

August 28, 2019

WHEREAS, the City of Dallas ("City") recognizes the importance of its role in local economic development; and

WHEREAS, it is in the interest of the City to support and secure the expansions and relocations of business operations within the city of Dallas and the economic vitality and employment opportunities that these business operations bring for Dallas residents; and

WHEREAS, the proposed project will not occur within the city of Dallas without an offer of economic development incentives from the City; and

WHEREAS, on November 6, 2012, Dallas voters approved a \$642 million General Obligation Bond Programs of which \$55 million in bond funding to promote economic development activities in southern Dallas and promoting economic development in other areas of the City in conjunction with transit-oriented development by providing public infrastructure and funding the City's economic development programs for such areas; and

WHEREAS, on June 12, 2019, City Council authorized the re-adoption of the City of Dallas' Public/Private Partnership Program Guidelines and Criteria through December 31, 2019, which established certain guidelines and criteria for the use of City incentive programs for private development projects; established programs for making loans and grants of public money to promote local economic development and to stimulate business and commercial activity in the City pursuant to the Economic Development Programs provisions under Chapter 380 of the Texas Local Government Code; and established appropriate guidelines and criteria governing tax abatement agreements to be entered into by City as required by the Property Redevelopment and Tax Abatement Act, as amended, (Texas Tax Code, Chapter 312) ("Tax Abatement Act") by Resolution No. 19-0891; and

WHEREAS, the City desires to support the development of a new grocery fulfillment center by The Kroger Co. or an affiliate thereof ("Kroger") and Ocado Solutions USA Inc. or an affiliate thereof ("Ocado") located on approximately 55 acres at the northwest corner of Telephone Road and Bonnie View Road ("Project Site") as further described on the attached site map **Exhibit A (Map)** and as legally described by **Exhibit B (Metes and Bounds Legal Description)** and in accordance with the City's Public/Private Partnership Program; and

WHEREAS, the proposed Project Site is located in an existing Texas Enterprise Zone; and

WHEREAS, pursuant to Section 312.2011 of the Texas Tax Code, the Property Redevelopment and Tax Abatement Act provides that the designation of an area as an enterprise zone under the Texas Enterprise Zone Act constitutes designation of an area as a reinvestment zone without further hearing or other procedural requirements; and

August 28, 2019

WHEREAS, the City desires to enter into a business personal property tax abatement agreement with Kroger for added value to business personal property located at the Project Site within City of Dallas; and

WHEREAS, the City desires to enter into a business personal property tax abatement agreement with Ocado for added value to business personal property located at the Project Site within City of Dallas; and

WHEREAS, the City desires to enter into a real property tax abatement agreement with Kroger for added value to real property located at the Project Site within City of Dallas; and

WHEREAS, the City desires to enter into a Chapter 380 economic development grant agreement with Kroger to promote economic development through the investment of related public improvements required for the development of the grocery fulfillment center at the Project Site; and

WHEREAS, the Dallas City Council previously passed Ordinance No. 30376 on February 22, 2017 electing to participate in the Texas Enterprise Zone Program; and

WHEREAS, the local incentives offered under this resolution are the same on this date as were outlined in Ordinance No. 30376; and

WHEREAS, the Office of the Governor, Economic Development and Tourism division, through the Economic Development Bank, will consider Kroger as an Enterprise Zone Project pursuant to a nomination and an application made by the City; and

WHEREAS, the City desires to pursue the creation of the proper economic and social environment in order to induce the investment of private resources in productive business enterprises located in the City and to provide employment to residents of enterprise zones, economically disadvantaged individuals and veterans; and

WHEREAS, pursuant to Chapter 2303, Subchapter F of the Texas Enterprise Zone Act, Texas Government Code ("Act"), Kroger has applied to the City for designation as an Enterprise Zone Project; and

WHEREAS, the City finds that Kroger meets the criteria for designation as an Enterprise Zone project under the Act; and

WHEREAS, the City finds that it is in the best interest of the City to nominate Kroger as an Enterprise Zone Project pursuant to the Act; and

WHEREAS, the City finds that both Kroger and Ocado meets the criteria for tax relief and other incentives adopted by the City.

