ORDINANCE 82-19

TO AUTHORIZE THE ISSUANCE AND SALE OF ECONOMIC DEVELOPMENT REVENUE BONDS (KROGER COMPANY PROJECT) AND TO APPROVE OTHER RELATED ACTIONS

WHEREAS, the City of Bloomington, Indiana (the "Issuer"), wishes to issue $1,100,000 of its Economic Development Revenue Bonds, Series 1982, (The Kroger Co. Project) (the "Series 1982 Bonds") and to loan the proceeds from the sale of the Bonds to the Kroger Co., an Ohio corporation(the "Company") pursuant to the terms of a Loan Agreement, dated as of April 1,1982 (the "Loan Agreement" or "Agreement") to be used by the Company to fixture and equip a supermarket to be operated by the Company in the city of Bloomington, Indiana; and

WHEREAS, the issuance and sale of the Series 1982 Bonds and the loaning of the proceeds from the sale of the Series 1982 Bonds to the Company will induce the Company to locate the Project at the Site and thereby will create jobs and employment opportunities within the boundaries of the Issuer and will improve the economic welfare of the people residing within the boundaries of the Issuer; and

WHEREAS, the Bloomington Economic Development Commission (the "Commission") has rendered its Project Report dated July 21, 1980, for the Kroger Co. Project regarding the financing of proposed economic development facilities for the Company; and

WHEREAS, the Commission conducted a public hearing on March 25 , 1982, and also adopted a resolution on March 25 , 1982, which resolution has been transmitted to the Issuer, finding that the financing of certain economic development facilities of the Company complies with the provisions of IC 36-7-12 and that such financing will be of benefit to the health and welfare of the City of Bloomington and its citizens; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of Bond Legislation by this Common Council and has approved the forms of, and has transmitted for approval by this Common Council, the Loan Agreement and Trust Indenture;

NOW, THEREFORE, BE IT HEREBY ORDAINED, BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. Definitions. In addition to the works and terms elsewhere defined in this ordinance (herein "Bond Legislation"), all initially capitalized terms and words used herein shall have the same meaning as in the Loan Agreement and/or Indenture relating to the Series 1982 Bonds authorized by this Bond Legislation, unless the context or use clearly indicates another or different meaning or intent.

SECTION II. Determinations by the Legislative Authority. The Legislative Authority hereby determines that the financing of the economic development facilities referred to in the Loan Agreement approved by the Commission and presented to this Common Council, the issuance and sale of Economic Development Revenue Bonds, Series 1982 (the Kroger Co. Project), the loan of the proceeds of the Series 1982 Bonds to the Company for the acquisition and installation of such facilities, and the payment of the Series 1982 Bonds by the note payments of the Company under the Loan Agreement and Note, complies with the purposes and provisions of IC 36-7-12 (the "Act"), and will benefit the health and welfare of the City of Bloomington and its citizens.

SECTION III. (a) The Issuer is hereby authorized to issue the Series 1982 Bonds, to deliver the Series 1982 Bonds to, and cause the Series 1982 Bonds to be authenticated by, the Trustee in accordance with the terms and conditions of the Indenture and to sell the Series 1982 Bonds to Gradison & Company Incorporated (the "Underwriters") at the price and on the terms and conditions set forth in a certain Underwriting Agreement, dated as of April 1 , 1982, between the Company and the Underwriter, which price, terms and conditions are hereby approved. The Series 1982 Bonds shall have the terms set forth in Section IV of this Bond Legislation. The proceeds from the sale of the Series 1982 Bonds shall be used by the Issuer to make the Loan to the Company to assist

the Company in financing the Cost of the Project, which Loan is hereby authorized and is hereby determined to be necessary to accomplish the purposes contemplated by the Act.

(b) To secure the payment of the Series 1982 Bonds, the Issuer is authorized to enter into, and to perform its obligations under, the Loan Agreement and the Indenture in substantially the forms submitted to the Issuer but with such changes therein as (i) are not inconsistent with this Bond Legislation, (ii) are not substantially adverse to the Issuer, (iii) are permitted by the Act and (iv) are approved by the officers of the Issuer executing and delivering such agreements and instruments, all of which facts shall be conclusively evidenced by such officers' execution and delivery of such agreements and instruments.

