

Reserve Capacity Agreement

This Reserve Capacity Agreement ("Agreement") is made and entered into as of the 14TH day of APRIL, 2005 ("Effective Date") by and between The Union Light Heat & Power Company ("ULH&P" or "Company"), a corporation organized and existing under the laws of the Commonwealth of Kentucky, and The Kroger Co. ("Customer") with facilities at 2781 Chancellor Dr., Crestview Hills, Kentucky ("Data Center") (each a "Party" and collectively the "Parties").

WHEREAS, Customer is currently being provided electric service at the Data Center by Company through two different feeders each with its own electric service connections (designated as the "Villa 43" and "Kenton 46" feeders, with Customer's load being split between the two feeders) ("Primary Service and Supplemental Service Facilities") pursuant to Rate DT of the Company's KY. P.S.C. Electric No. 4, on file with the Kentucky Public Service Commission ("KyPSC") and as amended from time to time ("Electric Tariff"); and

WHEREAS, Customer and Company are contemporaneously entering into a Supplemental Service Agreement under which Company shall construct and maintain the Company's facilities to enable the Company to provide reserve capacity service to the Data Center ; and


WHEREAS, the Customer desires that Company reserve 1,000 kilo-Watts (kW) of capacity on its distribution facilities that will provide such reserve capacity service ("Reserve Capacity Service"); and

WHEREAS, the purpose of the Supplemental Service and Reserve Capacity Service is to provide an alternate source of electric service to Customer in the event of the failure of the Company's primary source of supply to Customer; and

WHEREAS, Company is willing to provide such limited Reserve Capacity Service to Customer, subject to the terms and conditions of this Agreement;

NOW THEREFORE, the Parties agree as follows:

1. Reserve Capacity. Company shall reserve on Customer's behalf 1,000 kW of capacity split between two separate distribution circuits that are interconnected to the Primary Service and Supplemental Service facilities in accordance with the terms, conditions and limitations set forth herein ("Reserve Capacity Amount").
2. Fees The Customer shall pay a one-time charge of \$ 0.00 for costs associated with the provision of Reserve Capacity Service under this Agreement. In addition to the Company's regular monthly charges pursuant to service to the Data Center under the Electric Tariff, The Customer shall also pay a monthly fee of \$3,250 (\$3.25 per kW)("Monthly Fee") applied to the monthly electric utility bill for the Term of this Agreement or until such time, if any, that Customer determines that additional Reserve Capacity is required. The Monthly Fee shall be subject to change if and when a change in Company's retail electric base rates is approved

By 
 Executive Director
 APR 15 2005

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by the KyPSC. In such event, Company will notify Customer of the new monthly fee thirty (30) days prior to imposing the new fee. The Monthly Fee shall become effective either on the date that the Supplemental Service meter is installed by the Company or 60 days after the Company has completed the installation of the Supplemental Service facilities, whichever date occurs first.

3. Additional Reserve Capacity. In the event that either Party reasonably determines that Customer requires additional Reserve Capacity above the Reserve Capacity Amount, such Party may terminate this Agreement in accordance with Paragraph 8 herein. In the event of such termination, the Parties shall work in good faith to develop a replacement agreement that reflects the increased level of desired Reserve Capacity and the appropriate facilities required to provide the service.
4. Limitations on Service. Company shall make reasonable provisions to supply Reserve Capacity Service, but does not guarantee a constant or uninterrupted supply of electricity from the primary or Supplemental Service sources. Moreover, Company shall not be liable for any damage or claim of damage attributable to any interruption or reversal of service caused by accident or casualty, extraordinary action of the elements, action of any governmental authority, or by any other cause which Company could not have reasonably foreseen and made provisions against, unless due to the gross negligence or intentional misconduct of Company.
5. Excess Demand. Company does not guarantee or warranty that the Reserve Capacity Service will be available beyond the Reserve Capacity Amount level. If Customer's Supplemental Service demand exceeds the Reserve Capacity Amount, Customer shall immediately implement a curtailment plan to reduce its peak electric demand by curtailing non-essential load or by utilizing some other means to obtain an imposed loading of the Reserve Capacity Amount or less.
6. Limitation of Liability / Indemnification. The Company shall not be held responsible by the Customer for any interruption or damages attributed to the Customer's failure to conform to the Reserve Capacity Amount demand limit. Moreover, the Customer shall be held responsible for damages to Company property in the event Customer fails to conform to the Reserve Capacity Amount limit. Further, Customer shall hold Company harmless and shall indemnify Company from and against any and all damage to adjacent customers' property supplied from the same facilities as Customer, to the extent such damage results from Customer's failure to conform to the Reserve Capacity Amount demand limit. In the event Company finds that Customer is not complying with the terms of this Agreement, Company reserves the right to terminate this Agreement, disable the Reserve Capacity Service and/or remove the Supplemental Service facilities. Company will send written notice twenty-four (24) hours prior to such action being taken.
7. Changes in Facilities. If during the Term of this Agreement, Customer requests Company to temporarily or permanently relocate, rearrange, or alter any or all of the facilities required to provide Reserve Capacity Service, and Company agrees to do so, which agreement shall not


