
Section 1: 8-K (8-K)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report: **January 24, 2017**
(Date of earliest event reported)

THE KROGER CO.

(Exact name of registrant as specified in its charter)

Ohio
(State or other jurisdiction of
incorporation)

No. 1-303
(Commission File Number)

31-0345740
(IRS Employer
Identification No.)

1014 Vine Street
Cincinnati, OH 45202
(Address of principal executive offices)

Registrant's telephone number: **(513) 762-4000**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01 Other Events.

On December 14, 2016, The Kroger Co. filed Registration Statement No. 333-215085 on Form S-3 with the Securities and Exchange Commission pursuant to Rule 415 registering an indeterminate amount of securities (the "Registration Statement"). Pursuant to a Prospectus Supplement dated January 17, 2017, The Kroger Co. is issuing \$1,000,000,000 of debt securities denominated 4.450% Senior Notes due 2047 (the "Notes").

Filed as Exhibit 1.1 to the Registration Statement was a form of Underwriting Agreement for the issuance of debt securities. In connection with the issuance of the Notes, the Registrant has executed an Underwriting Agreement and a Pricing Agreement each dated as of January 17, 2017, among The Kroger Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBC Capital Markets, LLC, U.S. Bancorp Investments, Inc., Citigroup Global Markets Inc., Mizuho Securities USA Inc., MUFG Securities Americas Inc., BB&T Capital Markets, a division of BB&T Securities, LLC, BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., Goldman, Sachs & Co., PNC Capital Markets LLC, Santander Investment Securities Inc., Wells Fargo Securities, LLC and Drexel Hamilton, LLC. The Underwriting Agreement is attached hereto as Exhibit 1.1 and the Pricing Agreement is

attached hereto as Exhibit 1.1.1.

The form of Indenture for the Notes was filed as Exhibit 4.1 to the Registration Statement.

The Forty-First Supplemental Indenture, relating to the 4.450% Senior Notes due 2047, dated as of January 24, 2017, between The Kroger Co. and U.S. Bank National Association (formerly known as Firststar Bank, National Association), as Trustee, supplements the Indenture dated as of June 25, 1999, between The Kroger Co. and Firststar Bank, National Association, as Trustee. The Forty-First Supplemental Indenture is attached hereto as Exhibit 4.3.

An opinion of Christine S. Wheatley, Esq., including her consent, is attached hereto as Exhibit 5.1. An opinion of Freshfields Bruckhaus Deringer US LLP, including its consent, is attached hereto as Exhibit 5.2.

The Kroger Co. expects to use the net proceeds of this offering to reduce outstanding commercial paper balances and for general corporate purposes.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement, dated as of January 17, 2017, among The Kroger Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBC Capital Markets, LLC, U.S. Bancorp Investments, Inc., Citigroup Global Markets Inc., Mizuho Securities USA Inc., MUFG Securities Americas Inc., BB&T Capital Markets, a division of BB&T Securities, LLC, BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., Goldman, Sachs & Co., PNC Capital Markets LLC, Santander Investment Securities Inc., Wells Fargo Securities, LLC and Drexel Hamilton, LLC.
1.1.1	Pricing Agreement, dated as of January 17, 2017, among The Kroger Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBC Capital Markets, LLC, U.S. Bancorp Investments, Inc., Citigroup Global Markets Inc., Mizuho Securities USA Inc., MUFG Securities Americas Inc., BB&T Capital Markets, a division of BB&T Securities, LLC, BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., Goldman, Sachs & Co., PNC Capital Markets LLC, Santander Investment Securities Inc., Wells Fargo Securities, LLC and Drexel Hamilton, LLC.
4.3	Forty-First Supplemental Indenture, relating to the 4.450% Senior Notes due 2047, dated as of January 24, 2017, between The Kroger Co. and U.S. Bank National Association (formerly known as Firststar Bank, National Association), as Trustee.
5.1	Opinion of Christine S. Wheatley, Esq.
5.2	Opinion of Freshfields Bruckhaus Deringer US LLP.
23.1	Consent of Christine S. Wheatley, Esq., which is contained in her opinion filed as Exhibit 5.1.
23.2	Consent of Freshfields Bruckhaus Deringer US LLP, which is contained in its opinion filed as Exhibit 5.2.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

THE KROGER CO.

January 24, 2017

By: /s/ Christine S. Wheatley
Christine S. Wheatley
Group Vice President, Secretary and General Counsel

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EXHIBIT INDEX

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Inc., MUFG Securities Americas Inc., BB&T Capital Markets, a division of BB&T Securities, LLC, BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., Goldman, Sachs & Co., PNC Capital Markets LLC, Santander Investment Securities Inc., Wells Fargo Securities, LLC and Drexel Hamilton, LLC.

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- 23.1 Consent of Christine S. Wheatley, Esq., which is contained in her opinion filed as Exhibit 5.1.
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Section 2: EX-1.1 (EX-1.1)

Exhibit 1.1

The Kroger Co.
Debt Securities

Underwriting Agreement

January 17, 2017

To the Representatives of the
several Underwriters named in the
respective Pricing Agreements
hereinafter described.

Ladies and Gentlemen:

From time to time The Kroger Co., an Ohio corporation (the “Company”), proposes to enter into one or more Pricing Agreements (each a “Pricing Agreement”) in the form of Annex I hereto, with such additions and deletions as the parties thereto may determine, and, subject to the terms and conditions stated herein and therein, to issue and sell to the firms named in Schedule I to the applicable Pricing Agreement (such firms constituting the “Underwriters” with respect to such Pricing Agreement and the securities specified therein) certain of its debt securities (the “Securities”) specified in Schedule II to such Pricing Agreement (with respect to such Pricing Agreement, the “Designated Securities”).

The terms and rights of any particular issuance of Designated Securities shall be as specified in the Pricing Agreement relating thereto and in or pursuant to the indenture (the “Indenture”) identified in such Pricing Agreement.

1. Particular sales of Designated Securities may be made from time to time to the Underwriters of such Securities, for which the firms designated as representatives of the Underwriters of such Securities in the Pricing Agreement relating thereto will act as representatives (the “Representatives”). The term “Representatives” also refers to a single firm acting as sole representative of the Underwriters and to Underwriters who act without any firm being designated as their representative. This Underwriting Agreement shall not be construed as an obligation of the Company to sell any of the Securities or as an obligation of any of the Underwriters to purchase the Securities. The obligation of the Company to issue and sell any of the Securities and the obligation of any of the Underwriters to purchase any of the Securities shall be evidenced by the Pricing Agreement with respect to the Designated Securities specified therein. Each Pricing Agreement shall specify the aggregate principal amount of such Designated Securities, the initial public offering price of such Designated Securities, the purchase price to the Underwriters of such Designated Securities, the names of the Underwriters of such Designated Securities, the names of the Representatives of such Underwriters and the principal amount of such Designated Securities to be purchased by each Underwriter

and shall set forth the date, time and manner of delivery to such Designated Securities and payment therefor. The Pricing Agreement shall also specify (to the extent not set forth in the Indenture and the registration statement and prospectus with respect thereto) the terms of such Designated Securities. A Pricing Agreement shall be in the form of an executed writing (which may be in counterparts), and may be evidenced by an exchange of telegraphic communications or any other rapid transmission device designed to produce a written record of communications transmitted. The obligations of the Underwriters under this Agreement and each Pricing Agreement shall be several and not joint.

2. The Company represents and warrants to, and agrees with, each of the Underwriters that:
 - (a) A registration statement in respect of the Securities has been filed with the Securities and Exchange Commission (the "Commission"); at the time of filing, as of the time of the most recent amendment thereto for purposes of complying with Section 10(a)(3) of the Securities Act of 1933, as amended (the "Act"), and as of the date hereof, the Company was and is a "well known seasoned issuer" as defined in Rule 405 of the Act; such registration statement and any post-effective amendment thereto, each in the form heretofore delivered or to be delivered to the Representatives and, excluding exhibits to such registration statement, but including all documents incorporated by reference in the prospectus contained therein, to the Representatives for each of the other Underwriters, constitutes an "automatic shelf registration statement" under Rule 405 of the Act that became automatically effective upon filing with the Commission in such form not more than three years prior to the date hereof; no other document with respect to such registration statement or document incorporated by reference therein has heretofore been filed or transmitted for filing with the Commission; and no stop order suspending the effectiveness of such registration statement has been issued and no proceeding for that purpose or pursuant to Section 8A of the Act, against the Company or related to the offering of the Designated Securities has been initiated or threatened by the Commission (any preliminary prospectus included in such registration statement or filed with the Commission pursuant to Rule 424(a) or 424(b) of the rules and regulations of the Commission under the Act, including the prospectus filed as part of the Registration Statement together with a preliminary prospectus supplement relating to the Designated Securities, being hereinafter called a "Preliminary Prospectus"; the various parts of such registration statement, including all exhibits thereto and the documents incorporated by reference in the prospectus contained in the registration statement at the time such part of the registration statement became effective but excluding Form T-1, each as amended at the time such part of the registration statement became effective, and including the

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information, if any, deemed pursuant to Rules 430A, 430B or 430C to be part of the Registration Statement at its effective time, being hereinafter called the "Registration Statement"; the prospectus relating to the Securities, together with a final prospectus supplement relating to the Designated Securities, in the form in which it has most recently been filed, or transmitted for filing, with the Commission (or made available upon request of purchasers pursuant to Rule 173 under the Act) in connection with confirmation of sales of the Designated Securities, being hereinafter called the "Prospectus"; any reference herein to any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to the applicable form under the Act, as of the date of such Preliminary Prospectus or Prospectus, as the case may be; any reference to any amendment or supplement to any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed after the date of such Preliminary Prospectus or Prospectus, as the case may be, under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and incorporated by reference in such Preliminary Prospectus or Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement; and any reference to the Prospectus as amended or supplemented shall be deemed to refer to the Prospectus as amended or supplemented in relation to the applicable Designated Securities in the form in which it is filed with the Commission pursuant to Rule 424(b) under the Act in accordance with Section 5(a) hereof, including any documents incorporated by reference therein as of the date of such filing); for purposes of this Agreement, the term "effective date" means the effective date of the Registration Statement with respect to the offering of the Designated Securities, as determined for the Company pursuant to Section 11 of the Act and Item 512 of Regulation S-K, as applicable; at or prior to the time when sales of the Designated Securities will be first made (the "Time of Sale"), the Company will prepare certain information (collectively, the "Time of Sale Information") which information will be identified in Schedule III to the Pricing Agreement for such offering of Designated Securities as constituting part of the Time of Sale Information.

- (b) The documents incorporated by reference in the Prospectus and the Time of Sale Information, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an untrue statement of a material fact or omitted to

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state a material fact required to be stated therein or necessary to make the statements therein not misleading; and any further documents so filed and incorporated by reference in the Prospectus or any further amendment or supplement thereto, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to any

statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter of Designated Securities through the Representatives expressly for use in the Prospectus as amended or supplemented relating to such Securities;

- (c) The Registration Statement and the Prospectus conform, and any further amendments or supplements to the Registration Statement or the Prospectus will conform, in all material respects to the requirements of the Act and the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), and the rules and regulations of the Commission thereunder and do not and will not, as of the applicable effective date as to the Registration Statement and any amendment thereto and as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter of Designated Securities through the Representatives expressly for use in the Prospectus as amended or supplemented relating to such Securities;
- (d) The Time of Sale Information, at the Time of Sale and at the Time of Delivery for the Designated Securities (as defined in Section 4 herein), did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter of Designated Securities through the Representatives expressly for use in the Time of Sale Information relating to such Securities. No statement of material fact included in the Prospectus has been omitted from the Time of Sale Information and no statement of

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material fact included in the Time of Sale Information that is required to be included in the Prospectus has been omitted therefrom.

- (e) The Company (including its agents and representatives, other than the Underwriters in their capacity as such) has not prepared, made, used, authorized, approved or referred to and will not prepare, make, use, authorize, approve or refer to any “written communication” (as defined in Rule 405 under the Act) that constitutes an offer to sell or solicitation of an offer to buy the Securities (each such communication by the Company or its agents and representatives (other than a communication referred to in clauses (i), (ii) and (iii) below) an “Issuer Free Writing Prospectus”) other than (i) any document not constituting a prospectus pursuant to Section 2(a)(10)(a) of the Act or Rule 134 under the Act, (ii) the Preliminary Prospectus with respect to the Designated Securities, (iii) the Prospectus, (iv) the documents listed on Schedule III to the Pricing Agreement as constituting the Time of Sale Information and (v) any electronic road show or other written communications, in each case approved in writing in advance by the Representatives. Each such Issuer Free Writing Prospectus complied in all material respects with the Act, has been or will be (within the time period specified in Rule 433) filed in accordance with the Act (to the extent required thereby) and, when taken together with the Preliminary Prospectus accompanying, or delivered prior to delivery of, or filed prior to the first use of such Issuer Free Writing Prospectus, did not, and at the Time of Delivery for the Designated Securities will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions in an Issuer Free Writing Prospectus made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter of Designated Securities through the Representatives expressly for use in an Issuer Free Writing Prospectus relating to such Securities.
- (f) The Company and its subsidiaries have not sustained since the date of the latest audited financial statements included or incorporated by reference in the Time of Sale Information and the Prospectus any material loss or interference with their businesses, taken as a whole, from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Time of Sale Information and the Prospectus; and, since the respective dates as of which information is given in the Registration Statement, the Time of Sale Information and the Prospectus, there has not been any material change in the capital stock or long-term debt of the Company and its subsidiaries

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on a consolidated basis or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders’ equity or results of operations of the Company and its subsidiaries, taken as a whole, otherwise than as set forth or contemplated in the Time of Sale Information and the Prospectus;

- (g) The Company and its subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects except such as are described in the Time of Sale Information and the Prospectus or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries;

- (h) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Ohio, with power and authority (corporate and other) to own its properties and conduct its business as described in the Time of Sale Information and the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties, or conducts any business, so as to require such qualification, or is subject to no material liability or disability by reason of the failure to be qualified in any such jurisdiction; and each subsidiary of the Company has been duly incorporated and is validly existing as a corporation, a limited liability company or a limited partnership, as the case may be, in good standing under the laws of its jurisdiction of incorporation, or is subject to no material liability or disability by reason of the failure to be in good standing in any such jurisdiction;
- (i) The Company has an authorized capitalization as set forth in the Time of Sale Information and the Prospectus, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable; and all of the issued shares of capital stock of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and (except for directors' qualifying shares) are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims;

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- (j) The Securities have been duly authorized, and, when Designated Securities are issued and delivered pursuant to this Agreement and the Pricing Agreement with respect to such Designated Securities against payment of the consideration specified in the Pricing Agreement, such Designated Securities will have been duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles and will be entitled to the benefits provided by the Indenture under which they are to be issued which will be substantially in the form filed as an exhibit to the Registration Statement; the Indenture has been duly authorized and duly qualified under the Trust Indenture Act and, at the Time of Delivery for such Designated Securities (as defined in Section 4 hereof), the Indenture will constitute a valid and legally binding instrument, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles; and the Indenture conforms, and the Designated Securities will conform, in all material respects, to the descriptions thereof contained in the Time of Sale Information and the Prospectus as amended or supplemented with respect to such Designated Securities;
- (k) The issue and sale of the Securities and the compliance by the Company with all of the provisions of the Securities, the Indenture, this Agreement and any Pricing Agreement, and the consummation of the transactions herein and therein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, nor will such action result in any violation of the provisions of the Articles of Incorporation, as amended, or the Regulations of the Company or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities or the consummation by the Company of the other transactions contemplated by this Agreement or any Pricing Agreement or the Indenture, except such as have been, or will have been prior to the Time of Delivery, obtained under the Act and the Trust Indenture Act and such consents, approvals, authorizations, registrations or qualifications as may

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be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Underwriters;

- (l) Other than as set forth or contemplated in the Time of Sale Information and the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property of the Company or any of its subsidiaries is the subject with respect to which there is a reasonable likelihood of a determination which would individually or in the aggregate have a material adverse effect on the consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries; and, to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;
- (m) None of the transactions contemplated by this Agreement, any Pricing Agreement or the Indenture (including, without limitation, the use of the proceeds from the sale of the Securities) will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations G, T, U and X of the Board of Governors of the Federal Reserve System;
- (n) The Company is not subject to regulation under the Investment Company Act of 1940, as amended;
- (o) The Company will apply the net proceeds from the sale of Securities for the purpose set forth in the Time of Sale Information and

the Prospectus under the caption “Use of Proceeds”;

- (p) PricewaterhouseCoopers L.L.P., who has audited certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm as required by the Act and the rules and regulations of the Commission and the Public Company Accounting Oversight Board (United States) thereunder;
- (q) The Company is not an “ineligible issuer” as defined under the Act at the times specified in the Act in connection with the offering of the Securities; and
- (r) The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) of the Act objecting to use of the automatic shelf registration statement form and the Company has not otherwise ceased to be eligible to use the automatic shelf registration form.