(c) The Series 1982 Bonds and appurtenant coupons shall be executed by the Mayor and attested by the Clerk of the Legislative Authority provided that any or all of such signatures may be facsimiles and such officers shall cause a facsimile of the Issuer's seal to be imprinted thereon. The Agreement and Indenture shall be executed, acknowledged (where appropriate) and delivered, and the Note shall be endorsed to effect its assignment to the Trustee, by the Mayor and the Clerk of the Legislative Authority, who are hereby authorized and directed to do the same.

(d) The Mayor and the Clerk are hereby authorized and directed to take all steps necessary to effect due authentication, delivery and securing of the Series 1982 Bonds under the terms of this Bond Legislation and Indenture and to execute and deliver the Loan Agreement and the Indenture.

(e) The Clerk of this Legislative Authority shall cause to be furnished to the Underwriter a true, certified transcript of proceedings had with reference to the issuance of the Series 1982 Bonds, such transcript to include such information from the Clerk's records as is necessary to determine the regularity and validity of the issuance of said Series 1982 Bonds.

(f) The Issuer is hereby authorized to enter into, and to perform its obligations under, such other agreements, instruments and documents, and to take such other actions as are, in the opinion of Bond Counsel, necessary (i) to perfect the liens, security interest, pledges and other encumbrances created by the Indenture, (ii) to assign the Issuer's right, title and interest in such liens, security interests, pledges and other encumbrances to the Trustee and (iii) to consummate the transactions provided for in, or contemplated by, this Bond Legislation, the Agreement, and/or the Indenture. The Mayor and/or Clerk are hereby authorized and directed to execute and deliver such agreements, instruments and documents and to take such action by and on behalf of the Issuer.

SECTION IV. Terms of Bonds. (a) The Series 1982 Bonds shall be designated "Economic Development Revenue Bonds, Series 1982 (The Kroger Co. Project)" and shall be in the aggregate principal amount of $1,100,000.00. The Series 1982 Bonds shall be substantially in the forms of the bonds set forth in the Indenture with appropriate variations, omissions and insertions.

(b) The Series 1982 Bonds initially delivered will be dated April 1, 1982 and will bear interest payable semi-annually on the first day of each April and October commencing on October 1, 1982 until the Series 1982 Bonds are paid.

(c) The Series 1982 Bonds will be issuable as coupon bonds in the denomination of $5,000 each, each registrable as to principal only, and as fully registered bonds without coupons in the denomination of $5,000 or any integral multiple thereof. Coupon Bonds may be exchanged for fully registered Bonds, and vice versa. The Trustee will act as Bond Registrar and will maintain books at its principal office for the registration and registration of transfer of Bonds. The Bond Registrar is not required to accept any Bond for registration of transfer during the 15 days prior to any Interest Payment Date or, in the case of any proposed redemption of Bonds, after such Bond has been selected for redemption. No charge will be made for any transfer or exchange, provided that any tax, fee or other governmental charge applicable in connection therewith must be paid as a condition to the exercise of such privilege. In the event any Bond is mutilated, lost, stolen, or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond in accordance with the provisions therefor in the Indenture. The Issuer and the Trustee may charge the

holder or owner of such Bond their reasonable fees and expenses in this connection, and in the case of lost or destroyed Bonds, the holder may be required to provide the Issuer, the Trustee and the Company with evidence of the loss or destruction and appropriate indemnity.

(d) The principal of and premium, if any, on the Series 1982 Bonds will be payable at the corporate trust office of the Trustee. Interest on coupon Series 1982 Bonds will be payable at such corporate trust office and interest on fully registered Series 1982 Bonds will be payable by check or draft mailed to the registered owner.

(e) The Series 1982 Bonds shall bear interest at a rate per annum of 12½ percent (12½).