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By 
Executive Director

be unreasonably withheld, Customer shall reimburse Company for all reasonable, necessary and documented costs associated therewith.

8. **Term and Termination.** The term of this Agreement shall begin on the Effective Date and be for a period of five (5) years therefrom and shall remain in force, thereafter, until terminated by either Party giving the other Party sixty (60) days advanced written notice of its intent to terminate the Agreement. Notwithstanding the foregoing, this Agreement shall terminate upon the termination, cancellation or expiration of the Supplemental Service Agreement between The Union Light Heat & Power Company and The Kroger Co. executed contemporaneously with this Agreement ("Supplemental Service Agreement"). Upon termination of this Agreement, the Company may remove any affected facilities at Company's cost.
9. **Preventative Maintenance and Testing.** Company shall continue a reasonable preventive maintenance and testing program to reasonably ensure that all related equipment remains in operating condition. The Company's charges for such services shall be included as part of the monthly \$183.60 operation and maintenance fee under the Supplemental Service Agreement.
10. **Tariffed Electric Service.** Company shall provide electric service to Customer in accordance with ULH&P's Electric Tariff, except as otherwise set forth in this Agreement and the Supplemental Service Agreement.
11. **Regulatory Approvals.** This Agreement is subject to KyPSC jurisdiction. Any petitions and filings shall be the responsibility of the Company. Company shall notify the Customer when Company makes the required filing at the KyPSC, and shall notify the Customer of any KyPSC Order issued with respect to this Agreement. If the KyPSC issues any Order rejecting this Agreement or which materially affects the terms and conditions of Company's service rendered pursuant to this Agreement, Company reserves the right to terminate this Agreement upon thirty (30) days' written notice to Customer.
12. **Assignment.** Neither Party shall assign any of its rights nor delegate any of its duties under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of any and all successors or assigns of the Parties.
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and supersedes all prior or contemporaneous understandings, statements or agreements between the Parties on such subject matter with the exception of the Supplemental Service Agreement (together with this Agreement, the "Agreements"). In the event of any conflict between this Agreement and the Supplemental Service Agreement, the Supplemental Service Agreement shall control. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representation, statements or promises in addition to or in any way different that those contained in the Agreements, and that it is not entering into the Agreements in reliance upon any representation, statements or promises in addition to or in

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any way different than those contained in the Agreements, and that it is not entering into the Agreements in reliance upon any representation, statement or promise of the other Party except as expressly stated in the Agreements.

14. **Governing Law.** This Agreement, the construction of this Agreement, all rights and obligations between the Parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including tort claims), shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Kentucky without giving any effect to any conflict of law doctrine.
15. **Interpretation.** Both Parties have had the opportunity to have this Agreement reviewed by counsel; therefore, neither Party hereto shall be construed as the drafter hereof.
16. **Amendments.** No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding unless made in writing and duly signed by the Party to be obligated by, or to perform, such modification.
17. **No Waiver of Rights.** A failure or delay of either Party to exercise any right or remedy under this Agreement shall not operate to impair, limit, preclude, cancel, waive or otherwise affect such right or remedy.
18. **Severability.** If any provision under this Agreement shall be invalid or unenforceable with respect to either Party, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
19. **Notices.** All notices to be given hereunder, unless expressly provided otherwise herein, shall be given in writing to the Parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customer:
Kroger Data Center
2781 Chancellor Dr.
Crestview Hills, Ky.

To Company:
The Union Light Heat & Power Company
Attn. Field Customer Service
7200 Industrial Rd
Florence, KY 41042

20. **Headings.** The headings used in the paragraphs in this Agreement are only for the reference of the Parties and shall have no meaning in the interpretation of any of the provisions herein.