3. Upon the execution of the Pricing Agreement applicable to any Designated Securities and authorization by the Representatives of the release of such Designated Securities, the several Underwriters propose to offer such Designated

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Securities for sale upon the terms and conditions set forth in the Time of Sale Information and the Prospectus as amended or supplemented.

4. The Designated Securities to be purchased by each Underwriter pursuant to the Pricing Agreement relating thereto, in definitive form to the extent practicable, and in such authorized denominations and registered in such names as the Representatives may request upon at least forty-eight hours’ prior notice to the Company, shall be delivered by or on behalf of the Company to the Representatives for the account of such Underwriter, against payment by such Underwriter or on its behalf of the purchase price therefor by certified or official bank check or checks, payable to the order of the Company in the funds specified in such Pricing Agreement, all at the place and time and date specified in such Pricing Agreement or at such other place and time and date as the Representatives and the Company may agree upon in writing, such time and date being herein called the “Time of Delivery” for such Securities.

5. The Company agrees with each of the Underwriters of any Designated Securities:

- (a) To prepare the Prospectus as amended and supplemented in relation to the applicable Designated Securities in a form approved by the Representatives and to file such Prospectus pursuant to Rule 424(b) under the Act not later than the Commission’s close of business on the second business day following the execution and delivery of the Pricing Agreement relating to the applicable Designated Securities or, if applicable, such earlier time as may be required by Rule 424(b); to make no further amendment or any supplement to the Registration Statement or Prospectus as amended or supplemented after the date of the Pricing Agreement relating to such Securities and prior to the Time of Delivery for such Securities which shall be disapproved by the Representatives for such Securities promptly after reasonable notice thereof; to advise the Representatives promptly of any such amendment or supplement after such Time of Delivery and furnish the Representatives with copies thereof; to furnish the Representatives a copy of any proposed Issuer Free Writing Prospectus relating to such Securities prior to its use; not to use, authorize, approve, refer to or file any Issuer Free Writing Prospectus which shall be disapproved by the Representatives for such Securities promptly after reasonable notice thereof; to file promptly any Issuer Free Writing Prospectus (including the Term Sheet in the form of Schedule IV to the Pricing Agreement) to the extent required by Rule 433 under the Act; to file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act for so long as the delivery of a prospectus is required in connection with the offering or sale of such Securities, and during such same period to advise the Representatives, promptly after it receives notice thereof, of the time when any amendment to the Registration

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Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus or any Issuer Free Writing Prospectus has been filed with the Commission, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any prospectus relating to the Securities, of the suspension of the qualification of such Securities for offering or sale in any jurisdiction, of the initiation of or threatening of any proceeding for any such purpose or pursuant to Section 8A of the Act, or of any request by the Commission for the amending or supplementing of the Registration Statement or Prospectus or any Issuer Free Writing Prospectus or for additional information; and, in the event of the issuance of any such stop order or of any such order preventing or suspending the use of any prospectus relating to the Securities or suspending any such qualification, to use promptly its best efforts to obtain its withdrawal;

- (b) Promptly from time to time to take such action as the Representatives may reasonably request to qualify such Securities for offering and sale under the securities laws of such jurisdictions in the United States as the Representatives may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of such Securities, provided that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction;
- (c) To furnish the Underwriters with copies of the Prospectus as amended or supplemented and each Issuer Free Writing Prospectus in such quantities as the Representatives may from time to time reasonably request, and, if the delivery of a prospectus is required at any time prior to the expiration of nine months after the time of issue of the Prospectus in connection

with the offering or sale of any Designated Securities and if at such time any event shall have occurred as a result of which the Prospectus, the Time of Sale Information or any Issuer Free Writing Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus, Time of Sale Information or any such Issuer Free Writing Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Prospectus, the Time of Sale Information or any Issuer Free Writing Prospectus or to file under the Exchange Act any document incorporated by reference in the Time of Sale Information or the Prospectus in order to comply with the Act, the Exchange Act or the Trust Indenture Act, to notify the Representatives and upon their request to file such document and to prepare and furnish without charge to each Underwriter and to any dealer

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in securities as many copies as the Representatives may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus, Time of Sale Information or Issuer Free Writing Prospectus which will correct such statement or omission or effect such compliance; and in case any Underwriter is required to deliver a prospectus in connection with sales of any Designated Securities at any time nine months or more after the time of issue of the Prospectus as amended or supplemented with respect to such Designated Securities, upon the request of the Representatives but at the expense of such Underwriter, to prepare and deliver to such Underwriter as many copies as it may request of a further amended or supplemented Prospectus for such Designated Securities complying with Section 10(a)(3) of the Act;

- (d) To make generally available to its security holders as soon as practicable, but in any event not later than eighteen months after the effective date of the Registration Statement (as defined in Rule 158(c)), an earning statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Act and the rules and regulations of the Commission thereunder (including at the option of the Company Rule 158);
- (e) During the period beginning from the date of the Pricing Agreement for such Designated Securities and continuing to and including the earlier of (i) the termination of trading restrictions for such Designated Securities, as notified to the Company by the Representatives, and (ii) the Time of Delivery for such Designated Securities, not to offer, sell, contract to sell or otherwise dispose of any debt securities of the Company which mature more than one year after such Time of Delivery and which are substantially similar to such Designated Securities, without the prior written consent of the Representatives;
- (f) The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Act; and
- (g) The Company will pay the required Commission filing fees relating to the Designated Securities within the time required by and in accordance with Rule 456(b)(1) and 457(r) of the Act.

6. Each Underwriter hereby represents and agrees that:

- (a) It has not and will not use, authorize use of, refer to, or participate in the planning for use of, any “free writing prospectus,” as defined in Rule 405 under the Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) other than (i) a free writing prospectus that, solely as a

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result of use by such underwriter, would not trigger an obligation to file such free writing prospectus with the Commission pursuant to Rule 433, (ii) any Issuer Free Writing Prospectus listed on Schedule III to the Pricing Agreement or prepared pursuant to Section 2(e) or Section 5(a) above (including any electronic road show), or (iii) any free writing prospectus prepared by such underwriter and approved by the Company in advance in writing (each such free writing prospectus referred to in clauses (i) or (iii), an “Underwriter Free Writing Prospectus”).

- (b) Notwithstanding the foregoing, the Underwriters may use a term sheet substantially in the form of Schedule IV to the Pricing Agreement for the Designated Securities without the consent of the Company.
- (c) It is not subject to any pending proceeding under Section 8A of the Act with respect to the offering of the Designated Securities (and will promptly notify the Company if any such proceeding against it is initiated during any period when a prospectus is required to be delivered in connection with the Designated Securities).

7. The Company covenants and agrees with the several Underwriters that the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company’s counsel and accountants in connection with the registration of the Securities under the Act and all other expenses in connection with the preparation, printing and filing of the Registration Statement, any Preliminary Prospectus, any Issuer Free Writing Prospectus, any Time of Sale Information and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the cost of printing or producing any Agreement among Underwriters, this Agreement, any Pricing Agreement, any Indenture, any Blue Sky and Legal Investment Memoranda and any other documents in connection with the offering, purchase, sale and delivery of the Securities; (iii) all expenses in connection with the qualification of the Securities for offering and

sale under state securities laws as provided in Section 5(b) hereof, including the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky and legal investment surveys; (iv) any fees charged by securities rating services for rating the Securities; (v) any filing fees incident to securing any required review by the Financial Industry Regulatory Authority, Inc. of the terms of the sale of the Securities; (vi) the cost of preparing the Securities; (vii) the fees and expenses of any Trustee and any agent of any Trustee and the fees and disbursements of counsel for any Trustee in connection with any Indenture and the Securities; (viii) the fees and disbursements of counsel for the Underwriters to the extent they exceed such amount as may be specified in the Pricing Agreements and (ix) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that, except as provided in this Section, Section 9 and Section 12 hereof, the Underwriters will pay all of their own costs and expenses, including, but not limited to, the fees and disbursements of their counsel up to such amount as may be specified in the Pricing Agreements,

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transfer taxes on resale of any of the Securities by them, and any advertising expenses connected with any offers they may make.

8. The obligations of the Underwriters of any Designated Securities under the Pricing Agreement relating to such Designated Securities shall be subject, in the discretion of the Representatives, to the condition that all representations and warranties and other statements of the Company in or incorporated by reference in the Pricing Agreement relating to such Designated Securities are, at and as of the Time of Delivery for such Designated Securities, true and correct, the condition that the Company shall have performed all of its obligations hereunder theretofore to be performed, and the following additional conditions:

- (a) The Prospectus as amended or supplemented in relation to the applicable Designated Securities shall have been filed with the Commission pursuant to Rule 424(b) within the applicable time period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 5 (a) hereof; each Issuer Free Writing Prospectus shall have been filed with the Commission to the extent required by Rule 433 under the Act; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose or pursuant to Section 8A under the Act shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to the Representatives' reasonable satisfaction;
- (b) Counsel for the Underwriters shall have furnished to the Representatives such opinion or opinions, dated the Time of Delivery for such Designated Securities, with respect to the incorporation of the Company, the validity of the Indenture, the Designated Securities, the Registration Statement, the Prospectus as amended or supplemented and other related matters as the Representatives may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters;
- (c) Christine Wheatley, Group Vice President, Secretary and General Counsel of the Company, shall have furnished to the Representatives her written opinion, dated the Time of Delivery for such Designated Securities, in form and substance satisfactory to the Representatives, to the effect that:
 - (i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of Ohio, with corporate power and authority to own its properties and conduct its business as described in the Time of Sale Information and the Prospectus as amended or supplemented;

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- (ii) The Company has an authorized capitalization as set forth in the Time of Sale Information and the Prospectus as amended or supplemented, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable;

- (iii) The Company has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties, or conducts any business, so as to require such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction (such counsel being entitled to rely in respect of the opinion in this clause upon opinions of local counsel and in respect of matters of fact upon certificates of officers of the Company, provided that such counsel shall state that she believes that both the Underwriters and she are justified in relying upon such opinions and certificates);

- (iv) Each subsidiary of the Company, with respect to which the Company owns, directly or indirectly, an equity interest of more than 50% (each a "subsidiary"), has been duly incorporated and is validly existing as a corporation, a limited liability company or a limited partnership, as the case may be, in good standing under the laws of its jurisdiction of incorporation, or is subject to no material liability or disability by reason of the failure to be in good standing in any such jurisdiction; and all of the issued shares of capital stock of each such subsidiary have been duly and validly authorized and issued, are fully paid and non-assessable, and (except for directors' qualifying shares) are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, other than as described in the Prospectus (such counsel being entitled to rely in respect of the opinion in this clause upon opinions of local counsel and in respect of matters of fact upon certificates of officers of the Company, provided that such counsel shall state that she believes that both the Underwriters and she are justified in relying upon such opinions and certificates);

(v) The Company and its subsidiaries have good and marketable title in fee simple to all real property owned by them, in each case free and clear of all liens, encumbrances and defects except such as are described in the Time of Sale Information and the Prospectus or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries (in

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giving the opinion in this clause, such counsel may state that no examination of record titles for the purpose of such opinion has been made, and that she is relying upon a general review of the titles of the Company and its subsidiaries, upon opinions of local counsel and abstracts, reports and policies of title companies rendered or issued at or subsequent to the time of acquisition of such property by the Company or its subsidiaries, upon opinions of counsel to the lessors of such property and, in respect of matters of fact, upon certificates of officers of the Company or its subsidiaries, provided that such counsel shall state that she believes that both the Underwriters and she are justified in relying upon such opinions, abstracts, reports, policies and certificates);

(vi) To the best of such counsel's knowledge and other than as set forth in the Time of Sale Information and the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property of the Company or any of its subsidiaries is the subject with respect to which there is a reasonable likelihood of determinations which would individually or in the aggregate have a material adverse effect on the consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries; and, to the best of such counsel's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(vii) This Agreement and the Pricing Agreement with respect to the Designated Securities have been duly authorized, executed and delivered by the Company;

(viii) The Designated Securities have been duly authorized, executed, authenticated, issued and delivered, and the Designated Securities (assuming that (i) the Trustee has all requisite power and authority to perform its obligations under the Indenture and has made all necessary filings and received all necessary consents, (ii) the Indenture has been duly authorized, executed and delivered by the Trustee and (iii) the Trustee's certificates of authentication have been manually executed by an authorized officer of the Trustee) constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and are entitled to the benefits of the Indenture, except that (a) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium, or other laws now or hereafter in effect affecting creditors' rights generally, and (b) the enforceability thereof is subject to the general principles of equity (whether such enforceability is considered in a proceeding in equity or at law); provided, however, that such counsel need express no opinion as to the application or effect of any applicable fraudulent conveyance, fraudulent transfer, fraudulent obligation or preferential transfer laws or

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any laws governing the distribution of assets of the Company to its stockholders; and the terms of the Designated Securities and the Indenture conform in all material respects to the descriptions thereof in the Time of Sale Information and the Prospectus as amended or supplemented;

(ix) The Indenture (i) has been duly authorized, executed and delivered by the Company and (ii) (assuming that (a) the Trustee has all requisite power and authority to perform its obligations under the Indenture and has made all necessary filings and received all necessary consents, and (b) the Indenture has been duly authorized, executed and delivered by the Trustee) constitutes a valid and binding instrument of the Company, enforceable in accordance with its terms, except (a) that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium, or other laws now or hereafter in effect affecting creditors' rights generally, and (b) that the enforceability thereof is subject to general principles of equity (whether such enforceability is considered in a proceeding in equity or at law); *provided, however*, that such counsel need express no opinion as to the application or effect of any applicable fraudulent conveyance, fraudulent transfer, fraudulent obligation or preferential transfer laws or any laws governing the distribution of assets of the Company to its stockholders; and the Indenture has been duly qualified under the Trust Indenture Act;

(x) The issuance and sale of the Designated Securities and the compliance by the Company with all of the provisions of the Designated Securities, the Indenture, this Agreement and the Pricing Agreement with respect to the Designated Securities and the consummation of the transactions herein and therein contemplated, to the best of such counsel's knowledge, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, nor will such actions result in any violation of the provisions of the Articles of Incorporation, as amended, or the Regulations of the Company or any statute of the United States of America or of Ohio or any other statute known to such counsel or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties; *provided, however*, that such counsel need express no opinion as to the application or effect of any applicable fraudulent conveyance, fraudulent transfer, fraudulent

transfer laws or any laws governing the distribution of assets of the Company to its stockholders;

(xi) To the best of such counsel's knowledge, no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issuance and sale of the Designated Securities or the consummation of the other transactions contemplated by this Agreement or such Pricing Agreement or the Indenture, except such as have been obtained under the Act and the Trust Indenture Act and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Designated Securities by the Underwriters and as may be required due to the Underwriters' or the Trustees' legal or regulatory status;

(xii) The Company is not subject to regulation under the Investment Company Act of 1940, as amended;