(f) The Series 1982 Bonds are subject to redemption by the Issuer at the direction of the Company on or after April 1, 1987 in whole or in part on any Interest Payment Date (and if in part, by lot in such manner as the Trustee may designate) at the redemption prices (expressed as percentages of principal amount so redeemed) set forth in the table below plus acquired interest to the redemption date:

REDEMPTION DATES	REDEMPTION PRICE
April 1, 1987 and October 1, 1987	103%
April 1, 1988 and October 1, 1988	102%
April 1, 1989 and October 1, 1989	101%
April 1, 1990 and thereafter	100%

(g) The Series 1982 Bonds are subject to extraordinary redemption at the option of the Company prior to maturity upon the occurrence of any of the following events:

(i) The Project or supermarket located at the Site (as defined in the Agreement) shall have been damaged or destroyed (in whole or in part) by fire or other casualty to such extent that, in the Company's opinion (i) it is not practicable or desirable to rebuild, repair or restore the Project within a period of six consecutive months following such damage or destruction, or (ii) the Company is or will be thereby prevented from carrying on its normal operations at the supermarket for a period of six consecutive months.

(ii) Title to, or the temporary use of, all or substantially all the Project or supermarket located at the Site shall have been taken under the exercise of the power of eminent domain by any governmental authority, or person, firm or corporation acting under governmental authority (including such a taking or takings as results, or is likely to result, in the Company's opinion, in the Company's being prevented from carrying on its normal operations at the Project or such supermarket for a period of six consecutive months or results or is likely to result in rendering the Project or such supermarket unsuitable for use by the Company).

(iii) As a result of (x) any changes in the Constitution of the State of Indiana or the Constitution of the the United States of America, (y) legislative or administrative action (whether state or Federal) or (z) any final decree, judgment or order of any court or administrative body (whether state or Federal) entered after the contest thereof by the Company in good faith, the Agreement shall have become void, unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed in the Agreement.

(iv) As a result of any one or more of the events described in (iii)(x), (y) or (z), above, unreasonable burdens or excessive liabilities shall have been imposed on the Issuer or the Company, including without limitation Federal, state or other ad valorem, property, income or other taxes not being imposed on the date of the Agreement.

(v) The operation of the retail supermarket located at the Site shall no longer be suitable or economically viable in the opinion of the Company; provided that the Company shall use reasonable efforts to lease or sell the Site and the Facilities located at the Site to

another person or entity which shall intend to use the Site and the facilities located at the Site in a manner which would constitute an economic development facility within the meaning of the Act.

(vi) Any court or administrative body shall enter a judgment, order or decree requiring the Company to cease all or any substantial part of its operations at the supermarket located at the Site, to such extent that, in the Company's opinion, the Company is or will be thereby prevented from carrying on its normal operations at such supermarket for a period of six consecutive months.

In such events, the Series 1982 Bonds are callable at any time in whole, but not in part, at 100% of the principal amount thereof plus accrued interest to the redemption date.

(h) The Series 1982 Bonds are also subject to redemption at any time as a whole should the Company be obligated to prepay installments payable under the Agreement. The Company will be obligated to make such prepayments upon the final adoption of legislation or regulations or a final decision or ruling by a judicial or administrative authority that the interest payable on the Series 1982 Bonds or any of them is includable for Federal income tax purposes in the gross income of any holder thereof (other than a holder who is a "substantial user" of the related Project or a "related person" within the meaning of Section 102(b)(10) of the Code). Upon the occurrence of such an event, the Company is required to prepay the installments payable under the Agreement and Series 1982 Bonds shall be redeemed at 100% of the principal amount thereof plus accrued interest to the date of redemption plus a premium equal to one quarter's interest borne by the Series 1982 Bonds for each 3 month period or part thereof elapsed between the Event of Taxability (as defined in the Agreement) and the date of redemption (excluding, however, Series 1982 Bond for any period or part thereof during which such Series 1982 Bond has been held by a "substantial user" or "related person"). In addition, upon a Determination of Taxability (as defined in the Agreement) there shall also be paid to holders of any Series 1982 Bond not then outstanding (but which was outstanding on the Event of Taxability) an amount equal to one quarter's interest borne by such Series 1982 Bond for each 3 month period or part thereof elapsed between the Event of Taxability and the date such Series 1982 Bond was paid or redeemed (excluding, however, any Series 1982 Bond for any period or part thereof during which such Series 1982 Bond has been held by a "substantial user" or "related person"). Redemption as a result of the loss of tax exemption must take place within 180 days after a Determination of Taxability.