August 28, 2019

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct.

SECTION 2. That the City Manager is hereby authorized to execute the following: (1) a business personal property tax abatement agreement for a period of five-years in an amount equal to the City taxes assessed up to 50% of the increased value of The Kroger Co. or an affiliate thereof ("Kroger") business personal property; (2) a business personal property tax abatement agreement for a period of five-years in an amount equal to the City taxes assessed up to 50% of the increased value of Ocado Solutions USA Inc.'s or an affiliate thereof ("Ocado") business personal property; (3) a real property tax abatement agreement for a period of ten-years in an amount equal to the City taxes assessed up to 90% of the increased value of the Kroger's real property; (4) a Chapter 380 economic grant agreement in an amount not to exceed \$2,000,000.00 associated with project related public infrastructure with Kroger; and (5) the nomination of Kroger to receive designation as an Enterprise Zone Project under the Texas Enterprise Zone Act, as amended (Texas Government Code, Chapter 2303) to the Office of the Governor, Economic Development and Tourism division, through the Economic Development Bank; in connection with the proposed development of a new grocery fulfillment center located on approximately 55 acres at the northwest corner, as further described on the attached site map **Exhibit A (Map)** and as legally described by **Exhibit B (Metes and Bounds Legal Description)**, approved as to form by the City Attorney's Office.

SECTION 3. That the approval and execution of the real property and business personal property tax abatement agreements by the City is not conditional upon approval and execution of any other tax abatement agreement by any other taxing entity.

SECTION 4. That at least seven days prior to the execution of the tax abatement agreements, notice of the City's intention to enter into the tax abatement agreements shall be delivered to the governing bodies of each other taxing unit that includes in its boundaries the real property that is the subject of this agreement.

SECTION 5. That the approval and execution of the tax abatement agreements by the City is not conditional upon approval and execution of any other tax abatement agreement by any other taxing entity.

August 28, 2019

SECTION 6. That the business personal property and real property tax abatement agreements shall include the following terms, as applicable:

- (a) None of the property subject to the business personal property tax abatements is owned or leased by a member of the City Council of the City of Dallas or by a member of the City Plan Commission.
- (b) The Kroger business personal property tax abatement will only be applicable to the business personal property owned by Kroger located on the Project Site.
- (c) The Ocado business personal property tax abatement will only be applicable to the business personal property owned by Ocado located on the Project Site.
- (d) Each abatement will begin on January 1 of the year after Kroger or Ocado, as appropriate, confirms that it has hired the minimum required number of employees as described in Section 12 (d) below. The amount of the abatement(s) in any year will be determined by the percentage of employees of the abatement recipient who are residents of the City of Dallas, as outlined below:

Percentage of minimum employees who are residents of the City of Dallas	Kroger Real Property Tax Abatement Percentage	Kroger and Ocado BPP Tax Abatement Percentage
35% or greater	90%	50%
25-34%	75%	40%
0% to 24%	0%	0%

¹ This includes new workers who choose to live in Dallas once they are hired. Local residence compliance will not be conducted until the minimum 350 jobs are relocated/created.

- (e) A description of the kind, number, location and costs of all proposed improvements to the property shall be provided for each abatement.
- (f) That access to the subject property will be provided to allow for inspection by City inspectors and officials to ensure that the improvements or repairs are made according to the specifications and terms of the tax abatement agreements.
- (g) That the property tax revenue lost as a result of the tax abatement agreements will be recaptured by the City if improvements to real and business personal property are not made as provided by the tax abatement agreements.
- (h) A requirement that the owner of the property certify annually that the owner is in compliance with each applicable term of the tax abatement agreements.

August 28, 2019

SECTION 6. (continued)

- (i) That the Dallas City Council may terminate or modify the agreement if either Kroger or Ocado fails to comply with the agreement requirements.