(xiii) The documents incorporated by reference in the Time of Sale Information and the Prospectus as amended or supplemented (other than (a) the financial statements, notes and schedules thereto included or incorporated by reference therein and (b) other financial and statistical information included or incorporated by reference therein, as to all of which such counsel need express no opinion), when they became effective or were filed with the Commission, as the case may be, complied as to form in all material respects with the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder; and such counsel has no reason to believe that any of such documents, when they became effective or were so filed, as the case may be, contained, in the case of a registration statement which became effective under the Act, an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of other documents which were filed under the Act or the Exchange Act with the Commission, an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such documents were so filed, not misleading; and

(xiv) The Registration Statement, the Preliminary Prospectus with respect to the Designated Securities, each Issuer Free Writing Prospectus included in the Time of Sale Information and the Prospectus as amended or supplemented and any further amendments and supplements thereto made by the Company prior to the Time of Delivery for the Designated Securities (other than (a) the financial statements, notes and schedules thereto included or incorporated by reference

therein, (b) other financial and statistical information included or incorporated by reference therein or (c) the Form T-1 filed as exhibits to the Registration Statement, as to all of which such counsel need express no opinion) comply as to form in all material respects with the requirements of the Act and the Trust Indenture Act and the rules and regulations thereunder; such counsel has no reason to believe (A) that, as of its effective date, the Registration Statement or any further amendment thereto made by the Company prior to the Time of Delivery, including the information, if any, deemed pursuant to Rules 430A, 430B or 430C to be part of the Registration Statement at its effective time (other than (a) the financial statements, notes and schedules thereto included or incorporated by reference therein, (b) other financial and statistical information included or incorporated by reference therein or (c) the Form T-1 filed as exhibits to the Registration Statement, as to all of which such counsel need express no opinion) contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (B) that, at the Time of Sale (which such counsel may assume to be the date of the Pricing Agreement), the Time of Sale Information (other than (a) the financial statements, notes and schedules thereto included or incorporated by reference therein, (b) other financial and statistical information included or incorporated by reference therein or (c) the Form T-1 filed as exhibits to the Registration Statement, as to all of which such counsel need express no opinion) contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading, (C) that, as of its date, the Prospectus as amended or supplemented or any further amendment or supplement thereto made by the Company prior to the Time of Delivery (other than (a) the financial statements, notes and schedules thereto included or incorporated by reference therein, (b) other financial and statistical information included or incorporated by reference therein or (c) the Form T-1 filed as exhibits to the Registration Statement, as to all of which such counsel need express no opinion) contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading or (D) that, as of the Time of Delivery, either the Registration Statement or the Prospectus as amended or supplemented or any further amendment or supplement thereto made by the Company prior to the Time of Delivery (other than (a) the financial statements, notes and schedules thereto included or incorporated by reference therein, (b) other financial and statistical information included or incorporated by reference therein or (c) the Form T-1 filed as exhibits to the Registration Statement, as to all of which such counsel need express no opinion) contains an untrue statement of a material fact or omits to state a material fact necessary to

make the statements therein, in the light of the circumstances in which they were made, not misleading; and such counsel does not know of any amendment to the Registration Statement required to be filed or any contracts or other documents of a character required to be filed as an exhibit to the Registration Statement or required to be incorporated by reference into the Prospectus as amended or supplemented or required to be described in the Registration Statement, the Time of Sale Information or the Prospectus as amended or supplemented which are not filed or incorporated by reference or described as required;

- (d) At the Time of Delivery for such Designated Securities, the independent accountants of the Company who have audited the financial statements of the Company and its subsidiaries included or incorporated by reference in the Registration Statement shall have furnished to the Representatives a letter, dated the date of delivery of such letter, to the effect set forth in Annex II hereto, in form and substance satisfactory to the Representatives;
- (e) The Company shall have furnished to the Representatives a certificate of the Chief Financial Officer in a form mutually agreed upon;
- (f) (i) Neither the Company nor any of its subsidiaries shall have sustained since the date of the latest audited financial statements included or incorporated by reference in the Time of Sale Information and the Prospectus as amended or supplemented any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Time of Sale Information and the Prospectus as amended or supplemented, and (ii) since the respective dates as of which information is given in the Time of Sale Information and the Prospectus as amended or supplemented there shall not have been any change in the capital stock or long-term debt of the Company and its subsidiaries or any change, or any development involving a prospective change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, otherwise than as set forth or contemplated in the Time of Sale Information and the Prospectus as amended or supplemented, the effect of which, in any such case described in Clause (i) or (ii), is in the judgment of the Representatives so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Designated Securities on the terms and in the manner contemplated in the Time of Sale Information and the Prospectus as amended or supplemented;

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- (g) On or after the earlier of (A) the Time of Sale relating to the Designated Securities and (B) the date of the Pricing Agreement, (i) no downgrading shall have occurred in the rating accorded the debt securities of the Company and its subsidiaries by any "nationally recognized statistical rating organization," as that term is defined in Section 3(a)(62) of the Exchange Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the debt securities of the Company and its subsidiaries;
- (h) On or after the earlier of (A) the Time of Sale relating to the Designated Securities and (B) the date of the Pricing Agreement there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange; (ii) a general moratorium on commercial banking activities in New York declared by either Federal or New York State authorities; or (iii) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war, if the effect of any such event specified in this Clause (iii) in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Designated Securities on the terms and in the manner contemplated by the Time of Sale Information and the Prospectus as amended and supplemented; and
- (i) The Company shall have furnished or caused to be furnished to the Representatives at the Time of Delivery for the Designated Securities a certificate or certificates of officers of the Company satisfactory to the Representatives as to the accuracy of the representations and warranties of the Company herein at and as of such Time of Delivery, as to the performance by the Company of all of its obligations hereunder to be performed at or prior to such Time of Delivery, as to the matters set forth in subsections (a) and (f) of this Section and as to such other matters as the Representatives may reasonably request.

9. (a) The Company will indemnify and hold harmless each Underwriter, the directors, officers, employees, affiliates and agents of each Underwriter and each person who controls any Underwriter within the meaning of either the Act or the Exchange Act against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading or (ii) an untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Preliminary Prospectus, any preliminary prospectus supplement related to

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the Designated Securities, any Issuer Free Writing Prospectus, any Time of Sale Information or any other prospectus relating to the Securities, or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and in either case (i) or (ii) will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such action or claim; *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or

alleged untrue statement or omission or alleged omission in the Registration Statement, any Preliminary Prospectus, any preliminary prospectus supplement related to the Designated Securities, the Prospectus, or any amendment or supplement thereto, any Time of Sale Information, any Issuer Free Writing Prospectus or any other prospectus relating to the Securities in reliance upon and in conformity with written information furnished to the Company by any Underwriter of Designated Securities through the Representatives expressly for use therein;

(b) Each Underwriter, severally and not jointly, will indemnify and hold harmless the Company, each of its directors, each of its officers, and each person who controls the Company within the meaning of either the Act or the Exchange Act against any losses, claims, damages or liabilities to which the Company may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, any preliminary prospectus supplement related to the Designated Securities, the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus, any Time of Sale Information, or any other prospectus relating to the Securities, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made (other than in the case of the Registration Statement), not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, any preliminary prospectus supplement related to the Designated Securities, the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus, any Time of Sale Information, or any other prospectus relating to the Securities, in each case in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives expressly for use therein; and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim;

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the

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omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation.

(d) If the indemnification provided for in this Section 9 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters of the Designated Securities on the other from the offering of the Designated Securities to which such loss, claim, damage or liability (or action in respect thereof) relates. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (c) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Underwriters of the Designated Securities on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and such Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from such offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by such Underwriters, in each case as set forth in the table on the cover page of the Prospectus as amended or supplemented to relate to a particular offering of Designated Securities. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or such Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does

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not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the applicable Designated Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The obligations of the Underwriters of Designated Securities in this subsection (d) to contribute are several in proportion to their respective underwriting obligations with respect to such Securities and not joint.

(e) The obligations of the Company under this Section 9 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the Act; and the obligations of the Underwriters under this Section 9 shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company within the meaning of the Act.

10. (a) If any Underwriter shall default in its obligation to purchase the Designated Securities which it has agreed to purchase under the Pricing Agreement relating to such Designated Securities, the Representatives may in their discretion arrange for themselves or another party or other parties to purchase such Designated Securities on the terms contained herein. If within thirty-six hours after such default by any Underwriter the Representatives do not arrange for the purchase of such Designated Securities, then the Company shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to the Representatives to purchase such Designated Securities on such terms. In the event that, within the respective prescribed period, the Representatives notify the Company that they have so arranged for the purchase of such Designated Securities, or the Company notifies the Representatives that it has so arranged for the purchase of such Designated Securities, the Representatives or the Company shall have the right to postpone the Time of Delivery for such Designated Securities for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus as amended or supplemented, or in any other documents or arrangements, and the Company agrees to file promptly any amendments or supplements to the Registration Statement or the Prospectus which in the opinion of the Representatives may thereby be made necessary. The term

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“Underwriter” as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to the Pricing Agreement with respect to such Designated Securities.

(b) If, after giving effect to any arrangements for the purchase of the Designated Securities of a defaulting Underwriter or Underwriters by the Representatives and the Company as provided in subsection (a) above, the aggregate principal amount of such Designated Securities which remains unpurchased does not exceed one-eleventh of the aggregate principal amount of the Designated Securities, then the Company shall have the right to require each non-defaulting Underwriter to purchase the principal amount of Designated Securities which such Underwriter agreed to purchase under the Pricing Agreement relating to such Designated Securities and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the principal amount of Designated Securities which such Underwriter agreed to purchase under such Pricing Agreement) of the Designated Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Designated Securities of a defaulting Underwriter or Underwriters by the Representatives and the Company as provided in subsection (a) above, the aggregate principal amount of Designated Securities which remains unpurchased exceeds one-eleventh of the aggregate principal amount of the Designated Securities, as referred to in subsection (b) above, or if the Company shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Designated Securities of a defaulting Underwriter or Underwriters, then the Pricing Agreement relating to such Designated Securities shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Company, except for the expenses to be borne by the Company and the Underwriters as provided in Section 7 hereof and the indemnity and contribution agreements in Section 9 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

11. The respective indemnities, agreements, representations, warranties and other statements of the Company and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Company, or any officer or director or controlling person of the Company, and shall survive delivery of and payment for the Securities.

12. If any Pricing Agreement shall be terminated pursuant to Section 10 hereof, the Company shall not then be under any liability to any Underwriter with respect to the Designated Securities covered by such Pricing Agreement except as provided in Section 7 and Section 9 hereof; but, if for any other reason Designated Securities are not delivered by or on behalf of the Company as provided herein, the Company will

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reimburse the Underwriters through the Representatives for all out-of-pocket expenses approved in writing by the Representatives, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of such Designated Securities, but the Company shall then be under no further liability to any Underwriter with respect to such Designated Securities except as provided in Section 7 and Section 9 hereof.

13. In all dealings hereunder, the Representatives of the Underwriters of Designated Securities shall act on behalf of each of such Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by such Representatives jointly or by such of the Representatives, if any, as may be designated for such purpose in the Pricing Agreement.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or facsimile transmission to the address of the Representatives as set forth in the Pricing Agreement; and if to the Company shall be

delivered or sent by mail, telex or facsimile transmission to the address of the Company set forth in the Registration Statement: Attention: Secretary; *provided, however*, that any notice to an Underwriter pursuant to Section 9(c) hereof shall be delivered or sent by mail, telex or facsimile transmission to such Underwriter at its address set forth in its Underwriters' Questionnaire, or telex constituting such Questionnaire, which address will be supplied to the Company by the Representatives upon request. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

14. This Agreement and each Pricing Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Company and, to the extent provided in Section 9 and Section 11 hereof, the officers and directors of the Company and each person who controls the Company or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement or any such Pricing Agreement. No purchaser of any of the Securities from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

15. Time shall be of the essence of each Pricing Agreement. As used herein, "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

16. **This Agreement and each Pricing Agreement shall be governed by and construed in accordance with the laws of the State of New York.**

17. The Company and each Underwriter hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

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18. This Agreement and each Pricing Agreement may be executed by any one or more of the parties hereto and thereto in any number of counterparts, each of which shall be deemed to be an original, but all such respective counterparts shall together constitute one and the same instrument.

19. The Company acknowledges and agrees that the Underwriters named in the Pricing Agreement are acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to any offering of Designated Securities contemplated thereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person. Additionally, no such Underwriter is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and such Underwriters shall have no responsibility or liability to the Company with respect thereto. Any review by such Underwriters named in the Pricing Agreement of the Company, the transactions contemplated thereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Company.

20. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

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Very Truly Yours,

THE KROGER CO.

By: /s/ Christine Wheatley

Name: Christine Wheatley

Title: Group Vice President, Secretary and General Counsel

[Signature Page to Underwriting Agreement]

ANNEX I

Pricing Agreement

[Name(s) of Co-Representative(s)]

As Representatives of the several

Underwriters named in Schedule I hereto,

Dear Sirs:

The Kroger Co., an Ohio corporation (the "Company"), proposes, subject to the terms and conditions stated herein and in the Underwriting Agreement, dated _____, (the "Underwriting Agreement"), to issue and sell to the Underwriters named in Schedule I hereto (the "Underwriters") the Securities specified in Schedule II hereto (the "Designated Securities"). Each of the provisions of the Underwriting Agreement is incorporated herein by reference in its entirety, and shall be deemed to be a part of this Pricing Agreement to the same extent as if such provisions had been set forth in full herein; and each of the representations and warranties set forth therein shall be deemed to have been made at and as of the date of this Pricing Agreement, except that each representation and warranty which refers to the Prospectus in Section 2 of the Underwriting Agreement shall be deemed to be a representation or warranty as of the date of the Underwriting Agreement in relation to the Prospectus (as therein defined), and also a representation and warranty as of the date of this Pricing Agreement in relation to the Prospectus as amended or supplemented relating to the Designated Securities which are the subject of this Pricing Agreement. Each reference to the Representatives herein and in the provisions of the Underwriting Agreement so incorporated by reference shall be deemed to refer to you. Unless otherwise defined herein, terms defined in the Underwriting Agreement are used herein as therein defined. The Representatives designated to act on behalf of each of the Underwriters of the Designated Securities pursuant to Section 13 of the Underwriting Agreement and the address of the Representatives referred to in such Section 13 are set forth at the end of Schedule II hereto.

An amendment to the Registration Statement, or a supplement to the Prospectus, as the case may be, relating to the Designated Securities, in the form heretofore delivered to you is now proposed to be filed with the Commission.

Subject to the terms and conditions set forth herein and in the Underwriting Agreement incorporated herein by reference, the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly,

to purchase from the Company, at the time and place and at the purchase price to the Underwriters set forth in Schedule II hereto, the principal amount of Designated Securities set forth opposite the name of such Underwriter in Schedule I hereto.

The Company understands that the Underwriters intend to make a public offering of the Securities as soon after the effectiveness of this Pricing Agreement as in the judgment of the Representatives is advisable, and initially to offer the Securities on the terms set forth in the Time of Sale information and the Prospectus. Schedule III hereto sets forth the Time of Sale Information made available at the Time of Sale.

If the foregoing is in accordance with your understanding, please sign and return to us counterparts hereof, and upon acceptance hereof by you, on behalf of each of the Underwriters, this letter and such acceptance hereof, including the provisions of the Underwriting Agreement incorporated herein by reference, shall constitute a binding agreement between each of the Underwriters and the Company. It is understood that your acceptance of this letter on behalf of each of the Underwriters is or will be pursuant to the authority set forth in a form of Agreement among Underwriters, the form of which shall be submitted to the Company for examination upon request, but without warranty on the part of the Representatives as to the authority of the signers thereof.

Very Truly Yours,

THE KROGER CO.

