for as long as GGRI shall be subject to Section 6.1 of the Agreement, except as provided in paragraph 10 of this Guarantee.

10. Guarantor may terminate this Guarantee by sending notice by certified mail to LARWQCB and to GGRI, provided that this Guarantee may not be terminated unless and until GGRI obtains, and LARWQCB approve(s), alternate remediation cost coverage complying with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

11. Guarantor agrees that if GGRI fails to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, and obtain written approval of such assurance from LARWQCB within 90 days after a notice of cancellation by the Guarantor is received by LARWQCB from Guarantor, Guarantor shall provide such alternate financial assurance in the name of GGRI.

12. Guarantor expressly waives notice of acceptance of this Guarantee by LARWQCB or by GGRI.

Effective date:

The Kroger Co., an Ohio corporation

By: _____ Date: _____

Name:

Title:

STATE OF _____)	
)	ss
COUNTY OF _____)	

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public	

Appendix A Guarantee Amount

	Milestones drawn from Exhibit E to the Agreement	Estimated Cost of Milestone Completion	Guarantee Amount Remaining upon Milestone Completion
	Initial Guarantee Amount		\$3,412,950
1	Well Abandonment	\$93,400	\$3,319,550
2	Hazardous Building Materials Abatement and Building Demolition	\$371,769	\$2,947,781
3	LDA/ISCR and Cap Installation	\$2,023,881	\$923,900
4	SVE Pilot Testing/O&M/Rebound Testing	\$659,500	\$264,400
5	Post-Remedial Fieldwork and Risk Assessment	\$186,900	\$77,500
6	Post-Remedial Closeout Documents	\$77,500	\$0

Exhibit H LETTER FROM CHIEF FINANCIAL OFFICER

[Letterhead of The Kroger Co.]

Los Angeles Regional Water Quality Control Board
Attention: Executive Officer
320 West 4th Street, Suite 200
Los Angeles, California 90013

Ladies and Gentlemen:

I am the chief financial officer of The Kroger Co., an Ohio corporation (“**Kroger**”), the address of which is The Kroger Co., Attention: Law Department, 1014 Vine Street, Cincinnati, Ohio, 45202-1100. This letter is in support of the use by Kroger of the financial test to demonstrate the financial assurance contemplated by Section 6.1 of the Prospective Purchaser Agreement and Covenant Not to Sue (“**Agreement**”) made and entered into by and between the California Regional Water Quality Control Board, Los Angeles Region (“**LARWQCB**”), Glendale/Goodwin Realty I, LLC, an Ohio limited liability company (“**GGRI**”), The Kroger Co., an Ohio corporation (“**Kroger**”), and Ralphs Grocery Company, an Ohio corporation (“**RGC**”) and in particular the assurance of the Guarantee Amount as contemplated by the Guarantee issued in conformity with Exhibit G of the Agreement. The Agreement pertains to the former Excello Plating Co., Inc. real property (“**Property**”) located at 4057 and 4059 Goodwin Avenue, in the City of Los Angeles, County of Los Angeles, State of California, and referenced as Assessor Parcel Number 5593-020-020. The Property is more particularly described in Exhibit A (Legal Description of Property) and Exhibit B (Assessor’s Parcel Map of Property) attached to the Agreement.

1. Kroger guarantees, through the guarantee specified in Exhibit G to the Agreement, the performance under the Agreement by GGRI, the address of which is Glendale/Goodwin Realty I, LLC, c/o Ralphs Grocery Company, Attention: Legal Department, 1100 West Artesia Boulevard, Compton, California 90220. GGRI owns and operates the Property. The current Guarantee Amount is: _____.
2. Kroger owns, directly or indirectly, at least 50 percent of the voting membership interest of GGRI, which owns and operates the Property.
3. Kroger is required to file a Form 10K with the United States Securities and Exchange Commission for the latest fiscal year.
4. The fiscal year of this firm ends on [**insert month, day**]. The figures for the following items marked with an asterisk are derived from this firm’s independently audited, year-end financial statements for the latest completed fiscal year, ended [**insert date**].
5. Kroger is using “Alternative II” as described below and in California Code of Regulations, title 22, section 66264.143, subsection (f), and section 66264.151, subsection (h).

ALTERNATIVE II

- | | |
|--|----------|
| 1. Current Guarantee Amount | \$ _____ |
| 2. Current bond rating of most recent issuance of Kroger and name of rating service | _____ |
| 3. Date of issuance of bond | _____ |
| 4. Date of maturity of bond | _____ |
| *5. Tangible net worth [if any portion of the Guarantee Amount is included in “total | \$ _____ |

liabilities” on your firm’s financial statements, you may add the amount of that portion to this line]

*6. Total assets in U.S. (required only if less than 90% of firm’s assets are located in the U.S.)

\$_____

7. Is line 5 at least \$10 million?

[Yes/No]

8. Is line 5 at least 6 times line 1?

[Yes/No]

*9. Are at least 90% of firm’s assets located in the U.S.? If not, complete line 10

[Yes/No]

10. Is line 6 at least 6 times line 1?

[Yes/No]

[Signature], [Name], [Title], [Date]