SECTION 7. That the Chapter 380 economic grant agreement shall be payable in two equal installments of \$1 million. The first installment will be paid upon completion of a minimum 300,000 square foot robotics fulfillment center on the Project Site no later than December 31, 2022, as evidenced by a certificate of occupancy. The second installment will be paid on the later of (i) one year from the date of the first payment, or (ii) the date that Kroger and Ocado successfully document to the satisfaction of the Director of the Office of Economic Development ("Director") a total minimum capital investment of \$100 million, of which a minimum of \$35 million shall be real estate development capital investments. This investment shall not include any amounts spent on developer fees or other profit line items, attorney fees, or the purchase price of the Project Site. The Chapter 380 economic grant agreement shall be cross-defaulted with the City of Dallas business personal property and real property tax abatement agreement terms/requirements as noted in Section 6 a - i. Furthermore, Kroger shall create and maintain a local hiring requirement of which a minimum 25% of employees who are hired will be residents of the City of Dallas. This local hiring requirement will be effective throughout the term of the Chapter 380 economic grant agreement as outlined in the table in Section 6 d.

SECTION 8. That the City finds that Kroger meets the criteria for incentives adopted by the City and nominates Kroger for Enterprise Zone project status on the grounds that it will create or retain a higher level of employment and create economic activity and stability.

SECTION 9. That the designation of Kroger will contribute significantly to the achievement of the plans of the City of Dallas for development.

SECTION 10. That the City finds that it is in the best interest of the City to nominate Kroger as an Enterprise Zone project pursuant to the Enterprise Zone Act and hereby authorizes the Director to prepare and submit an application to the Office of the Governor, Economic Development and Tourism division, through the Economic Development Bank for designation of Kroger as an Enterprise Zone project.

SECTION 11. That the Enterprise Zone project shall take effect on the date of designation of the Enterprise Zone project by the Office of the Governor, Economic Development and Tourism division, through the Economic Development Bank and terminate five years after date of designation.

August 28, 2019

SECTION 12. That in addition to the terms highlighted elsewhere in this resolution, the Enterprise Zone nomination, business personal property tax abatements, real property tax abatement and Chapter 380 economic development grant (collectively the “incentive agreements”), Kroger and Ocado shall also satisfy and agree to the following terms:

- (a) Kroger’s purchase of the approximately 55 acre Project Site, by the end of Quarter 1 2020.
- (b) Construction by Kroger of a minimum 300,000 square foot robotics fulfillment center on the Project Site no later than December 31, 2022, as evidenced by a certificate of occupancy.
- (c) Operation of the constructed fulfillment center shall commence no later than December 31, 2023, and Kroger and Ocado shall continuously occupy and operate the entire facility during the terms of all tax abatements.
- (d) Kroger shall create a minimum of 350 permanent, full-time positions at the Project Site by December 31, 2024. Ocado shall create a minimum of 60 permanent, full-time positions at the project site by December 31, 2024. These minimum employee counts must be continuously maintained throughout the term of all tax abatement agreements with either party.
- (e) All employees of Kroger and Ocado shall be paid a minimum wage of \$15.00/hour. This amount does not include overtime, bonuses, benefits, or other non-salary items. This minimum salary requirement is applicable throughout the term of all tax abatements.
- (f) Kroger’s employees shall be paid an annual average wage not less than \$41,715.00, and Ocado’s employees shall be paid an annual average wage not less than \$66,000.00. These minimum annual average wage requirements are applicable throughout the term of the incentive agreements.
- (g) Kroger and Ocado shall document, to the satisfaction of the Director, a total minimum capital investment of \$100 million, of which a minimum of \$35 million shall be real estate development capital investments. This investment shall not include any amounts spent on developer fees or other profit line items, attorney fees, or the purchase price of the project site’s land.
- (h) Kroger and Ocado shall conduct or participate in two job fairs by December 31, 2022, at locations in the City of Dallas approved by the Director to facilitate the recruitment and hiring of residents of the City of Dallas.