Attest:

By: _____

Name:

Title:

Accepted as of the date hereof:

[Name(s) of Co-Representative(s)]

On behalf of each of the Underwriters

SCHEDULE I

Principal
Amount of
Designated

Underwriter	Securities to be Purchased
[Name(s) of Co-Representative(s)]	\$
[Names of other Underwriters]	
Total	\$

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SCHEDULE II

Title of Designated Securities:

[%] [Floating Rate] [Zero Coupon] [Notes]

[Debentures] due

Aggregate principal amount:

[\$]

Price to Public:

from [] to [] % of the principal amount of the Designated Securities, plus accrued interest from [] to [] [and accrued amortization, if any,

Purchase Price by Underwriters:

from [] to [] % of the principal amount of the Designated Securities, plus accrued interest from [] to [] [and accrued amortization, if any,

Specified funds for payment of purchase price:

[New York] Clearing House funds

Indenture:

Indenture dated [], 20 [], between the Company and, [] as Trustee

Maturity:

Interest Rate:

[%] [Zero Coupon] [See Floating Rate Provisions]

Interest Payment Dates:

[months and dates]

Redemption Provisions:

[No provisions for redemption]

[The Designated Securities may be redeemed, otherwise than through the sinking fund, in whole or in part at the option of the Company, in the amount of [\$] [] or an integral multiple thereof,

[on or after [], at the following redemption prices (expressed in percentages of principal amount). If [redeemed on or before [], []%, and if] redeemed during the 12-month period beginning [],

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Redemption	Year	Price

and thereafter at 100% of their principal amount, together in each case with accrued interest to the redemption date.]

[on any interest payment date falling in or after _____, _____ at the election of the Company, at a redemption price equal to the principal amount thereof, plus accrued interest to the date of redemption.]

[Other possible redemption provisions, such as mandatory redemption upon occurrence of certain events or redemption for changes in tax law]

[Restriction on refunding]

Sinking Fund Provisions:

[No sinking fund provisions]

[The Designated Securities are entitled to the benefit of a sinking fund to retire [\$] principal amount of Designated Securities on _____ in each of the years through _____ at 100% of their principal amount plus accrued interest] [together with [cumulative] [noncumulative] redemptions at the option of the Company to retire an additional [\$] _____ principal amount of Designated Securities in the years _____ through _____ at 100% of their principal amount plus accrued interest].

[If Securities are extendable debt Securities, insert —

Extendable provisions:

Securities are repayable on _____, [insert date and years], at the option of the holder, at their principal amount with accrued interest. Initial annual interest rate will be _____%, and thereafter annual interest rate will be adjusted on _____, and to a rate not less than _____% of the effective annual interest rate on U.S. Treasury obligations with _____-year maturities as of the [insert date 15 days prior to maturity date] prior to such [insert maturity date].]

[If Securities are Floating Rate debt Securities, insert —

Floating rate provisions:

Initial annual interest rate will be _____% through _____ [and thereafter will be adjusted [monthly] [on each _____, _____, and _____] [to an annual rate of _____% above the average rate for _____-year [month] [securities] [certificates of deposit] issued by _____ and _____ [insert names of banks].] [and the annual interest rate [thereafter] [from _____ through _____] will be the interest yield equivalent of the weekly average per annum market discount rate for _____-month Treasury bills plus _____% of Interest

Differential (the excess, if any, of (i) then current weekly average per annum secondary market yield for _____-month certificates of deposit over (ii) then current interest yield equivalent of the weekly average per annum market discount rate for _____-month Treasury bills); [from _____ and thereafter the rate will be the then current interest yield equivalent plus _____% of Interest Differential].]

Defeasance provisions:

Time of Delivery:

Closing Location:

Names and addresses of Representatives:

Designated Representatives:

Address for Notices, etc.:

[Other Terms]:

Schedule III

Time of Sale Information

Schedule IV

Pricing Term Sheet

The Kroger Co.

Pricing Term Sheet

% Notes due

Issuer:	The Kroger Co.
Principal Amount:	\$
Security Type:	Senior Note
Maturity:	, 20
Coupon:	%
Price to Public:	%
Yield to Maturity:	%
Spread to Benchmark Treasury:	%
Benchmark Treasury:	
Benchmark Treasury Spot and Yield:	%
Interest Payment Dates:	and , commencing 2017
Make-Whole Call:	Treasury Rate plus basis points
Trade Date:	, 2017
Settlement Date:	, 2017
Denominations:	\$2,000 x \$1,000
Ratings:	
Joint Bookrunners:	Merrill Lynch, Pierce, Fenner & Smith Incorporated RBC Capital Markets, LLC U.S. Bancorp Investments, Inc. Citigroup Global Markets Inc. Mizuho Securities USA Inc. MUFG Securities Americas Inc.
Co-Managers:	BB&T Capital Markets, a division of BB&T Securities, LLC BNY Mellon Capital Markets, LLC Fifth Third Securities, Inc. Goldman, Sachs & Co.

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PNC Capital Markets LLC
Santander Investment Securities Inc.
Wells Fargo Securities, LLC
Drexel Hamilton, LLC

The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling Merrill Lynch, Pierce, Fenner & Smith Incorporated toll-free at 1-800-294-1322, RBC Capital Markets, LLC toll-free at 1-866-375-6829, or U.S. Bancorp Investments, Inc. toll-free at 1-877-558-2607.

Any disclaimer or other notice that may appear below is not applicable to this communication and should be disregarded. Such disclaimer or notice was automatically generated as a result of this communication being sent by Bloomberg or another email system.

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ANNEX II

Pursuant to Section 8(d) of the Underwriting Agreement, the accountants shall furnish letters to the Underwriters to the effect that:

- (i) They are independent certified public accountants with respect to the Company and its subsidiaries within the meaning of the Act and the applicable published rules and regulations thereunder;
- (ii) In their opinion, the financial statements and any supplementary financial information and schedules audited (and, if applicable, prospective financial statements and/or pro forma financial information examined) by them and included or incorporated by

reference in the Registration Statement or the Prospectus comply as to form in all material respects with the applicable accounting requirements of the Act or the Exchange Act, as applicable, and the related published rules and regulations thereunder; and, if applicable, they have made a review in accordance with standards established by the Public Company Accounting Oversight Board of the consolidated interim financial statements, selected financial data, pro forma financial information, prospective financial statements and/or condensed financial statements derived from audited financial statements of the Company for the periods specified in such letter, as indicated in their reports thereon, copies of which have been furnished to the representatives of the Underwriters (the “Representatives”);

(iii) The unaudited selected financial information with respect to the consolidated results of operations and financial position of the Company for the five most recent fiscal years included in the Prospectus and included or incorporated by reference in Item 6 of the Company’s Annual Report on Form 10-K for the most recent fiscal year agrees with the corresponding amounts (after restatement where applicable) in the audited consolidated financial statements for five such fiscal years which were included or incorporated by reference in the Company’s Annual Reports on Form 10-K for such fiscal years;

(iv) On the basis of limited procedures, not constituting an audit in accordance with generally accepted auditing standards, consisting of a reading of the unaudited financial statements and other information referred to below, a reading of the latest available interim financial statements of the Company and its subsidiaries, inspection of the minute books of the Company and its subsidiaries since the date of the latest audited financial statements included or incorporated by reference in the Prospectus, inquiries of officials of the Company and its subsidiaries responsible for financial and accounting matters and such other inquiries and procedures as may be specified in such letter, nothing came to their attention that caused them to believe that:

(A) the unaudited financial statements included or incorporated by reference in the Company’s Quarterly Reports on Form 10-Q incorporated by reference in the Prospectus do not comply as to form in

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all material respects with the applicable accounting requirements of the Exchange Act as it applies to Form 10-Q and the related published rules and regulations thereunder or are not in conformity with generally accepted accounting principles applied on a basis substantially consistent with the basis for the audited financial statements included or incorporated by reference in the Company’s Annual Report on Form 10-K for the most recent fiscal year;

(B) any other unaudited income statement data and balance sheet items included in the Prospectus do not agree with the corresponding items in the unaudited consolidated financial statements from which such data and items were derived, and any such unaudited data and items were not determined on a basis substantially consistent with the basis for the corresponding amounts in the audited consolidated financial statements included or incorporated by reference in the Company’s Annual Report on Form 10-K for the most recent fiscal year;

(C) the unaudited financial statements which were not included in the Prospectus but from which were derived the unaudited condensed financial statements referred to in clause (A) and any unaudited income statement data and balance sheet items included in the Prospectus and referred to in Clause (B) were not determined on a basis substantially consistent with the basis for the audited financial statements included or incorporated by reference in the Company’s Annual Report on Form 10-K for the most recent fiscal year;

(D) any unaudited pro forma consolidated condensed financial statements included or incorporated by reference in the Prospectus do not comply as to form in all material respects with the applicable accounting requirements of the Act and the published rules and regulations thereunder or the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements;

(E) as of a specified date not more than five days prior to the date of such letter, there have been any changes in the consolidated capital stock (other than issuances of capital stock upon exercise of options and stock appreciation rights, upon earn-outs of performance shares and upon conversions of convertible securities, in each case which were outstanding on the date of the latest balance sheet included or incorporated by reference in the Prospectus, and sales of capital stock to employee benefit plans of the Company) or any increase in the consolidated long-term debt of the Company and its subsidiaries, or any decreases in consolidated net current assets or net assets or other items specified by the Representatives, or any increases in any items specified by the Representatives, in each case as compared with amounts shown

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in the latest balance sheet included or incorporated by reference in the Prospectus, except in each case for changes, increases or decreases which the Prospectus discloses have occurred or may occur or which are described in such letter; and

(F) for the period from the date of the latest financial statements included or incorporated by reference in the Prospectus to the specified date referred to in Clause (E) there were any decreases in consolidated net revenues or operating profit or the total or per share amounts of consolidated net income or other items specified by the Representatives, or any increases in any items specified by the Representatives, in each case as compared with the comparable period of the preceding year and with any other period of corresponding length specified by the Representatives, except in each case for increases or decreases which the Prospectus discloses have occurred or may occur or which are described in such letter; and

(v) In addition to the audit referred to in their report(s) included or incorporated by reference in the Prospectus and the limited procedures, inspection of minute books, inquiries and other procedures referred to in paragraphs (iii) and (iv) above, they have carried out certain specified procedures, not constituting an audit in accordance with generally accepted auditing standards, with respect to certain amounts, percentages and financial information specified by the Representatives, which are derived from the general accounting records of the Company and its subsidiaries, which appear in the Prospectus (excluding documents incorporated by reference), or in Part II of, or in exhibits and schedules to, the Registration Statement specified by the Representatives or in documents incorporated by reference in the Prospectus specified by the Representatives, and have compared certain of such amounts, percentages and financial information with the accounting records of the Company and its subsidiaries and have found them to be in agreement.

All references in this Annex II to the Prospectus shall be deemed to refer to the Prospectus (including the documents incorporated by reference therein) as defined in the Underwriting Agreement as of the date of the letter delivered on the date of the Pricing Agreement for purposes of such letter and to the Prospectus as amended or supplemented (including the documents incorporated by reference therein) in relation to the applicable Designated Securities for purposes of the letter delivered at the Time of Delivery for such Designated Securities.

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Section 3: EX-1.1.1 (EX-1.1.1)

Exhibit 1.1.1

Pricing Agreement

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
RBC Capital Markets, LLC
U.S. Bancorp Investments, Inc.
As Representatives of the several
Underwriters named in Schedule I hereto.

January 17, 2017

Ladies and Gentlemen:

The Kroger Co., an Ohio corporation (the “Company”), proposes, subject to the terms and conditions stated herein and in the Underwriting Agreement, dated January 17, 2017 (the “Underwriting Agreement”), to issue and sell to the Underwriters named in Schedule I hereto (the “Underwriters”) the Securities (the “Designated Securities”) specified in Schedule II hereto. Each of the provisions of the Underwriting Agreement is incorporated herein by reference in its entirety, and shall be deemed to be a part of this Pricing Agreement to the same extent as if such provisions had been set forth in full herein; and each of the representations and warranties set forth therein shall be deemed to have been made at and as of the date of this Pricing Agreement, except that each representation and warranty which refers to the Prospectus in Section 2 of the Underwriting Agreement shall be deemed to be a representation or warranty as of the date of the Underwriting Agreement in relation to the Prospectus (as therein defined), and also a representation and warranty as of the date of this Pricing Agreement in relation to the Prospectus as amended or supplemented relating to the Designated Securities. Each reference to the Representatives herein and in the provisions of the Underwriting Agreement so incorporated by reference shall be deemed to refer to you. Unless otherwise defined herein, terms defined in the Underwriting Agreement are used herein as therein defined. The Representatives designated to act on behalf of each of the Underwriters of the Designated Securities pursuant to Section 13 of the Underwriting Agreement and the address of the Representatives referred to in such Section 13 are set forth at the end of Schedule II hereto.

An amendment to the Registration Statement, or a supplement to the Prospectus, as the case may be, relating to the Designated Securities, in the form heretofore delivered to you is now proposed to be filed with the Commission.

Subject to the terms and conditions set forth herein and in the Underwriting Agreement incorporated herein by reference, the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at the time and place and at the purchase price to the Underwriters, and under other terms and conditions set forth in Schedule II hereto,

the principal amount of Designated Securities set forth opposite the name of such Underwriter in Schedule I hereto.

The Company understands that the Underwriters intend to make a public offering of the Securities as soon after the effectiveness of this Pricing Agreement as in the judgment of the Representatives is advisable, and initially to offer the Securities on the terms set forth in the Time of Sale Information and the Prospectus. Schedule III hereto sets forth the Time of Sale Information made available at the Time of Sale.

If the foregoing is in accordance with your understanding, please sign and return to us three counterparts hereof, and upon

acceptance hereof by you, on behalf of each of the Underwriters, this letter and such acceptance hereof, including the provisions of the Underwriting Agreement incorporated herein by reference, shall constitute a binding agreement between each of the Underwriters and the Company. It is understood that your acceptance of this letter on behalf of each of the Underwriters is or will be pursuant to the authority set forth in a form of Agreement among Underwriters, the form of which shall be submitted to the Company for examination upon request, but without warranty on the part of the Representatives as to the authority of the signers thereof.

Very Truly Yours,

THE KROGER CO.

By: /s/ Christine Wheatley

Name: Christine Wheatley

Title: Group Vice President, Secretary and General Counsel

[Signature Page to Pricing Agreement]

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
RBC Capital Markets, LLC
U.S. Bancorp Investments, Inc.
and the additional Underwriters named on Schedule I to this Pricing Agreement

By: Merrill Lynch, Pierce, Fenner & Smith
Incorporated

By: /s/ Happy Hazelton

Name: Happy Hazelton
Title: Managing Director

By: RBC Capital Markets, LLC

By: /s/ Scott G. Primrose

Name: Scott G. Primrose
Title: Authorized Signatory

By: U.S. Bancorp Investments, Inc.