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By 
Executive Director

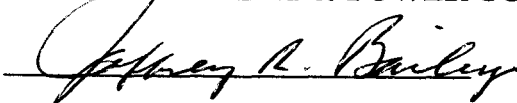
21. Alternative Dispute Resolution. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following Alternative Dispute Resolution ("ADR") procedure prior to either Party pursuing other available remedies:

- a) The aggrieved Party shall send a written notice to the other Party describing the dispute.
- b) Within fifteen (15) days after receipt of such notice, a meeting, teleconference or videoconference, upon agreement of the Parties, shall be held between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate resolution of the dispute.
- c) If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the Parties to act as a mediator ("Neutral"). If the Parties are unable to agree on the Neutral within ten (10) days after expiration of the thirty (30) day period, they shall seek assistance in such regard from CPR Institute for Dispute Resolution, Inc. ("CPR"). The fees of the Neutral and all other common fees and expenses shall be shared equally by the Parties.
- d) The mediation may proceed in accordance with CPR's Model Procedure for Mediation of Business Disputes, or the Parties may mutually establish their own procedure.
- e) The Parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within twenty (20) days following the mediation, the, upon seven (7) days' written notice to the other Party, either Party may immediately seek other remedies available to it in law and equity.
- f) All ADR proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for the ADR proceedings shall not be used as evidence by the other Party in any subsequent litigation; provided, however, the underlying facts supporting such materials may be subject to discovery, and used as evidence in any subsequent litigation.
- g) Each Party fully understands its specific obligations under the ADR provisions of the Agreement. Neither Party considers such obligations to be vague or in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceedings.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective representatives, thereunto duly authorized.

THE UNION LIGHT HEAT & POWER COMPANY

By:



Title:

Manager, Pricing

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By



Executive Director

THE KROGER CO.

By: Mike Fields

Title: _____
Mike Fields
Vice President
Computer Operations

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Executive Director

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PUBLIC SERVICE COMMISSION

SUPPLEMENTAL SERVICE AGREEMENT

480Y/277 VOLTAGE SERVICE

This Supplemental Service Agreement ("Agreement") is made and entered into as of the 14th day of April, 2004, between The Union Light Heat & Power Company, a corporation organized and existing under the laws of the Commonwealth of Kentucky ("ULH&P" or "Company") and The Kroger Co. ("Customer"), with facilities at 2781 Chancellor Dr, Crestview Kentucky ("Data Center"), (each a "Party" and collectively the "Parties").

WHEREAS, Customer is currently being provided electric service by Company at the Data Center through two different feeders each with its own electric service connection (designated as the "Villa 43" and "Kenton 46" feeders, with Customer's load being split between the two feeders), pursuant to Rate DT of the Company's KY. P.S.C. Electric No. 4, on file with the Kentucky Public Service Commission ("KypSC") and as amended from time to time ("Electric Tariff"); and

WHEREAS, the Villa 43 and the Kenton 46 feeders each has a capacity of 750 kVA, and Customer desires to receive reserve capacity service from Company for the Data Center, which would require an upgrade to the capacity of the Villa 43 and Kenton 46 feeders from 750 kVA to 1500 kVA each.; and

WHEREAS, Customer and Company are contemporaneously entering into a Reserve Capacity Agreement under which Company shall reserve certain capacity on its distribution facilities serving the Data Center ("Reserve Capacity Service"); and


WHEREAS, the purpose of this Supplemental Service Agreement and the Reserve Capacity Service is to provide an alternate source of electric service to Customer's Data Center, capable of serving the entire load, in the event of the failure of either, but not both, of the Company's two feeders which currently provide source of supply to Customer's Data Center; and

WHEREAS, Company is willing to provide such Supplemental Service to Customer, subject to the terms and conditions of this Agreement;

NOW THEREFORE, the Parties agree as follows:

- 1. Supplemental Service. Company shall construct, own, operate and maintain the Supplemental Service facilities (hereinafter referred to as "Facilities") shown on Company's drawing, attached hereto as Exhibit A, and thereafter provide Customer a 480Y/277 voltage Supplemental Service. Supplemental Service shall be in addition to the 480Y/277 voltage service ("Primary Service") now supplying the Customer in accordance with the provisions of the Company's Electric Tariff and rate schedule Rate DT contained therein. The purpose of the Supplemental Service is to enable Customer's entire load for the Data Center to be served through either feeder. The electricity


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consumed by Customer under this Agreement shall be supplied and billed according to Rate DT and subject to the terms and conditions stated therein, in addition to other applicable provisions of the Company's Electric Tariff.