August 28, 2019

SECTION 12. (continued)

- (i) Kroger and Ocado shall execute formal agreements with the Dallas Independent School District and Richardson Independent School District by June 30, 2022 to participate as an Industry Partner in the Pathway to Technology Early College High School programs of each school district. Office of Economic Development staff are available to make introductions to relevant school district staff.
- (j) Kroger shall undertake a good faith/best effort to comply with the City's Business Inclusion and Development goal of 25% participation by Minority/Women-owned Business Enterprises for construction and construction-related expenditures incurred by the proposed grocery fulfillment center in Dallas. Compliance will be coordinated with the City's Office of Business Diversity, and Kroger shall meet with the Office of Business Diversity prior to executing any incentive agreement.
- (k) Throughout the term of the incentive agreements, Kroger shall provide grocery delivery services to all residents of the City of Dallas and shall not redline, exclude, or otherwise limit delivery availability in any area of the city.
- (l) Access to healthy food in southern Dallas is a priority for the City of Dallas. In that spirit, Kroger agrees to the following:
 - a. Kroger shall conduct a review of the southern Dallas market for potential new store sites and will meet with the Director by December 31, 2020 the findings of that review. Kroger shall specifically review sites suggested by the Director in which the City has made or plans to make substantial investments.
 - i. If a location in southern Dallas is selected for a new full-service retail grocery store, additional incentives may be available to assist with the construction of the new store. Additional incentives are subject to negotiation and would require separate consent of the City Council.
 - b. Kroger has only one existing store in southern Dallas. Kroger has identified this store as a significant priority, and Kroger division management currently visits the store at least weekly to evaluate store performance. Kroger is committed to investing in the store in the future but makes no representation at this time as to timeline or budget. As to this particular store, Kroger shall:

August 28, 2019

SECTION 12. (continued)

- i. Within 24 months, determine the scope, specifications, and budget of any remodel, or determine that no remodel will be completed. Kroger will meet with the Director on or before December 31, 2021 to discuss its determinations and plans. If a remodel is planned, additional incentives may be available to assist with the project. Additional incentives are subject to negotiation and would require separate consent of the City Council.
 - ii. During the time period between the execution of the incentive agreement and the meeting with the Director described above, Kroger shall make best efforts to continue weekly visits by division management in order to evaluate store performance and possible store operational or capital improvements.
- (m) On or before May 31, 2021, Kroger shall meet with leadership at Paul Quinn College, University of North Texas at Dallas, and Cedar Valley College to discuss potential workforce development programs with these nearby educational institutions, including possible grant funding from the Recruit Texas program. Kroger shall report back to the Director by August 31, 2021 as to the result of those meetings. Office of Economic Development staff are available to attend those meetings, make introductions, or otherwise facilitate as needed.
- (n) Kroger and Ocado shall, upon request, permit staff from the Office of Economic Development access to the facility to review all records and documents related to the obligations contained herein to monitor compliance with the City incentive agreement.
- (o) Kroger and Ocado shall provide written annual reports to the Office of Economic Development regarding compliance with the City incentive agreement.
- (p) Failure to comply with the terms of the incentive agreement may result in recapture and/or repayment of all or part of the incentives.
- (q) If incentive agreements are not executed within one year of the date of the council resolution approving the incentives, the incentives are revoked.

SECTION 13. That the Chapter 380 economic development grant as noted within Section 2 within this Resolution is subject to annual verification, audit, or other necessary procedures deemed appropriate by the City. The Director is authorized to make appropriate arrangements with Kroger to meet the verification, audit, or other necessary requirements to fulfill the purposes described herein.

August 28, 2019

SECTION 14. That development and operation of the Project Site shall conform to all requirements of the City's zoning ordinance and that the use of the Project Site is consistent with the general purpose of encouraging development or redevelopment in the City of Dallas during the period the Chapter 380 economic development grant, real property and business personal property tax abatements are in effect.

SECTION 15. That the Chapter 380 economic development grant, real and business personal property abatements applicable to Kroger as noted within this Resolution are personal to Kroger and cannot be sold or assigned to non-affiliated companies without written approval by the Director.

SECTION 16. That the business personal property abatement applicable to Ocado as noted within this Resolution is personal to Ocado and cannot be sold or assigned to non-affiliated companies without written approval by the Director.