By: /s/ Douglas J. Fink

Name: Douglas J. Fink
Title: Managing Director

On behalf of each of the Underwriters

[Signature Page to Pricing Agreement]

SCHEDULE I

Underwriter	Principal Amount of Senior Notes To Be Purchased
Merrill Lynch, Pierce, Fenner & Smith Incorporated	\$ 150,000,000
RBC Capital Markets, LLC	150,000,000
U.S. Bancorp Investments, Inc.	150,000,000
Citigroup Global Markets Inc.	70,000,000

Mizuho Securities USA Inc.	70,000,000
MUFG Securities Americas Inc.	70,000,000
BB&T Capital Markets, a division of BB&T Securities, LLC	45,000,000
BNY Mellon Capital Markets, LLC	45,000,000
Fifth Third Securities, Inc.	45,000,000
Goldman, Sachs & Co.	45,000,000
PNC Capital Markets LLC	45,000,000
Santander Investment Securities Inc.	45,000,000
Wells Fargo Securities, LLC	45,000,000
Drexel Hamilton, LLC	25,000,000
Total	\$ 1,000,000,000

SCHEDULE II

Title of Designated Securities:

4.450% Senior Notes due 2047

Aggregate Principal Amount:

\$1,000,000,000 of 4.450% Senior Notes due 2047

Price to Public:

99.867% of the principal amount of the 4.450% Senior Notes due 2047, plus accrued interest from January 24, 2017

Purchase Price by Underwriters:

98.992% of the principal amount of the 4.450% Senior Notes due 2047, plus accrued interest from January 24, 2017

Specified Funds for Payment of Purchase Price:

Immediately available funds

Indenture:

Indenture dated as of June 25, 1999, between the Company and Firstar Bank, National Association, as Trustee, as supplemented by the First Supplemental Indenture, dated June 25, 1999, the Second Supplemental Indenture, dated June 25, 1999, the Third Supplemental Indenture, dated June 25, 1999, the Fourth Supplemental Indenture, dated September 22, 1999, the Fifth Supplemental Indenture, dated September 22, 1999, the Sixth Supplemental Indenture, dated September 22, 1999, the Seventh Supplemental Indenture, dated February 11, 2000, the Eighth Supplemental Indenture, dated February 11, 2000, the Ninth Supplemental Indenture, dated August 21, 2000, the Tenth Supplemental Indenture, dated May 11, 2001, the Eleventh Supplemental Indenture, dated May 11, 2001, the Twelfth Supplemental Indenture, dated August 16, 2001, the Thirteenth Supplemental Indenture, dated April 3, 2002, the Fourteenth Supplemental Indenture, dated June 17, 2002, the Fifteenth Supplemental Indenture, dated January 28, 2003, the Sixteenth Supplemental Indenture, dated December 20, 2004, the Seventeenth Supplemental Indenture, dated August 15, 2007, the Eighteenth Supplemental Indenture, dated January 16, 2008, the Nineteenth Supplemental Indenture, dated March 27, 2008, the Twentieth Supplemental Indenture, dated March 27, 2008, the Twenty-First Supplemental Indenture, dated November 25, 2008, the Twenty-Second Supplemental Indenture, dated October 1, 2009, the Twenty-Third Supplemental Indenture,

dated July 13, 2010, the Twenty-Fourth Supplemental Indenture, dated January 19, 2012, the Twenty-Fifth Supplemental Indenture, dated April 16, 2012, the Twenty-Sixth Supplemental Indenture, dated April 16, 2012, the Twenty-Seventh Supplemental Indenture, dated July 25, 2013, the Twenty-Eighth Supplemental Indenture, dated July 25, 2013, the Twenty-Ninth Supplemental Indenture, dated December 23, 2013, the Thirtieth Supplemental Indenture, dated December 23, 2013, the Thirty-First Supplemental Indenture, dated December 23, 2013, the Thirty-Second Supplemental Indenture, dated December 23, 2013, the Thirty-Third Supplemental Indenture, dated January 30, 2014, the Thirty-Fourth Supplemental Indenture, dated October 28, 2014, the Thirty-Fifth Supplemental Indenture, dated January 15, 2016, the Thirty-Sixth Supplemental Indenture, dated January 15, 2016, the Thirty-Seventh Supplemental Indenture, dated January 15, 2016, the Thirty-Eighth Supplemental Indenture, dated October 3, 2016, the Thirty-Ninth Supplemental Indenture, dated October 3, 2016, the Fortieth Supplemental Indenture, dated October 3, 2016 and the Forty-First Supplemental Indenture, to be dated January 24, 2017.

Maturity:

The 4.450% Senior Notes due 2047 will mature on February 1, 2047

Interest Rates:

The 4.450% Senior Notes due 2047 will bear interest from January 24, 2017 at 4.450%

Interest Payment Dates:

Interest on the 4.450% Senior Notes due 2047 is payable semiannually on February 1 and August 1 of each year, commencing on August 1, 2017

Redemption Provisions:

As described in the term sheet dated January 17, 2017 included on Schedule IV

Change of Control Put:

As described in the preliminary prospectus supplement dated January 17, 2017

Sinking Fund Provision:

No sinking fund provisions

Defeasance Provisions:

As described in the preliminary prospectus supplement dated January 17, 2017

Guarantees:

None

Time of Delivery:

January 24, 2017

Closing Location:

Offices of Freshfields Bruckhaus Deringer US LLP
601 Lexington Avenue
31st Floor
New York, New York 10022

Name and Address of Representatives:

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
50 Rockefeller Plaza
NY1-050-12-01
New York, NY 10020
Attention: High Grade Transaction Management/Legal

RBC Capital Markets, LLC
200 Vesey Street, 8th Floor
New York, NY 10281
Attention: Scott Primrose/USDCM Transaction Management

U.S. Bancorp Investments, Inc.
214 N. Tryon Street, 26th Floor
Charlotte, NC 28202
Attention: High Grade Fixed Income Syndicate

Schedule III**Time of Sale Information**

1. Preliminary Prospectus Supplement, dated January 17, 2017, including the base prospectus included therein, dated December 14, 2016
2. Term sheet, dated January 17, 2017, included on Schedule IV

**Schedule IV
The Kroger Co.**



Pricing Term Sheet
Dated January 17, 2017

Issuer:	The Kroger Co.
Security Type:	Senior Notes
Trade Date:	January 17, 2017
Settlement Date:	January 24, 2017 (T+5)
Principal Amount:	\$1,000,000,000
Maturity Date:	February 1, 2047
Coupon:	4.450%
Benchmark Treasury:	UST 2.250% due August 15, 2046
Benchmark Treasury Price / Yield:	86-03+ / 2.958%
Spread to Benchmark Treasury:	T + 150 basis points
Yield to Maturity:	4.458%
Price to Public:	99.867%
Interest Payment Dates:	February 1 and August 1, commencing on August 1, 2017
Make-Whole Call:	Treasury Rate plus 25 basis points (prior to August 1, 2046)
Par Call:	On or after August 1, 2046 (six months prior to maturity)
CUSIP/ISIN:	501044 DG3 / US501044DG38
Denominations:	\$2,000 x \$1,000
Joint Book-Running Managers:	Merrill Lynch, Pierce, Fenner & Smith Incorporated RBC Capital Markets, LLC U.S. Bancorp Investments, Inc. Citigroup Global Markets Inc. Mizuho Securities USA Inc. MUFG Securities Americas Inc.
Co-Managers:	BB&T Capital Markets, a division of BB&T Securities, LLC BNY Mellon Capital Markets, LLC

Fifth Third Securities, Inc.
Goldman, Sachs & Co.
PNC Capital Markets LLC
Santander Investment Securities Inc.
Wells Fargo Securities, LLC
Drexel Hamilton, LLC

The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling Merrill Lynch, Pierce, Fenner & Smith Incorporated toll-free at 1-800-294-1322, RBC Capital Markets, LLC toll-free at 1-866-375-6829, or U.S. Bancorp Investments, Inc. toll-free at 1-877-558-2607.

Any disclaimer or other notice that may appear below is not applicable to this communication and should be disregarded. Such disclaimer or notice was automatically generated as a result of this communication being sent by Bloomberg or another email system.

Section 4: EX-4.3 (EX-4.3)

Exhibit 4.3

THE KROGER CO.
TO
U.S. BANK NATIONAL ASSOCIATION
(formerly known as Firststar Bank, N.A.)
Trustee

FORTY-FIRST SUPPLEMENTAL INDENTURE
Dated as of January 24, 2017
TO
INDENTURE
Dated as of June 25, 1999

4.450% SENIOR NOTES DUE 2047

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existing under the laws of the State of Ohio, as Trustee (herein called the "Trustee").

RECITALS OF THE COMPANY

The Company has heretofore executed and delivered to the Trustee an Indenture dated as of June 25, 1999 (the "Indenture"), providing for the issuance from time to time of the Company's unsecured debentures, notes or other evidences of indebtedness (herein and therein called the "Securities"), to be issued in one or more series as in the Indenture provided.

Section 201 of the Indenture permits the form of the Securities of any series to be established pursuant to an indenture supplemental to the Indenture.

Section 301 of the Indenture permits the terms of the Securities of any series to be established in an indenture supplemental to the Indenture.

Section 901(7) of the Indenture provides that, without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental to the Indenture for the purpose of establishing the form or terms of Securities of any series as permitted by Sections 201 and 301 of the Indenture.

The Company, pursuant to the foregoing authority, proposes in and by this Forty-First Supplemental Indenture to establish the terms and form of the Securities of a new series and to amend and supplement the Indenture in certain respects with respect to the Securities of such series.

All things necessary to make this Forty-First Supplemental Indenture a valid agreement of the Company, and a valid amendment of and supplement to the Indenture, have been done.

NOW, THEREFORE, THIS FORTY-FIRST SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of the series to be created hereby, as follows:

ARTICLE ONE

DEFINITIONS

Section 101. Definitions.

(a) For all purposes of this Forty-First Supplemental Indenture:

- (1) Capitalized terms used herein without definition shall have the meanings specified in the Indenture;
- (2) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this Forty-First Supplemental Indenture and, where so specified, to the Articles and Sections of the Indenture as supplemented by this Forty-First Supplemental Indenture; and
- (3) The terms "hereof", "herein", "hereby", "hereto", "hereunder" and "herewith" refer to this Forty-First Supplemental Indenture.

(b) For all purposes of the Indenture and this Forty-First Supplemental Indenture, with respect to the Securities of the series created hereby, except as otherwise expressly provided or unless the context otherwise requires:

"Adjusted Treasury Rate" means, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such Redemption Date.

"Attributable Debt" means, in connection with a Sale and Lease-Back Transaction, as of any particular time, the aggregate of present values (discounted at a rate per annum equal to the interest rate borne by the Securities of the series created by this Forty-First Supplemental Indenture) of the obligations of the Company or any Restricted Subsidiary for net rental payments during the remaining primary term of the applicable lease, calculated in accordance with generally accepted accounting principles. The term "net rental payments" under any lease for any period shall mean the sum of the rental and other payments required to be paid in such period by the lessee thereunder, not including, however, any amounts required to be paid by such lessee (whether or not designated as rental or additional rental) on account of maintenance and repairs, reconstruction, insurance, taxes, assessments, water rates, operating and labor costs or similar charges required to be paid by such lessee thereunder or any amounts required to be paid by such lessee thereunder contingent upon the amount of sales, maintenance and

repairs, reconstruction, insurance, taxes, assessments, water rates or similar charges.

“Business Day” means any day other than a Saturday or Sunday or a day on which banking institutions in New York City or Cincinnati, Ohio are authorized or obligated by law or executive order to close.

“Capital Lease” means any lease of property which, in accordance with generally accepted accounting principles, should be capitalized on the lessee’s balance sheet or for which the amount of the asset and liability thereunder as if so capitalized should be disclosed in a note to such balance sheet; and “Capitalized Lease Obligation” means the amount of the liability which should be so capitalized or disclosed.

“Comparable Treasury Issue” means the United States Treasury security selected by a Quotation Agent as having a maturity comparable to the remaining term of the Securities to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Securities (the maturity date of the Securities will be deemed to be August 1, 2046 for this purpose).

“Comparable Treasury Price” means, with respect to any Redemption Date, (i) the average of the Reference Treasury Dealer Quotations, after excluding the highest and lowest such Reference Treasury Dealer Quotations for such Redemption Date, or (ii) if the Trustee obtains fewer than three such Reference Treasury Dealer Quotations, the average of all such Quotations.

“Consolidated Net Tangible Assets” means, for the Company and its Subsidiaries on a consolidated basis determined in accordance with generally accepted accounting principles, the aggregate amounts of assets (less depreciation and valuation reserves and other reserves and items deductible from gross book value of specific asset accounts under generally accepted accounting principles) which under generally accepted accounting principles would be included on a balance sheet after deducting therefrom (a) all liability items except deferred income taxes, commercial paper, short-term bank Indebtedness, Funded Indebtedness, other long-term liabilities and shareholders’ equity and (b) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, which in each case would be so included on such balance sheet.

“Funded Indebtedness” means any Indebtedness maturing by its terms more than one year from the date of the determination thereof, including (i) any Indebtedness having a maturity of 12 months or less but

by its terms renewable or extendible at the option of the obligor to a date later than 12 months from the date of the determination thereof and (ii) rental obligations payable more than 12 months from the date of determination thereof under Capital Leases (such rental obligations to be included as Funded Indebtedness at the amount so capitalized at the date of such computation and to be included for the purposes of the definition of Consolidated Net Tangible Assets both as an asset and as Funded Indebtedness at the amount so capitalized).

“Non-Restricted Subsidiary” means any Subsidiary that the Company’s Board of Directors has in good faith declared pursuant to a written resolution not to be of material importance, either singly or together with all other Non-Restricted Subsidiaries, to the business of the Company and its consolidated Subsidiaries taken as a whole.

“Operating Assets” means all merchandise inventories, furniture, fixtures and equipment (including all transportation and warehousing equipment but excluding office equipment and data processing equipment) owned or leased pursuant to Capital Leases by the Company or a Restricted Subsidiary.

“Operating Property” means all real property and improvements thereon owned or leased pursuant to Capital Leases by the Company or a Restricted Subsidiary and constituting, without limitation, any store, warehouse, service center or distribution center wherever located, provided that such term shall not include any store, warehouse, service center or distribution center which the Company’s Board of Directors declares by written resolution not to be of material importance to the business of the Company and its Restricted Subsidiaries.

“Quotation Agent” means the Reference Treasury Dealer appointed by the Company, which shall initially be U.S. Bancorp Investments, Inc.

“Par Call Date” has the meaning set forth in Section 1101 of the Indenture.

“Reference Treasury Dealer” means (i) Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBC Capital Markets, LLC and U.S. Bancorp Investments, Inc., and their successors; provided, however, that if any of the foregoing is not or shall cease to be a primary U.S. Government securities dealer in New York City (a “Primary Treasury Dealer”), the Company shall substitute therefor another Primary Treasury Dealer, and (ii) any other Primary Treasury Dealer selected by the Company.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Company, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m. on the third Business Day preceding such Redemption Date.

“Restricted Subsidiaries” means all Subsidiaries other than Non-Restricted Subsidiaries.

“Sale and Lease-Back Transaction” has the meaning specified in Section 1010.

“Subsidiary” means (i) any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the Company and/or one or more Subsidiaries or (ii) any partnership of which more than 50% of the partnership interest is owned by the Company or any Subsidiary.

ARTICLE TWO

SECURITY FORMS

Section 201. Form of Securities of this Series.

The Securities of this series shall be in the form set forth in this Article.

Section 202. Form of Face of Security.

This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. This Security is not exchangeable for Securities registered in the name of a Person other than the Depository or its nominee except in the limited circumstances described in the Indenture, and no transfer of this Security (other than a transfer of this Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in the limited circumstances described in the Indenture.

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to The Kroger Co. or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

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No.

THE KROGER CO.

4.450% Senior Notes due 2047

CUSIP No. 501044 DG3

ISIN No. US501044DG38

§

The Kroger Co., a corporation duly organized and existing under the laws of the State of Ohio (herein called the “Company”, which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of \$ _____ on February 1, 2047 and to pay interest thereon from January 24, 2017, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on February 1 and August 1 in each year, commencing August 1, 2017 at the rate of interest of 4.450% per annum until the principal hereof is paid or made available for payment. Interest on the Security will be computed on the basis of a 360-day year of twelve 30-day months. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be January 15 and July 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

Payment of the principal of (and premium, if any) and interest on this Security will be made at the office or agency of the Company maintained for that purpose in Cincinnati, Ohio, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

In the case where any Interest Payment Date or the maturity date of this Security does not fall on a Business Day, payment of

interest or principal otherwise payable on such day need not be made on such day, but may be made on the next succeeding Business Day with the same force and effect as if made on such Interest Payment Date or the maturity date of this Security.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

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Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: January 24, 2017

THE KROGER CO.

By: _____
Name:
Title:

Attest:

Name:
Title:

This is one of the Securities of the series designated therein referred to in the within mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

Attest:

Name:
Title:

Section 203. Form of Reverse of Security.