2. Fees. Customer shall pay to Company a one-time fee of \$26,698.00 as compensation for constructing the Facilities (hereinafter referred to as "Construction Cost"). Such payment shall be made within 30 days of the date of invoice. Customer shall also pay the Company a monthly fee of \$181.55 for the operation and maintenance of the Facilities ("Monthly Fee"). The Company may include the Monthly Fee on the same bill rendered to Customer for other services provided by the Company, and payments by Customer shall be applied by Company to the billed amounts according to Company's customer accounting practices. The Monthly Fee shall become effective either on the date that the Supplemental Service meter is installed by the Company or 60 days after the Company has completed the installation of the Facilities, whichever date occurs first. The amount of such Monthly Fee shall be in effect for the first year immediately following the date that the Monthly Fee becomes effective. At the end of such first year and on each anniversary date thereafter, the Monthly Fee may be adjusted by the Company for any change in the Company's cost of operation, or maintenance of the Facilities and in accordance with Paragraph 9 herein.
3. Required Rights. If Company is unable to obtain, without cost, all required permits, rights-of-way and easements or any other documents or approvals necessary for the installation on public or private property of the Facilities, this Agreement shall be null and void and neither party shall, thereafter, have any obligations whatsoever to the other party.
4. Grants of Easement. Customer shall, contemporaneously with the execution of this Agreement and without cost to Company, execute and deliver to Company grants of easement requested by the Company in the form prescribed by Company, granting Company the right to construct, maintain, operate and remove the Facilities to be located upon Customer's property.
5. Use of Supplemental Service. The Company and the Customer shall agree to a set of procedures for operation of the Supplemental Service in conjunction with the operation of the Primary Service ("Operating Procedures"). Such Operating Procedures shall be set forth in writing, and shall address the loading of the Supplemental and Primary Services, testing and maintenance of the Facilities, and other such matters related to the operation of the Supplemental and Primary Services as the Parties deem appropriate. Such Operating Procedures shall be part of this Agreement as if fully set forth herein, except that changes to such Operating Procedures shall not be deemed to be amendments to this Agreement. The Parties may agree from time to time to change the Operating Procedures, such changes shall be set forth in writing and shall thereafter be deemed to be part of this Agreement as if fully set forth herein.

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6. Right to Inspect. Company shall have the right, at reasonable times, to inspect the Facilities and any of Customer's equipment connected thereto.
7. Billing Determinants. For billing purposes, the kilowatt hours and kilowatts registered on the Supplemental Service meter shall be bulked together in accordance with Company's standard practice for bulking interval meters.
8. Limitations on Service. The Facilities to be provided based on this Supplemental Service Agreement are intended to provide an alternate source of supply to the Customer's Crestview Hills Kentucky Data Center facility from the local ULH&P distribution system. The Facilities will provide service from the ULH&P distribution system comparable to the standard service provided to any customer supplied from the Company's distribution system. The Primary Service and/or the Supplemental Service may be individually or simultaneously out of service due to events beyond Company's control. In such instances, Company shall restore service as quickly as possible consistent with good utility practice. Company shall not be liable for any damage or claim of damage attributable to any interruption or reversal of service caused by unavoidable accident or casualty, extraordinary action of the elements, action of any governmental authority, or by any other cause which Company could not have reasonably foreseen and made provision consistent with Company's standard system design and operating practices against. Company also reserves the right to re-configure its Facilities to provide service to the Data Center from feeders other than Villa 43 and Kenton 46.
9. Changes in Facilities. If, during the term of this Agreement, Customer requests Company to temporarily or permanently relocate, rearrange or alter any or all of the Facilities, and Company agrees to do so, Customer shall reimburse Company for all costs associated therewith, such reimbursement to include changes to the Monthly Fee reflective of any change in Company maintenance of the Facilities.
10. Term and Termination. The term of this Agreement shall be for a period of five (5) years and shall remain in force, thereafter, until terminated by either Party giving the other Party sixty (60) days written notice of its intent to terminate the Agreement. Upon termination of this Agreement, the Company may, at its sole discretion, remove the Facilities and Company shall bear the cost of removing the Facilities.
13. Tariffed Electric Service. Company shall provide electric service to Customer in accordance with ULH&P's Electric Tariff, except as otherwise set forth in this Agreement.
14. Regulatory Approvals. This Agreement is subject to KyPSC jurisdiction. Any petitions and filings shall be the responsibility of the Company. Company shall notify the Customer when Company makes the required filing at the KyPSC, and shall notify the Customer of any KyPSC Order issued with respect to this Agreement. If the KyPSC issues any Order rejecting this Agreement or which materially affects the terms and

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conditions of Company's service rendered pursuant to this Agreement, Company reserves the right to terminate this Agreement upon thirty (30) days' written notice to Customer.