SECTION 17. That pursuant to Section 2 and related terms within this Resolution, the business personal property tax abatement agreement with Kroger is identified by the City as Contract No. ECO-2019-00011251.

SECTION 18. That pursuant to Section 2 and related terms within this Resolution, the business personal property tax abatement agreement with Ocado is identified by the City as Contract No. ECO-2019-00011252.

SECTION 19. That pursuant to Section 2 and related terms within this Resolution, the real property tax abatement agreement with Kroger is identified by the City as Contract No. ECO-2019-00011253.

SECTION 20. That pursuant to the Chapter 380 economic grant agreement, its related terms within this agreement, and upon City approval of annual appropriation, the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$2,000,000.00 from Economic & S. Area of City Transit-Oriented Development Fund, Fund 2U52, Department ECO, Unit W476, Object 3016, Activity ECNR, Contract No. ECO-2019-00011254, Vendor 256691.

SECTION 21. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

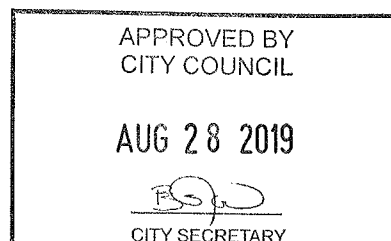


EXHIBIT A
MAP
The Kroger Co./ Ocado Solutions USA Inc.