(i) In the event of any redemption, the Trustee is required to publish twice, the first such publication to be not less than 30 nor more than 60 days prior to the date fixed for redemption, notice in a newspaper of general circulation or a financial journal published in the City of New York, New York. If any coupon Series 1982 Bonds registered as to principal or any fully registered Series 1982 Bonds or portions thereof shall be called, a similar notice shall be mailed by registered or certified mail at least 30 and not more than 60 days prior to the date fixed for redemption to the registered owners of such Bonds at their addresses as they may appear on the registration books of the Trustee and to each of the holders of such Bonds whose address is shown on the Bondholders List maintained by the Trustee. Failure to mail such notice or any defect therein shall not, however, affect the validity of the proceedings for the redemption of Bonds. All Bonds so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time, and such Bonds shall no longer be protected by or deemed outstanding under the Indenture pursuant to which such Bonds were issued. If all the Bonds to be redeemed are registered (other than to bearer), no publication will be required and notice of redemption shall be by mailing only. However, failure to give such notice by mailing, or any defect therein, will not affect the validity of proceedings for the redemption of any Bond or portion thereof with respect to which no such failure has occurred.

SECTION V. Security Pledged for Bonds As provided herein, the Bonds shall be equally and ratably payable solely from the Pledged Receipts and shall be secured by a pledge of and lien on moneys deposited in the Acquisition Fund and Bond Fund and by a pledge and assignment of other moneys constituting Pledged Receipts, and shall be further secured by the Indenture and by the pledge

of the Note. Anything in this Bond Legislation, the Agreement, Note, Bonds or the Indenture to the contrary notwithstanding, neither this Bond Legislation, the Bonds, nor the Indenture shall constitute a debt or a pledge of the faith and credit of the Issuer or the State of Indiana or of any political subdivision thereof, and the holders or owners of the Bonds shall have no right to have taxes levied by the General Assembly of the State, by the Legislative Authority of the Issuer, or by the legislative authority of any other political subdivision of the State of Indiana for the payment of the principal of, premium, if any, or interest on the Bonds. The Bonds are payable solely from the Pledged Receipts and the Bonds shall contain on the face thereof a statement to that effect; provided, however, that nothing herein shall be deemed to prohibit the Issuer, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of the Indenture, this Bond Legislation or any of the Bonds.

SECTION VI. Acquisition Fund.

(a) There is hereby created by the Issuer and ordered maintained as a separate trust account (except when invested as provided in Article VII of the Indenture) in the custody of the Trustee a trust fund to be designated "City of Bloomington, Indiana Acquisition Fund (The Kroger Co. Project)" (herein called the "Acquisition Fund"). After deducting the accrued and capitalized interest, if any, on the Series 1982 Bonds required by Section VII of this Bond Legislation to be paid into the Bond Fund, the balance of the proceeds of the Series 1982 Bonds shall be deposited in the Acquisition Fund and shall be disbursed by the Trustee in accordance with the provisions of the Loan Agreement, and the Trustee is hereby authorized and directed to issue its check for each disbursement required by the provisions of the Loan Agreement.

(b) The moneys to the credit of the Acquisition Fund shall, pending application thereof as above set forth, be subject to a lien and charge in favor of the holders of the Bonds, but only to the extent of their interest therein.

SECTION VII. Source of Payment--Bond Fund.