15. Assignment. Neither Party shall assign any of its rights nor delegate any of its duties under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of any and all successors or assigns of the Parties.
16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and supersedes all prior or contemporaneous understandings, statements or agreements between the Parties on such subject matter with the exception of the Reserve Capacity Agreement between The Union Light Heat & Power Company and The Kroger Company providing for reserve capacity service to the Data Center ("Reserve Capacity Agreement" and together with this Agreement, the "Agreements"). In the event of any conflict between this Agreement and the Reserve Capacity Agreement, this Agreement shall control. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representation, statements or promises in addition to or in any way different than those contained in the Agreements, and that it is not entering into this Agreement in reliance upon any representation, statements or promises in addition to or in any way different than those contained in the Agreements, and that it is not entering into this Agreement in reliance upon any representation, statement or promise of the other Party except as expressly stated in the Agreements.
11. Governing Law. This Agreement, the construction of this Agreement, all rights and obligations between the Parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including tort claims), shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Kentucky without giving any effect to any conflict of law doctrine.
12. Interpretation. Both Parties have had the opportunity to have this Agreement reviewed by counsel; therefore, neither Party hereto shall be construed as the drafter hereof.
13. Amendments. No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding unless made in writing and duly signed by the Party to be obligated by, or to perform, such modification.
14. No Waiver of Rights. A failure or delay of either Party to exercise any right or remedy under this Agreement shall not operate to impair, limit, preclude, cancel, waive or otherwise affect such right or remedy.
15. Severability. If any provision under this Agreement shall be invalid or unenforceable with respect to either Party, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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16. Notices. All notices to be given hereunder, unless expressly provided otherwise herein, shall be given in writing to the Parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customer:
Kroger Data Center

To Company:
The Union Light Heat & Power Company
Attn. Field Customer Service
7200 Industrial Road
Florence, Kentucky 41042

17. Headings. The headings used in the paragraphs in this Agreement are only for the reference of the Parties and shall have no meaning in the interpretation of any of the provisions herein.
18. Alternative Dispute Resolution. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following Alternative Dispute Resolution (“ADR”) procedure prior to either Party pursuing other available remedies:
- a) The aggrieved Party shall send a written notice to the other Party describing the dispute.
 - b) Within fifteen (15) days after receipt of such notice, a meeting, teleconference or videoconference, upon agreement of the Parties, shall be held between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate resolution of the dispute.
 - c) If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the Parties to act as a mediator (“Neutral”). If the Parties are unable to agree on the Neutral within ten (10) days after expiration of the thirty (30) day period, they shall seek assistance in such regard from CPR Institute for Dispute Resolution, Inc. (“CPR”). The fees of the Neutral and all other common fees and expenses shall be shared equally by the Parties.
 - d) The mediation may proceed in accordance with CPR’s Model Procedure for Mediation of Business Disputes, or the Parties may mutually establish their own procedure.
 - e) The Parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within twenty (20) days following the mediation, the, upon seven (7) days’ written notice to the other

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Executive Director

Party, either Party may immediately seek other remedies available to it in law and equity.

- f) All ADR proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for the ADR proceedings shall not be used as evidence by the other Party in any subsequent litigation; provided, however, the underlying facts supporting such materials may be subject to discovery, and used as evidence in any subsequent litigation.
- g) Each Party fully understands its specific obligations under the ADR provisions of the Agreement. Neither Party considers such obligations to be vague or in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceedings.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective representatives, thereunto duly authorized.

THE UNION LIGHT HEAT & POWER COMPANY

By: Jeffrey R. Bailey

Title: Manager, Pricing

THE KROGER CO.

By: Mike Fields

Title: Mike Fields
Vice President
Computer Operations

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By: [Signature]
Executive Director