This Security is one of a duly authorized issue of Securities of the Company (the "Securities") issued and to be issued under an Indenture dated as of June 25, 1999, as supplemented by the First Supplemental Indenture dated as of June 25, 1999, the Second Supplemental Indenture dated as of June 25, 1999, the Third Supplemental Indenture dated as of June 25, 1999, the Fourth Supplemental Indenture dated as of September 22, 1999, the Fifth Supplemental Indenture dated as of September 22, 1999, the Sixth Supplemental Indenture dated as of September 22, 1999, the Seventh

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Supplemental Indenture dated as of February 11, 2000, the Eighth Supplemental Indenture dated as of February 11, 2000, the Ninth Supplemental Indenture dated as of August 21, 2000, the Tenth Supplemental Indenture dated as of May 11, 2001, the Eleventh Supplemental Indenture dated as of May 11, 2001, the Twelfth Supplemental Indenture dated as of August 16, 2001, the Thirteenth Supplemental Indenture dated as of April 3, 2002, the Fourteenth Supplemental Indenture dated as of June 17, 2002, the Fifteenth Supplemental Indenture dated as of January 28, 2003, the Sixteenth Supplemental Indenture dated as of December 20, 2004, the Seventeenth Supplemental Indenture dated as of August 15, 2007, the Eighteenth Supplemental Indenture dated as of January 16, 2008, the Nineteenth Supplemental Indenture dated as of March 27, 2008, the Twentieth Supplemental Indenture dated as of March 27, 2008, the Twenty-First Supplemental Indenture dated as of November 25, 2008, the Twenty-Second Supplemental Indenture dated as of October 1, 2009, the Twenty-Third Supplemental Indenture dated as of July 13, 2010, the Twenty-Fourth Supplemental Indenture dated as of January 19, 2012, the Twenty-Fifth Supplemental Indenture dated as of April 16, 2012, the Twenty-Sixth Supplemental Indenture dated as of April 16, 2012, the Twenty-Seventh Supplemental Indenture dated as of July 25, 2013, the Twenty-Eighth Supplemental Indenture dated as of July 25, 2013, the Twenty-Ninth Supplemental Indenture dated as of December 23, 2013, the Thirtieth Supplemental Indenture dated as of December 23, 2013, the Thirty-First Supplemental Indenture dated as of December 23, 2013, the Thirty-Second Supplemental Indenture dated as of December 23, 2013, the Thirty-Third Supplemental Indenture dated as of January 30, 2014, the Thirty-Fourth Supplemental Indenture dated as of October 28, 2014, the Thirty-Fifth Supplemental Indenture dated as of January 15, 2016, the Thirty-Sixth Supplemental Indenture dated as of January 15, 2016, the Thirty-Seventh Supplemental Indenture dated as of January 15, 2016, the

Thirty-Eighth Supplemental Indenture dated as of October 3, 2016, the Thirty-Ninth Supplemental Indenture dated as of October 3, 2016, the Fortieth Supplemental Indenture dated as of October 3, 2016, and the Forty-First Supplemental Indenture dated as of January 24, 2017 (as so supplemented, herein called the “Indenture”), each between the Company and Firststar Bank, N.A. (now known as U.S. Bank National Association), as Trustee (herein called the “Trustee”, which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, initially limited in aggregate principal amount to \$1,000,000,000.

The Company may from time to time, without notice to or consent of the registered holders of the Securities issue further Securities (“Additional Securities”). The Additional Securities will rank equal with the Securities in all respects (or in all respects other than the payment of interest accruing prior to the issue date of the Additional Securities, or except for the first payment of interest following the issue date of the Additional Securities). The Additional Securities may be consolidated and form a single series with the Securities and may have the same terms as to status, redemption, or otherwise, as the Securities.

The Securities will be redeemable, in whole or in part, at the option of the Company at any time. If the Securities are redeemed prior to August 1, 2046 (the “Par Call Date”), the redemption price will be equal to the greater of (i) 100% of the principal amount of such Securities and (ii) as determined by a Quotation Agent, the sum of the present values of (1) the principal amount of the Securities being redeemed and (2) the remaining scheduled payments of interest thereon (not including any portion of such payments of interest accrued and unpaid as of the date of redemption) from the

redemption date to the Par Call Date discounted to the date of redemption on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Adjusted Treasury Rate plus 25 basis points plus, in each case, accrued and unpaid interest thereon to the date of redemption. If the Securities are redeemed on or after the Par Call Date, the redemption price will be equal to 100% of the principal amount of such Securities, plus accrued and unpaid interest thereon to the date of redemption.

Notice of any redemption will be mailed at least 30 days but not more than 60 days before the Redemption Date to each holder of the Securities to be redeemed. Unless the Company defaults in payment of the redemption price, on and after the Redemption Date, interest will cease to accrue on the Securities or portions thereof called for redemption.

If a Change of Control Triggering Event occurs, unless the Company has exercised its right to redeem the Securities, Holders of Securities will have the right to require the Company to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of their Securities pursuant to the offer described below (the “Change of Control Offer”). In the Change of Control Offer, the Company shall offer payment in cash equal to 101% of the aggregate principal amount of Securities repurchased plus accrued and unpaid interest, if any, on the Securities repurchased, to the date of purchase (the “Change of Control Payment”). Within 30 days following any Change of Control Triggering Event, or, at the Company’s option, prior to any Change of Control, but after the public announcement of the Change of Control, the Company shall mail a notice to Holders of Securities describing the transaction or transactions that constitute or may constitute the Change of Control Triggering Event and offering to repurchase the Securities on the date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed (the “Change of Control Payment Date”), pursuant to the procedures described herein and in such notice. The notice shall, if mailed prior to the date of consummation of the Change of Control, state that the offer to purchase is conditioned on the Change of Control Triggering Event occurring on or prior to the payment date specified in the notice. The Company shall comply with the requirements of Rule 14e-1 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Securities as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions herein, the Company shall be required to comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the Change of Control provisions herein by virtue of such conflicts.

On the Change of Control Payment Date, the Company shall, to the extent lawful, (i) accept for payment all Securities or portions of Securities properly tendered pursuant to the Change of Control Offer; (ii) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all Securities or portions of Securities properly tendered; and (iii) deliver or cause to be delivered to the Trustee the Securities properly accepted, together with an officers’ certificate stating the aggregate principal amount of Securities or portions of Securities being purchased.

“Below Investment Grade Rating Event” means the Securities are rated below an Investment Grade Rating by any two of the three Rating Agencies (as defined below) on any date from the date of the public notice of an arrangement that could result in a Change of Control until the end of the 60-day period following public notice of the occurrence of the Change of Control (which 60-day

period shall be extended so long as the rating of the Securities is under publicly announced consideration for possible downgrade below investment grade by any of the Rating Agencies); provided that a Below Investment Grade Rating Event otherwise arising by virtue of a particular reduction in rating shall not be deemed to have occurred in respect of a particular Change of Control (and thus shall not be deemed a Below Investment Grade Rating Event for purposes of the definition of Change of Control Triggering Event) if the Rating Agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the Trustee in writing at the Company’s request that the reduction was the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control shall have occurred at the time of the Below

Investment Grade Rating Event).

“Change of Control” means the occurrence of any of the following: (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its subsidiaries taken as a whole to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) other than the Company or one of its subsidiaries; (2) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) becomes the beneficial owner, directly or indirectly, of more than 50% of the then outstanding number of shares of the Company’s voting stock; or (3) the first day on which a majority of the members of the Company’s Board of Directors are not Continuing Directors. Notwithstanding the foregoing, a transaction will not be deemed to involve a Change of Control if (1) the Company becomes a wholly owned subsidiary of a holding company that has agreed to be bound by the terms of the Securities and (2) the Holders of the voting stock of such holding company immediately following that transaction are substantially the same as the Holders of the Company’s voting stock immediately prior to that transaction.

“Change of Control Triggering Event” means the occurrence of both a Change of Control and a Below Investment Grade Rating Event.

“Continuing Directors” means, as of any date of determination, members of the Board of Directors of the Company who (1) were members of such Board of Directors on the date of original issuance of the Securities; or (2) were nominated for election or elected to such Board of Directors with the approval of a majority of the continuing directors under clause (1) or (2) of this definition who were members of such Board of Directors at the time of such nomination or election (either by a specific vote or by approval of the Company’s proxy statement in which such member was named as a nominee for election as a director, without objection to such nomination).

“Fitch” means Fitch, Inc.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P and Fitch, and the equivalent investment grade credit rating from any replacement rating agency or rating agencies selected by the Company.

“Moody’s” means Moody’s Investors Service, Inc.

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“Person” means any individual, partnership, corporation, limited liability company, joint stock company, business trust, trust, unincorporated association, joint venture or other entity, or a government or political subdivision or agency thereof

“Rating Agencies” means (1) each of Fitch, Moody’s and S&P; and (2) if Fitch, Moody’s or S&P ceases to rate the Securities or fails to make a rating of the Securities publicly available for reasons outside of the Company’s control, a “nationally recognized statistical rating organization” as defined in Section 3(a)(62) of the Exchange Act, selected by the Company (as certified by a Board Resolution) as a replacement agency for Fitch, Moody’s or S&P, or any of them, as the case may be.

“S&P” means Standard & Poor’s Ratings Services, a division of McGraw-Hill Financial, Inc.

The Indenture contains provisions for defeasance at any time of (i) the entire indebtedness of this Security or (ii) certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth therein.

If an Event of Default shall occur and be continuing, the principal of all Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of 50% in aggregate principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all the Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As set forth in, and subject to, the provisions of the Indenture, no Holder of any Security will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless such Holder shall have previously given to the Trustee written notice of a continuing Event of Default, the Holders of not less than 25% in principal amount of the Outstanding Securities shall have made written request, and offered reasonable indemnity, to the Trustee to institute such proceeding as trustee, and the Trustee shall not have received from the Holders of a majority in principal amount of the Outstanding Securities a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days; provided, however, that such limitations do not apply to a suit instituted by the Holder hereof for the enforcement of payment of the principal of (and premium, if any) or any interest on this Security on or after the respective due dates expressed herein.

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No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registerable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in denominations of \$2,000 and integral multiples of \$1,000. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities of like tenor, of a different authorized denomination, as requested by the Holder surrendering the same.

Except where otherwise specifically provided in the Indenture, no service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

ARTICLE THREE

THE SERIES OF SECURITIES

Section 301. Title and Terms.

There shall be a series of Securities designated as the “4.450% Senior Notes due 2047” of the Company. Their Stated Maturity shall be February 1, 2047, and they shall bear interest at the rate of 4.450% per annum.

Interest on the Securities of this series will be payable semi-annually on February 1 and August 1 of each year, commencing August 1, 2017, until the principal thereof is made available for payment. Interest on the Securities of this series will be computed on the basis of a 360-day year of twelve 30-day months. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will be paid to the Person in whose name the Securities of this series (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such

interest, which shall be January 15 and July 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

In the case where any Interest Payment Date or the maturity date of the Securities of this series does not fall on a Business Day, payment of interest or principal otherwise payable on such date need not be made on such day, but may be made on the next succeeding Business Day with the same force and effect as if made on such Interest Payment Date or the maturity date of the Securities of this series.

The aggregate principal amount of Securities of this series which may be authenticated and delivered under this Forty-First Supplemental indenture is initially limited to \$1,000,000,000, except for Securities authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Securities of this series pursuant to Section 304, 305 and 306 of the Indenture and except for any Securities of this series which, pursuant to Section 303 of the Indenture, are deemed never to have been authenticated and delivered under the Indenture. Notwithstanding the foregoing, the Company may from time to time, without notice to or consent of the registered holders of the Securities issue further Securities (“Additional Securities”). The Additional Securities will rank equal with the Securities in all respects (or in all respects other than the payment of interest accruing prior to the issue date of the Additional Securities, or except for the first payment of interest following the issue date of the Additional Securities). The Additional Securities may be consolidated and form a single series with the Securities and may have the same terms as to status, redemption, or otherwise, as the Securities.

The Securities of this series will be represented by one or more Global Securities representing the entire \$1,000,000,000 aggregate principal amount of the Securities of this series (as such amount may be increased by the Additional Securities), and the Depository with respect to such Global Security or Global Securities will be The Depository Trust Company.

The Place of Payment for the principal of (and premium, if any) and interest on the Securities of this series shall be the office or agency of the Company in the City of Cincinnati, State of Ohio, maintained for such purpose, which shall be the Corporate Trust Office of the Trustee and at any other office or agency maintained by the Company for such purpose; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security

Register.

The Securities of this series are redeemable prior to maturity at the option of the Company as provided in this Forty-First Supplemental Indenture.

The Securities of this series are not subject to a sinking fund and the provisions of Section 501(3) and Article Twelve of the Indenture shall not be applicable to the Securities of this series.

The Securities of this series are subject to defeasance at the option of the Company as provided in this Forty-First Supplemental Indenture.

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ARTICLE FOUR

MODIFICATIONS AND ADDITIONS TO THE INDENTURE

Section 401. Modifications to the Consolidation, Merger, Conveyance, Transfer or Lease Provisions.

With respect to the Securities of this series, Section 801 of the Indenture shall be deleted in its entirety and the following shall be substituted therefor:

“Section 801. Covenant Not to Merge, Consolidate, Sell or Convey Property Except Under Certain Conditions.

The Company covenants that it will not merge with or into or consolidate with any corporation, partnership, or other entity or sell, lease or convey all or substantially all of its assets to any other Person, unless (i) either the Company shall be the continuing corporation, or the successor entity or the Person which acquires by sale, lease or conveyance all or substantially all the assets of the Company (if other than the Company) shall be a corporation or partnership organized under the laws of the United States of America or any State thereof or the District of Columbia and shall expressly assume all obligations of the Company under this Indenture and the Securities of the series created by the Forty-First Supplemental Indenture, including the due and punctual payment of the principal of and interest on all the Securities of the series created by the Forty-First Supplemental Indenture according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of the Indenture to be performed or observed by the Company, by supplemental indenture in form satisfactory to the Trustee, executed and delivered to the Trustee by such entity, and (ii) the Company, such person or such successor entity, as the case may be, shall not, immediately after such merger or consolidation, or such sale, lease or conveyance, be in default in the performance of any such covenant or condition and, immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing.

Section 802. Successor Substituted.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any sale, lease or conveyance of all or substantially all of the assets of the Company in accordance with Section 801, the successor Person formed by such consolidation or into which the Company is merged or to which such sale, lease or conveyance is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.”

Section 402. Other Modifications.

With respect to the Securities of this series, the Indenture shall be modified as follows:

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(a) The eighth paragraph of Section 305 of the Indenture shall be modified by inserting “, and a successor Depositary is not appointed by the Company within 90 days” at the end of clause (i) in such paragraph; and

(b) Section 401 of the Indenture shall be modified by adding to the end of such Section the following paragraph:

“For the purpose of this Section 401, trust funds may consist of (A) money in an amount, or (B) U.S. Government Obligations (as defined in Section 1304) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (C) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, the principal of, premium, if any, and each installment of interest on the Securities of this series on the Stated Maturity of such principal or installment of interest on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities of this series.”

Section 403. Additional Covenants: Defeasance and Covenant Defeasance.

(a) With respect to the Securities of this series, the following provisions shall be added as Sections 1009, 1010 and 1011 and as Article Thirteen (Section references contained in these additional provisions are to the Indenture as supplemented by this Forty-First Supplemental Indenture):

“Section 1009. Limitations on Liens.