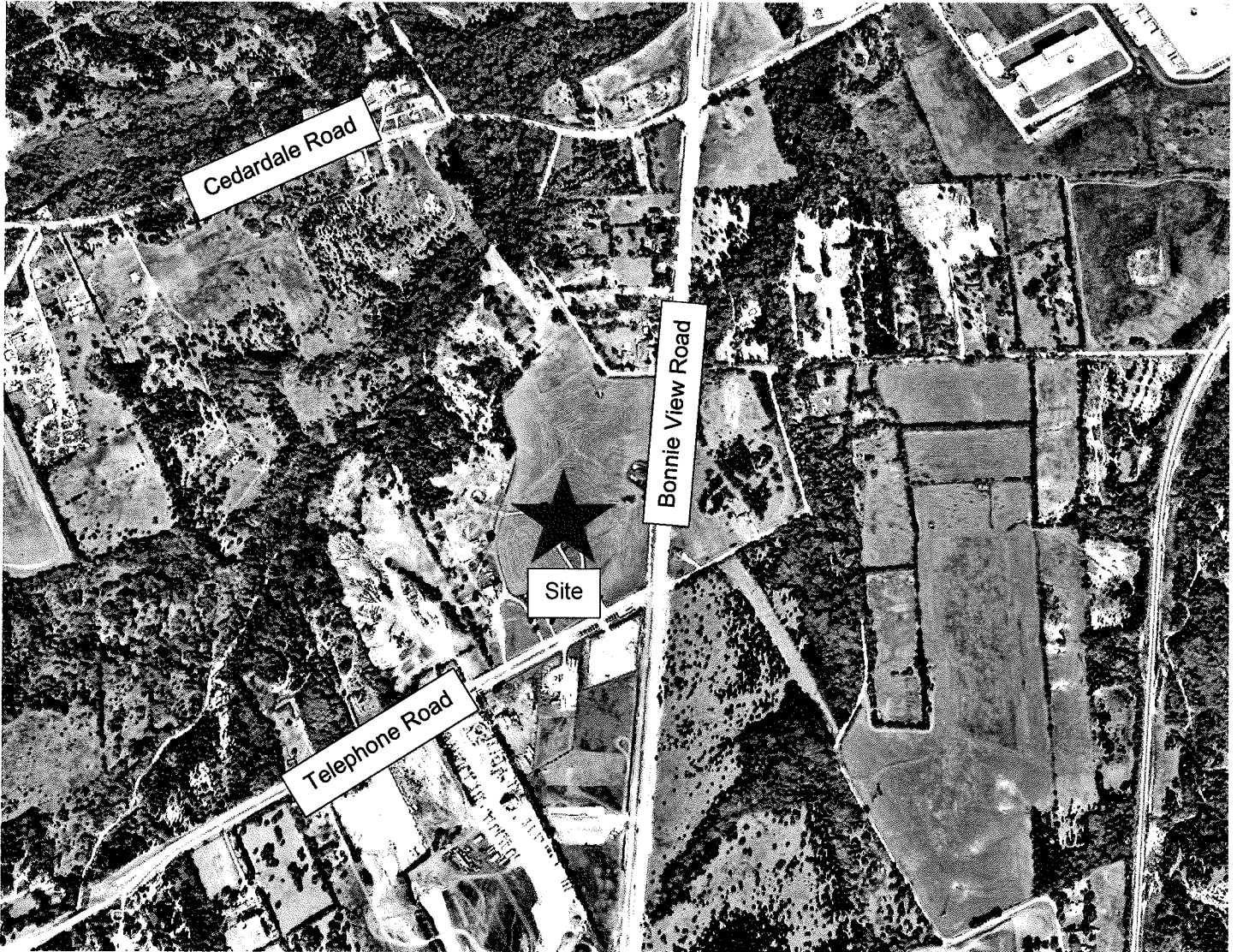


EXHIBIT B
METES AND BOUNDS – LEGAL DESCRIPTION
The Kroger Co./ Ocado Solutions USA Inc.

191316

Tract 1:

DESCRIPTION, of a 56.116 acre (2,444,405 square foot) tract of land situated in the George Floyd Survey, Abstract No. 463, City of Dallas Block 8309, Dallas County, Texas; said tract being a portion of Lot 1, Block, A/8309 Skief Addition, an addition to the City of Dallas according to the plat recorded in Volume 97168, Page 95 of the Plat Records of Dallas County, Texas; said tract also being a part of that tract of land described in Special Warranty Deed with Vendor's Lien to Clemmie Skief recorded in Volume 93051, Page 4775 of the Deed Records of Dallas County, Texas, and being a part of that tract of land described in Warranty Deed with Vendor's Lien to Clemmie Skief recorded in Volume 2001062, Page 8483 of the Deed Records of Dallas County, Texas, said tract also being a part of "Tract 1" and "Tract 2" described in Warranty Deed to Clemmie Skief recorded in Volume 2001131, Page 6282 of the Deed Records of Dallas County, Texas; said 56.116 acre (2,444,405 square foot) tract being more particularly described by metes and bounds as follows (bearing system for this survey is based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone 4202, based on observations made on April 3, 2019):

BEGINNING, at a 1/2-inch iron rod with "PACHECO KOCH" cap set in the west line of said "Tract 1" described in Volume 2001131, Page 6282 and the east line of that tract of land described in Warranty Deed with Vendor's Lien to John H. Adams and wife, Dolly D. Adams recorded in Volume 74107, Page 144 of the Deed Records of Dallas County, Texas, said iron rod being the northwest corner of "Tract 1" described in Warranty Deed to City of Dallas recorded in Instrument Number 201100266364 of the Official Public Records of Dallas County, Texas, and the northeast corner of that tract of land described in Warranty Deed to City of Dallas recorded in Instrument Number 201100271632 of the Official Public Records of Dallas County, Texas, said iron rod also being in the north right-of-way line of Telephone Road (a 100-foot right-of-way);

THENCE, North 30 degrees 10 minutes 36 seconds West along the west line of said "Tract 1" the west line of said "Tract 2" both described in Volume 2001131, Page 6282 and joining the west line of said tract described in Volume 93051, Page 4775 and the east line of said Adams tract, at a distance of 1,500.00 feet passing a 1/2-inch iron rod with "PACHECO KOCH" cap set for reference and continuing in all a total distance of 1583.34 feet to a point in the approximate centerline of Overton's Branch Creek, said point also being in the southeast line of that tract of land described in Special Warranty Deed to Cedardale Phase I, LLC recorded in Instrument Number 201700026404;

THENCE, with the approximate centerline of said Overton's Branch Creek the following fifteen (15) calls:

1) North 62 degrees 24 minutes 28 seconds East, a distance of 13.82 feet; 2) North 56 degrees 16 minutes 33 seconds East, a distance of 128.57 feet; 3) North 47 degrees 50 minutes 00 seconds East, a distance of 52.59 feet; 4) North 15 degrees 35 minutes 07 seconds East, a distance of 59.60 feet; 5) North 10 degrees 29 minutes 29 seconds West, a distance of 118.91 feet 6) North 09 degrees 47 minutes 43 seconds East, a distance of 6.22 feet 7) North 51 degrees 20 minutes 20 seconds East, a distance of 158.00 feet 8) North 45 degrees 29 minutes 32 seconds East, a distance of 22.38 feet 9) North 15 degrees 56 minutes 06 seconds West, a distance of 95.38 feet 10) North 01 degrees 59 minutes 42 seconds West, a distance of 12.62 feet 11) North 24 degrees 42 minutes 13 seconds West, a distance of 33.59 feet 12) North 09 degrees 25 minutes 37 seconds East, a distance of 204.93 feet 13) North 06 degrees 48 minutes 33 seconds West, a distance of 223.51 feet 14) North 64 degrees 50 minutes 42 seconds East, a distance of 160.41 feet 15) North 40 degrees 52 minutes 17 seconds East, a distance of 234.86 feet to the northeast corner of said tract described in Volume 93051, Page 4775, the northwest corner of said tract described in Volume 2001062, Page 8483, and the northwest corner of that 100-foot wide tract of land described in Warranty Deed to Dallas Power & Light Company in Volume 70042, Page 258 of the Deed Records of Dallas County, Texas;

EXHIBIT B
METES AND BOUNDS – LEGAL DESCRIPTION
The Kroger Co./ Ocado Solutions USA Inc.

191316

THENCE, South 38 degrees 23 minutes 32 seconds East, departing said approximate centerline of Overton's Branch Creek and along the southwest line of said Dallas Power & Light Company tract, at a distance of 100.00 feet passing a 1/2-inch iron rod with "PACHECO KOCH" cap set for reference and continuing in all a total distance of 1832.99 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap set in the east line of said tract described in Volume 2001062, Page 8483, said iron rod also being in the west right-of-way line of Bonnie View Road (a 100-foot right-of-way);

THENCE, South 02 degrees 46 minutes 47 seconds West, departing said southwest line of the Dallas Power & Light Company tract and along the east line of said tracts recorded in Volume 2001062, Page 8483 and Volume 93051, Page 4775 and along said west right-of-way line of Bonnie View Road, a distance of 609.85 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap set at the northeast corner of "Tract 2" described to the City of Dallas by aforementioned Instrument Number 201100266364, said iron rod also being at the north end of a corner clip at the intersection of said west right-of-way line of Bonnie View Road with the aforementioned north right-of-way line of Telephone Road;

THENCE, South 30 degrees 39 minutes 24 seconds West, departing said east line of said tract described in Volume 93051, Page 4775 and along the north line of said "Tract 2" described in Instrument Number 201100266364, a distance of 43.14 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap set at an angle point in the north line of said "Tract 2" described by said Instrument Number 201100266364 and also being the southwest end of said corner clip;

THENCE, South 59 degrees 34 minutes 54 seconds West, continuing along the north line of said "Tract 2" described in Instrument Number 201100266364, the north line of said tract described in Warranty Deed to City of Dallas recorded in Instrument Number 201400197739 of the Official Public Records of Dallas County, Texas, the north line of said "Tract 1" described in Instrument Number 201100266364 and along the said north right-of-way line of Telephone Road, a distance of 984.63 feet to the POINT OF BEGINNING and CONTAINING 56.116 acre (2,444,405 square foot) of land area.

Note: The Company is prohibited from insuring the area or quantity of the Land. Any statement in the legal description contained in Schedule A as to area or quantity of land is not a representation that such area or quantity is correct but is for informal identification purposes and does not override Item 2 of Schedule B hereof.