After the date hereof and so long as any Securities of the series created by the Forty-First Supplemental Indenture are Outstanding, the Company will not issue, assume or guarantee, and will not permit any Restricted Subsidiary to issue, assume or guarantee, any Indebtedness which is secured by a mortgage, pledge, security interest, lien or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any of the foregoing) (each being hereinafter referred to as a “lien” or “liens”) of or upon any Operating Property or Operating Asset, whether now owned or hereafter acquired, of the Company or any Restricted Subsidiary without effectively providing that the Securities of the series created by the Forty-First Supplemental Indenture (together with, if the Company shall so determine, any other Indebtedness of the Company ranking equally with the Securities) shall be equally and ratably secured by a lien on such assets ranking ratably with and equal to (or at the Company’s option prior to) such secured Indebtedness; provided that the foregoing restriction shall not apply to:

(a) liens on any property or assets of any corporation existing at the time such corporation becomes a Restricted Subsidiary provided that such lien does not extend to any other property of the Company or any of its Restricted Subsidiaries;

(b) liens on any property or assets (including stock) existing at the time of acquisition of such property or assets by the Company or a Restricted Subsidiary, or

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liens to secure the payment of all or any part of the purchase price of such property or assets (including stock) upon the acquisition of such property or assets by the Company or a Restricted Subsidiary or to secure any indebtedness incurred, assumed or guaranteed by the Company or a Restricted Subsidiary for the purpose of financing all or any part of the purchase price of such property or, in the case of real property, construction or improvements thereon or attaching to property substituted by the Company to obtain the release of a lien on other property of the Company on which a lien then exists, which indebtedness is incurred, assumed or guaranteed prior to, at the time of, or within 18 months after such acquisition (or in the case of real property, the completion of construction (including any improvements on an existing asset) or commencement of full operation at such property, whichever is later (which in the case of a retail store is the opening of the store for business to the public)); provided that in the case of any such acquisition, construction or improvement, the lien shall not apply to any other property or assets theretofore owned by the Company or a Restricted Subsidiary;

(c) liens on any property or assets to secure Indebtedness of a Restricted Subsidiary to the Company or to another Restricted Subsidiary;

(d) liens on any property or assets of a corporation existing at the time such corporation is merged into or consolidated with the Company or a Restricted Subsidiary or at the time of a purchase, lease or other acquisition of the assets of a corporation or firm as an entirety or substantially as an entirety by the Company or a Restricted Subsidiary provided that such lien does not extend to any other property of the Company or any of its Restricted Subsidiaries;

(e) liens on any property or assets of the Company or a Restricted Subsidiary in favor of the United States of America or any State thereof, or any department, agency or instrumentality or political subdivision of the United States of America or any State thereof, or in favor of any other country, or any political subdivision thereof, to secure partial, progress, advance or other payments pursuant to any contract or statute or to secure any Indebtedness incurred or guaranteed for the purpose of financing all or any part of the purchase price (or, in the case of real property, the cost of construction) of the property or assets subject to such liens (including, but not limited to, liens incurred in connection with pollution control, industrial revenue or similar financings);

(f) liens existing on properties or assets of the Company or any Restricted Subsidiary existing on the date hereof., provided that such liens secure only those obligations which they secure on the date hereof or any extension, renewal or replacement thereof;

(g) any extension, renewal or replacement (or successive extensions, renewals or replacements) in whole or in part, of any lien referred to in the foregoing clauses (a) through (f), inclusive; provided that such extension, renewal or replacement shall be limited to all or a part of the property or assets which secured the lien so extended, renewed or replaced (plus improvements and construction on real property);

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(h) liens imposed by law, such as mechanics’, workmen’s, repairmen’s, materialmen’s, carriers’, warehouseman’s, vendors’, or other similar liens arising in the ordinary course of business of the Company or a Restricted Subsidiary, or governmental (federal, state or municipal) liens arising out of contracts for the sale of products or services by the Company or any Restricted Subsidiary, or deposits or pledges to obtain the release of any of the foregoing liens;

(i) pledges, liens or deposits under worker’s compensation laws or similar legislation and liens or judgments thereunder which are not currently dischargeable, or in connection with bids, tenders, contracts (other than for the payment of money) or leases to which

the Company or any Restricted Subsidiary is a party, or to secure the public or statutory obligations of the Company or any Restricted Subsidiary, or in connection with obtaining or maintaining self-insurance or to obtain the benefits of any law, regulation or arrangement pertaining to unemployment insurance, old age pensions, social security or similar matters, or to secure surety, appeal or customs bonds to which the Company or any Restricted Subsidiary is a party, or in litigation or other proceedings such as, but not limited to, interpleader proceedings, and other similar pledges, liens or deposits made or incurred in the ordinary course of business;

(j) liens created by or resulting from any litigation or other proceeding which is being contested in good faith by appropriate proceedings, including liens arising out of judgments or awards against the Company or any Restricted Subsidiary with respect to which the Company or such Restricted Subsidiary is in good faith prosecuting an appeal or proceedings for review or for which the time to make an appeal has not yet expired; or final unappealable judgment liens which are satisfied within 30 days of the date of judgment; or liens incurred by the Company or any Restricted Subsidiary for the purpose of obtaining a stay or discharge in the course of any litigation or other proceeding to which the Company or such Restricted Subsidiary is a party;

(k) liens for taxes or assessments or governmental charges or levies not yet due or delinquent, or which can thereafter be paid without penalty, or which are being contested in good faith by appropriate proceedings; landlord's liens on property held under lease; and any other liens or charges incidental to the conduct of the business of the Company or any Restricted Subsidiary or the ownership of the property or assets of any of them which were not incurred in connection with the borrowing of money or the obtaining of advances or credit and which do not, in the opinion of the Company, materially impair the use of such property or assets in the operation of the business of the Company or such Restricted Subsidiary or the value of such property or assets for the purposes of such business; or

(l) liens not permitted by clauses (a) through (k) above if at the time of, and after giving effect to, the creation or assumption of any such lien, the aggregate amount of all Indebtedness of the Company and its Restricted Subsidiaries secured by all such liens not so permitted by clauses (a) through (k) above together with the Attributable Debt in respect of Sale and Lease-Back Transactions permitted by paragraph (a) of Section 1010 does not exceed 10% of Consolidated Net Tangible Assets.

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Section 1010. Limitations on Sale and Lease-Back Transactions.

After the date hereof and so long as any Securities of the series created by the Forty-First Supplemental Indenture are Outstanding, the Company agrees that it will not, and will not permit any Restricted Subsidiary to, enter into any arrangement with any Person providing for the leasing by the Company or a Restricted Subsidiary of any Operating Property or Operating Asset (other than any such arrangement involving a lease for a term, including renewal rights, for not more than three years and leases between the Company and a Restricted Subsidiary or between Restricted Subsidiaries), whereby such Operating Property or Operating Asset has been or is to be sold or transferred by the Company or any Restricted Subsidiary to such Person (herein referred to as a "Sale and Lease-Back Transaction"), unless:

(a) the Company or such Restricted Subsidiary would, at the time of entering into a Sale and Lease-Back Transaction, be entitled to incur Indebtedness secured by a lien on the Operating Property or Operating Asset to be leased in an amount at least equal to the Attributable Debt in respect of such Sale and Lease-Back Transaction without equally and ratably securing the Securities of the series created by the Forty-First Supplemental Indenture pursuant to Section 1009; or

(b) the proceeds of the sale of the Operating Property or Operating Asset to be leased are at least equal to the fair market value of such Operating Property or Operating Asset (as determined by the chief financial officer or chief accounting officer of the Company) and an amount in cash equal to the net proceeds from the sale of the Operating Property or Operating Asset so leased is applied, within 180 days of the effective date of any such Sale and Lease-Back Transaction, to the purchase or acquisition (or, in the case of Operating Property, the construction) of Operating Property or Operating Assets or to the retirement, repurchase, redemption or repayment (other than at maturity or pursuant to a mandatory sinking fund or redemption provision and other than Indebtedness owned by the Company or any Restricted Subsidiary) of Securities of the series created by the Forty-First Supplemental Indenture or of Funded Indebtedness of the Company ranking on a parity with or senior to the Securities of the series created by the Forty-First Supplemental Indenture, or in the case of a Sale and Lease-Back Transaction by a Restricted Subsidiary, of Funded Indebtedness of such Restricted Subsidiary; provided that in connection with any such retirement, any related loan commitment or the like shall be reduced in an amount equal to the principal amount so retired.

The foregoing restriction shall not apply to, in the case of any Operating Property or Operating Asset acquired or constructed subsequent to the date eighteen months prior to the date of this Indenture, any Sale and Lease-Back Transaction with respect to such Operating Asset or Operating Property (including presently owned real property upon which such Operating Property is to be constructed) if a binding commitment is entered into with respect to such Sale and Lease-Back Transaction within 18 months after the later of the acquisition of the Operating Property or Operating Asset or the completion of improvements or construction thereon or

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commencement of full operations at such Operating Property (which in the case of a retail store is the opening of the store for business to the public).

Section 1011. Change of Control.

If a Change of Control Triggering Event occurs, unless the Company has exercised its right to redeem the Securities, Holders of Securities will have the right to require the Company to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of their Securities pursuant to the offer described below (the “Change of Control Offer”). In the Change of Control Offer, the Company shall offer payment in cash equal to 101% of the aggregate principal amount of Securities repurchased plus accrued and unpaid interest, if any, on the Securities repurchased, to the date of purchase (the “Change of Control Payment”). Within 30 days following any Change of Control Triggering Event, or, at the Company’s option, prior to any Change of Control, but after the public announcement of the Change of Control, the Company shall mail a notice to Holders of Securities describing the transaction or transactions that constitute or may constitute the Change of Control Triggering Event and offering to repurchase the Securities on the date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed (the “Change of Control Payment Date”), pursuant to the procedures described herein and in such notice. The notice shall, if mailed prior to the date of consummation of the Change of Control, state that the offer to purchase is conditioned on the Change of Control Triggering Event occurring on or prior to the payment date specified in the notice. The Company shall comply with the requirements of Rule 14e-1 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Securities as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions herein, the Company shall be required to comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the Change of Control provisions herein by virtue of such conflicts.

On the Change of Control Payment Date, the Company shall, to the extent lawful, (i) accept for payment all Securities or portions of Securities properly tendered pursuant to the Change of Control Offer; (ii) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all Securities or portions of Securities properly tendered; and (iii) deliver or cause to be delivered to the Trustee the Securities properly accepted, together with an officers’ certificate stating the aggregate principal amount of Securities or portions of Securities being purchased.

“Below Investment Grade Rating Event” means the Securities are rated below an Investment Grade Rating by any two of the three Rating Agencies (as defined below) on any date from the date of the public notice of an arrangement that could result in a Change of Control until the end of the 60-day period following public notice of the occurrence of the Change of Control (which 60-day period shall be extended so long as the rating of the Securities is under publicly announced consideration for possible

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downgrade below investment grade by any of the Rating Agencies); provided that a Below Investment Grade Rating Event otherwise arising by virtue of a particular reduction in rating shall not be deemed to have occurred in respect of a particular Change of Control (and thus shall not be deemed a Below Investment Grade Rating Event for purposes of the definition of Change of Control Triggering Event) if the Rating Agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the Trustee in writing at the Company’s request that the reduction was the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control shall have occurred at the time of the Below Investment Grade Rating Event).

“Change of Control” means the occurrence of any of the following: (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its subsidiaries taken as a whole to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) other than the Company or one of its subsidiaries; (2) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) becomes the beneficial owner, directly or indirectly, of more than 50% of the then outstanding number of shares of the Company’s voting stock; or (3) the first day on which a majority of the members of the Company’s Board of Directors are not Continuing Directors. Notwithstanding the foregoing, a transaction will not be deemed to involve a Change of Control if (1) the Company becomes a wholly owned subsidiary of a holding company that has agreed to be bound by the terms of the Securities and (2) the Holders of the voting stock of such holding company immediately following that transaction are substantially the same as the Holders of the Company’s voting stock immediately prior to that transaction.

“Change of Control Triggering Event” means the occurrence of both a Change of Control and a Below Investment Grade Rating Event.

“Continuing Directors” means, as of any date of determination, members of the Board of Directors of the Company who (1) were members of such Board of Directors on the date of original issuance of the Securities; or (2) were nominated for election or elected to such Board of Directors with the approval of a majority of the continuing directors under clause (1) or (2) of this definition who were members of such Board of Directors at the time of such nomination or election (either by a specific vote or by approval of the Company’s proxy statement in which such member was named as a nominee for election as a director, without objection to such nomination).

“Fitch” means Fitch, Inc.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P and Fitch, and the

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equivalent investment grade credit rating from any replacement rating agency or rating agencies selected by the Company.

“Moody’s” means Moody’s Investors Service, Inc.

“Person” means any individual, partnership, corporation, limited liability company, joint stock company, business trust, trust, unincorporated association, joint venture or other entity, or a government or political subdivision or agency thereof.

“Rating Agencies” means (1) each of Fitch, Moody’s and S&P; and (2) if Fitch, Moody’s or S&P ceases to rate the Securities or fails to make a rating of the Securities publicly available for reasons outside of the Company’s control, a “nationally recognized statistical rating organization” as defined in Section 3(a)(62) of the Exchange Act, selected by the Company (as certified by a Board Resolution) as a replacement agency for Fitch, Moody’s or S&P, or any of them, as the case may be.

“S&P” means Standard & Poor’s Ratings Services, a division of McGraw-Hill Financial, Inc.

ARTICLE THIRTEEN

DEFEASANCE AND COVENANT DEFEASANCE

Section 1301. Company’s Option to Effect Defeasance or Covenant Defeasance.

The Company may at its option by Board Resolution, at any time, elect to have either Section 1302 or Section 1303 applied to the Outstanding Securities of this series upon compliance with the conditions set forth below in this Article Thirteen.

Section 1302. Defeasance and Discharge.

Upon the Company’s exercise of the option provided in Section 1301 applicable to this Section, the Company shall be deemed to have been discharged from its obligations with respect to the Outstanding Securities of the series created by the Forty-First Supplemental Indenture on the date the conditions set forth below are satisfied (hereinafter, “Defeasance”). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of this series and to have satisfied all its other obligations under such Securities of this series and this Indenture insofar as such Securities of this series are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of Outstanding Securities of this series to receive, solely from the trust fund described in Section 1304 and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any) and interest on such securities when such payments are due, (B) the Company’s obligations with respect to such Securities of this series under Sections 304, 305, 306, 1002 and 1003, (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (D) this Article Thirteen. Subject to compliance with this Article

Thirteen, the Company may exercise its option under this Section 1302 notwithstanding the prior exercise of its option under Section 1303.

Section 1303. Covenant Defeasance.

Upon the Company’s exercise of the option provided in Section 1301 applicable to this Section, the Company shall be released from its obligations under Section 501(4) (in respect of the covenants in Sections 1008 through 1010), Section 801 and Sections 1008 through 1010, the Securities of this series and the Holders of Securities of this series, on and after the date the conditions set forth below are satisfied (hereinafter, “Covenant Defeasance”). For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities of this series shall be unaffected thereby.

Section 1304. Conditions to Defeasance or Covenant Defeasance.

The following shall be the conditions to application of either Section 1302 or Section 1303 to the Outstanding Securities of this series:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 609 who shall agree to comply with the provisions of this Article Thirteen applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities of this series, (A) money in an amount, or (B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (C) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which

shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, the principal of, premium, if any, and each installment of interest on the Securities of this series on the Stated Maturity of such principal or installment of interest on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities of this series. For this purpose, "U.S. Government Obligations" means securities that are (x) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (y) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the Company thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended) as custodian with respect to any such U.S. Government Obligation or a

specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt.

(2) No Event of Default or event which with notice or lapse of time or both would become an Event of Default shall have occurred and be continuing on the date of such deposit or, insofar as subsections 501(6) and (7) are concerned, at any time during the period ending on the 121st day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(3) Such Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest as defined in Section 608 and for purposes of the Trust Indenture Act with respect to any securities of the Company.

(4) Such Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound.

(5) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to either the Defeasance under Section 1302 or the Covenant Defeasance under Section 1303 (as the case may be) have been complied with.

(6) In the case of an election under Section 1302, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Forty-First Supplemental Indenture there has been a change in the applicable Federal income tax law, in either case to the effect that and based thereon such opinion shall confirm that, and in the case of an election under Section 1303 the Company shall have delivered to the Trustee an Opinion of Counsel stating that, the Holders of the Outstanding Securities of this series will not recognize income, gain or loss for Federal income tax purposes as a result of such Defeasance or Covenant Defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Defeasance or Covenant Defeasance had not occurred.

Section 1305. Deposited Money and U.S. Government Obligations to Be Held in Trust, Other Miscellaneous Provisions.

Subject to the provisions of the last paragraph of Section 1003, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee—collectively, for purposes of this Section 1305, the "Trustee") pursuant to Section 1304 in respect of the Securities of this series shall be

held in trust and applied by the Trustee, in accordance with the provisions of such Securities of this series and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities of this series, of all sums due and to become due thereon in respect of principal (and premium, if any) and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 1304 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Outstanding Securities of this series.

Anything in this Article Thirteen to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 1304 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Defeasance or Covenant Defeasance.

Section 1306. Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money in accordance with Section 1302 or 1303 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Securities of this series shall be revived and reinstated as though no deposit had occurred pursuant to this Article Thirteen until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 1302 or 1303; provided, however, that if the Company makes any payment of principal of (and premium, if any) or interest on any Security of this series following the reinstatement of its obligations, the Company shall be subjugated to the rights of the Holders of such Securities of this series to receive such payment from the money held by the Trustee or the Paying Agent."

Section 404. Redemption of Securities.

With respect to Securities of this series, Section 1101 of the Indenture shall be deleted in its entirety and the following shall be substituted therefor:

"Section 1101. Optional Redemption.

The Securities will be redeemable, in whole or in part, at the option of the Company at any time. If the Securities are redeemed prior to August 1, 2046 (the "Par Call Date"), the redemption price will be equal to the greater of (i) 100% of the principal amount of such Securities and (ii) as determined by a Quotation Agent, the sum of the present values of (1) the principal amount of the Securities being redeemed and (2) the remaining scheduled payments of interest thereon (not including any portion

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of such payments of interest accrued and unpaid as of the date of redemption) from the redemption date to the Par Call Date, discounted to the date of redemption on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Adjusted Treasury Rate plus 25 basis points plus, in each case, accrued and unpaid interest thereon to the date of redemption. If the Securities are redeemed on or after the Par Call Date, the redemption price will be equal to 100% of the principal amount of such Securities, plus accrued and unpaid interest thereon to the date of redemption."

ARTICLE FIVE

MISCELLANEOUS

Section 501. Miscellaneous.

- (a) The Trustee accepts the trusts created by the Indenture, as supplemented by this Forty-First Supplemental Indenture, and agrees to perform the same upon the terms and conditions of the Indenture, as supplemented by this Forty-First Supplemental Indenture.
- (b) The recitals contained herein shall be taken as statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Forty-First Supplemental Indenture.
- (c) All capitalized terms used and not defined herein shall have the respective meanings assigned to them in the Indenture.
- (d) Each of the Company and the Trustee makes and reaffirms as of the date of execution of this Forty-First Supplemental Indenture all of its respective representations, covenants and agreements set forth in the Indenture.
- (e) All covenants and agreements in this Forty-First Supplemental Indenture by the Company or the Trustee and each Guarantor shall bind its respective successors and assigns, whether so expressed or not.
- (f) In case any provisions in this Forty-First Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (g) Nothing in this Forty-First Supplemental Indenture, express or implied, shall give to any Person, other than the parties hereto and their successors under the Indenture and the Holders of the series of Securities created hereby, any benefit or any legal or equitable right, remedy or claim under the Indenture.
- (h) If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act of 1939, as may be amended from time to time, that is required under such Act to be a part of and govern this Forty-First Supplemental Indenture, the latter provision shall control. If any provision hereof modifies or excludes any provision of such Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Forty-First Supplemental Indenture as so modified or excluded, as the case may be.

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- (i) This Forty-First Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of New York.
- (j) All amendments to the Indenture made hereby shall have effect only with respect to the series of Securities created hereby.

(k) All provisions of this Forty-First Supplemental Indenture shall be deemed to be incorporated in, and made a part of, the Indenture; and the Indenture, as supplemented by this Forty-First Supplemental Indenture, shall be read, taken and construed as one and the same instrument.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

THE KROGER CO.

By: /s/ Todd A. Foley
Name: Todd A. Foley
Title: Vice President and Treasurer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Bill Sicking
Name: William E. Sicking
Title: Vice President and Trust Officer

Attest:

/s/ Daniel Boyers
Name: Daniel Boyers
Title: Vice President

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On the 24th day of January, 2017, before me personally came Todd A. Foley, to me known, who, being by me duly sworn, did depose and say that he is Vice President and Treasurer of The Kroger Co., one of the corporations described in and which executed the foregoing instrument, and that he signed his name thereto by like authority.

/s/ Dorothy D. Roberts

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On the 24th day of January, 2017, before me personally came William E. Sicking, to me known, who, being by me duly sworn, did depose and say that he is a Vice President and Trust Officer of U.S. Bank National Association, one of the corporations described in and which executed the foregoing instrument, and that he signed his name thereto by like authority.

/s/ Dorothy D. Roberts

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Section 5: EX-5.1 (EX-5.1)

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

January 24, 2017

Board of Directors
The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202

Ladies and Gentlemen:

I am familiar with the proceedings taken by The Kroger Co., an Ohio corporation (the “Company”), in connection with the issuance of \$1,000,000,000 aggregate principal amount of 4.450% Senior Notes due 2047, (the “Securities”) under an Indenture, dated as of June 25, 1999, by and between the Company and U.S. Bank National Association (formerly known as Firststar Bank, N.A.), as trustee (as amended by the First Supplemental Indenture dated as of June 25, 1999; the Second Supplemental Indenture dated as of June 25, 1999; the Third Supplemental Indenture dated as of June 25, 1999; the Fourth Supplemental Indenture dated as of September 22, 1999; the Fifth Supplemental Indenture dated as of September 22, 1999; the Sixth Supplemental Indenture dated as of September 22, 1999; the Seventh Supplemental Indenture dated as of February 11, 2000; the Eighth Supplemental Indenture dated as of February 11, 2000; the Ninth Supplemental Indenture dated as of August 21, 2000; the Tenth Supplemental Indenture dated as of May 11, 2001; the Eleventh Supplemental Indenture dated as of May 11, 2001; the Twelfth Supplemental Indenture dated as of August 16, 2001; the Thirteenth Supplemental Indenture dated as of April 3, 2002; the Fourteenth Supplemental Indenture dated as of June 17, 2002; the Fifteenth Supplemental Indenture dated as of January 28, 2003; the Sixteenth Supplemental Indenture dated as of December 20, 2004; the Seventeenth Supplemental Indenture dated as of August 15, 2007; the Eighteenth Supplemental Indenture, dated as of January 16, 2008; the Nineteenth Supplemental Indenture dated as of March 27, 2008; the Twentieth Supplemental Indenture dated as of March 27, 2008; the Twenty-First Supplemental Indenture dated as of November 25, 2008; the Twenty-Second Supplemental Indenture, dated as of October 1, 2009; the Twenty-Third Supplemental Indenture dated as of July 13, 2010; the Twenty-Fourth Supplemental Indenture, dated as of January 19, 2012; the Twenty-Fifth Supplemental Indenture dated as of April 16, 2012; the Twenty-Sixth Supplemental Indenture dated as of April 16, 2012; the Twenty-Seventh Supplemental Indenture dated as of July 25, 2013; the Twenty-Eighth Supplemental Indenture dated as of July 25, 2013, the Twenty-Ninth Supplemental Indenture, the Thirtieth Supplemental Indenture, the Thirty-First Supplemental Indenture, and the Thirty-Second Supplemental Indenture, all dated as of December 23, 2013, the Thirty-Third Supplemental Indenture, dated as of January 30, 2014, the Thirty-Fourth Supplemental Indenture, dated as of October 28, 2014, the Thirty-Fifth Supplemental Indenture, the Thirty-Sixth Supplemental Indenture, and the Thirty-Seventh Supplemental Indenture, all dated as of January 15, 2016, the Thirty-Eighth Supplemental Indenture, the Thirty-Ninth Supplemental Indenture and the Fortieth Supplemental Indenture, all dated as of October 3, 2016, and the Forty-First Supplemental Indenture, dated as of January 24, 2017 (the “Indenture”) incorporated by reference as Exhibit 4.1 to the Registration Statement.

I have acted as counsel to the Company in connection with its preparation of a Registration Statement relating to such issuance of the Securities and the public sale thereof on Form S-3 filed by the Company with the Securities and Exchange Commission (the “Registration Statement”) for the registration of the Securities under the Securities Act of 1933, as amended (the “Act”). I have examined the Registration Statement and the exhibits thereto; the Amended Articles of Incorporation and Regulations of the Company; the corporate minutes of the proceedings of the directors and shareholders of the Company; and such other records and documents as I have deemed necessary in order to express the opinions hereinafter set forth.

The opinion expressed herein is limited to the laws of the State of Ohio, and, to the extent set forth in the following sentence, the laws of the State of New York, each as currently in effect, and no opinion is expressed with respect to any other laws or any effect that such other laws may have on the opinion expressed herein. Insofar as the opinions set forth herein are governed by the laws of the State of New York, I have relied as to all matters governed by such law upon the opinion dated the date hereof of Freshfields Bruckhaus Deringer US LLP, addressed to the Company and filed as an exhibit to a Current Report on Form 8-K of the Company to be filed with the Commission, which will be incorporated by reference in the Registration Statement. To the extent the opinion of Freshfields Bruckhaus Deringer US LLP contains conditions and limitations, I incorporate such conditions and limitations herein.

Based upon the foregoing, I am of the opinion that, assuming receipt by the Company of payment of the issue price of the Securities, the Securities will constitute the valid and binding obligations of the Company.

The foregoing opinion is subject to applicable bankruptcy, insolvency, or other laws affecting creditors’ rights generally, as from time to time in effect, and to general equity principles.

I consent to the filing of this opinion as an exhibit to a Current Report on Form 8-K of the Company to be filed with the Commission, which will be incorporated by reference in the Registration Statement, and to the reference to me in the Registration Statement under the caption “Legal Matters” therein. In giving such consents, I do not admit that I am in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ Christine S. Wheatley

Christine S. Wheatley
Group Vice President, Secretary and
General Counsel

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Section 6: EX-5.2 (EX-5.2)

Exhibit 5.2



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DOC ID US2673963
OUR REF MAL/PDT
CLIENT-MATTER NO. 166917-0003

The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202

January 24, 2017

Ladies and Gentlemen:

We are acting as counsel to the Underwriters (as defined below) in relation to the Registration Statement on Form S-3 (File No. 333-215085) (the **Registration Statement**) under the Securities Act of 1933, as amended (the **Securities Act**), with respect to the issuance of \$1,000,000,000 aggregate principal amount of 4.450% Senior Notes due 2047 (the **Notes**) of The Kroger Co., an Ohio corporation (the **Company**), pursuant to an Underwriting Agreement dated January 17, 2017 (the **Underwriting Agreement**), which is incorporated by reference in its entirety in the Pricing Agreement dated January 17, 2017 (the **Pricing Agreement**), among the Company and the underwriters named therein (the **Underwriters**).

This opinion is confined to the law of the State of New York and, accordingly, we express no opinion herein with regard to any other laws. The opinions expressed herein are limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein. We do not undertake to advise you of changes in law or facts that may come to our attention after the date of this letter.

The Freshfields Bruckhaus Deringer US LLP partners include members of the Bars of the State of New York and the District of Columbia, Solicitors of the Supreme Court of England and Wales and Rechtsanwälte of Germany.

In rendering the opinions expressed below, we have examined the following documents and agreements:

- (a) the Underwriting Agreement;
- (b) the Pricing Agreement;
- (c) the Indenture dated June 25, 1999 among the Company and U.S. Bank National Association (formerly known as Firststar Bank, N.A.), as trustee (the **Trustee**), as amended and supplemented prior to the date hereof (the **Base Indenture**) and as amended and supplemented by the Forty-First Supplemental Indenture dated as of January 24, 2017 (the **Forty-First Supplemental Indenture**) and, together with the Base Indenture, the **Indenture**); and
- (d) the global notes representing the Notes (together with the Underwriting Agreement, the Pricing Agreement and the Indenture, the **Notes Documents**).

In addition, we have examined and have relied as to matters of fact upon such corporate and other records, agreements, documents and other instruments and certificates or comparable documents of public officials and of officers and representatives of the Company and such other persons, and we have made such other investigations, as we have deemed relevant and necessary as a basis for the opinions expressed below.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals and the conformity with authentic originals of all documents submitted to us as copies. As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied, without independent verification, upon the representations and warranties contained in the Underwriting Agreement and oral or written statements and representations of public officials, officers and other representatives of the Company.

In rendering the opinions set forth herein, we have assumed further that (a) the Company is validly existing and in good standing under the law of its jurisdiction of organization, (b) the

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Company has the power and authority to execute and deliver the Notes Documents, perform its obligations thereunder and consummate the transactions contemplated thereby, (c) each of the Notes Documents has been duly authorized, executed and delivered by all of the parties thereto, (d) each of the Notes Documents constitutes a valid and binding obligation of all the parties thereto (other than as expressly addressed in the opinion below as to the Company), enforceable against such parties in accordance with its terms, (e) the Notes have been duly authenticated and delivered by the Trustee against payment therefor in accordance with the Notes Documents, (f) the execution, delivery and performance by the Company of the Notes Documents do not violate the laws of the jurisdiction in which it is organized or the law of any other jurisdiction (other than with respect to matters related to the law of the State of New York) and (g) the execution, delivery and performance by the Company of the Notes Documents do not constitute a breach or violation of any agreement or instrument to which the Company is a party or which is binding upon the Company or constitute a breach or violation of any organizational documents of the Company.

Based upon and subject to the foregoing, and subject also to the comments and qualifications set forth below, and having considered such questions of law as we have deemed relevant and necessary as a basis for the opinions expressed below, we are of the opinion that the Notes, when paid for by the Underwriters in accordance with the terms of the Notes Documents, will constitute valid and legally binding obligations of the Company.

Our opinions above are subject to (A) (1) the effects of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or transfer or other similar laws relating to or affecting the rights of creditors generally and (2) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including without limitation (a) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (b) concepts of materiality, reasonableness, good faith and fair dealing, and (B) limitations on the right to indemnity and contribution under applicable law and public policy. In addition, we express no opinion as to the validity, legally binding effect or enforceability of any waiver of immunity, any waiver of a right to trial by jury or any provisions relating to partial unenforceability.

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In connection with any provisions whereby the parties submit to the jurisdiction of the U.S. federal and state courts in the Borough of Manhattan in The City, County and State of New York, we note the limitations of 28 U.S.C. §§ 1331 and 1332 on U.S. federal court jurisdiction. In connection with provisions which relate to forum selection (including, without limitation, any waiver of any objection to venue or any objection that a court is an inconvenient forum), we note that under NYCPLR §510 a New York State court may have discretion to transfer the place of trial, and under 28 U.S.C. §1404(a) a U.S. district court has discretion to transfer an action from one U.S. federal court to another, and we also note that a New York State court and a U.S. federal court may dismiss an action on the ground that such court is an improper venue or inconvenient forum.

In addition, we express no opinion as to the validity, binding effect or enforceability of any provision of the Notes Documents:

- (i) related to (a) forum selection or submission to jurisdiction (including, without limitation, any waiver of any objection to venue in any court or of any objection that a court is an inconvenient forum) to the extent that the validity, binding effect or enforceability of any provision is to be determined by any court other than a court of the State of New York, or (b) choice of governing law to the extent that the validity, binding effect or enforceability of any such provision is to be determined by any court other than a court of the State of New York or a federal district court sitting in the State of New York, in each case, applying the law and choice of law principles of the State of New York;
- (ii) specifying that provisions thereof may be waived only in writing, to the extent that an oral agreement or an implied agreement by trade practice or course of conduct has been created that modifies any provision of such agreement; and
- (iii) purporting to give any person or entity the power to accelerate obligations without any notice to the obligor.

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The opinions expressed above are subject to the effect of, and we express no opinions herein as to, the application of state or foreign securities or

Blue Sky laws or any rules or regulations thereunder.

Additionally, we express no opinion as to the submission to the jurisdiction of United States federal courts insofar as it relates to the subject matter jurisdiction of any United States federal court sitting in the Borough of Manhattan, The City of New York, to adjudicate any controversy related to the Underwriting Agreement, the Pricing Agreement, the Indenture or any document related thereto.

This opinion is furnished solely for your benefit in connection with internal counsel for the Company rendering an opinion to the Company to be filed as an exhibit to a Current Report on Form 8-K of the Company to be filed with the SEC, which will be incorporated by reference in the Registration Statement (the **Form 8-K**). We hereby consent to the filing of this opinion as an exhibit to the Form 8-K, and to the reference to this firm under the caption "Validity of the Notes" in the prospectus supplement that is included in the Registration Statement. In giving this consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Freshfields Bruckhaus Deringer US LLP