(a) There is hereby created by the Issuer and ordered maintained, as a separate trust account (except when invested as provided in Article VII of the Indenture) in the custody of the Trustee, a trust fund to be designated "City of Bloomington, Indiana Bond Fund (The Kroger Co. Project)" (herein called the "Bond Fund"). The Bond Fund and the moneys and investments therein are hereby pledged to and shall be used solely and exclusively for the payment of Bond Service Charges as they fall due at stated maturity or by redemption or pursuant to any mandatory debt service fund requirements, all as provided herein, in the Indenture and in the Loan Agreement; provided that no part thereof (other than any amounts paid as and for any mandatory debt service fund requirements, and except as may otherwise be provided for herein in the Indenture or in the Agreement) shall be used to redeem, prior to maturity, any Bonds.

(b) The moneys to the credit of the Acquisition Fund shall, pending application thereof as above set forth, be subject to a lien and charge in favor of the holders of the Bonds, but only to the extent of their interest therein.

(c) As provided in the Agreement, Loan Payments sufficient in time and amount to pay the Bond Service Charges as they come due are to be paid by the Company directly to the Trustee for the account of the Issuer and are to be deposited in the Bond Fund.

(d) On or before each date when Bond Service Charges are due and payable, the Trustee shall transmit to the other Paying Agents, if any, from moneys in the Bond Fund amounts sufficient to meet payments to be made by such Paying Agents of Bond Service Charges then to be due and payable; provided that to the extent that the amount needed by any other Paying Agent is not sufficiently predictable, the Trustee may make credit arrangements with such Paying Agent so as to permit the meeting of such payments.

(e) The Issuer hereby covenants and agrees that so long as any of the Bonds are outstanding it will deposit, or cause to be de-

posited, in the Bond Fund, Pledged Receipts sufficient in time and amount to pay the Bond Service Charges as the same become due and payable, and to this end the Issuer covenants and agrees that, so long as any Bonds are outstanding, it will diligently and promptly proceed in good faith, and use its best efforts, to enforce the Agreement. Should there be an event of default under the Agreement, the Issuer shall fully cooperate with the Trustee and the Bondholders. Nothing herein shall be construed as requiring the Issuer to use or apply to the payment of Bond Service Charges any funds or revenues from any source other than the Pledged Receipts.

(f) The Issuer covenants and agrees that, whenever the moneys and investments in the Bond Fund (or otherwise held by the Trustee for such purpose) are sufficient in amount to redeem all of the Bonds then outstanding and to pay interest to accrue thereon to the date or dates of such redemption, the Issuer shall take and cause to be taken, at the direction of the Company, the necessary steps to redeem all of said Bonds on the next succeeding redemption date or dates for which the required notice of call for redemption may be given.

SECTION VIII. Additional Bonds. Reference is made to Section 209 of the Indenture for the terms and conditions upon which the Issuer shall consider the issuance of Additional Bonds, which Additional Bonds the Issuer is hereby authorized to issue, sell and deliver as provided in such Section 209.

SECTION IX. Other Documents. The Mayor or the Clerk of the Legislative Authority are hereby further authorized and directed to execute, deliver and appropriately file (a) financing statements, other assignments and other instruments including such as are in the opinion of the City Attorney of the Issuer and Bond Counsel necessary to perfect the pledges set forth in the Indenture and (b) such other documents and instruments as are necessary to consummate the transactions provided for in the Indenture and Agreement.

SECTION X. Contracts. The provisions of this Bond Legislation and the Indenture securing the Bonds shall constitute contracts between the Issuer and the holders of all Bonds, and after the issuance of said Bonds, this Bond Legislation shall not be repealed or amended in any respect which would adversely affect the rights of such holders.

SECTION XI. Election by Issuer. The Issuer hereby elects with respect to the Series 1982 Bonds to be within the limitation imposed by the provision of Section 103(b)(6)(D) of the Code, and the Mayor of the Issuer is hereby authorized and directed to perform any and all acts and provide such information as may be required by the Secretary of the Treasury, his delegate, or the Internal Revenue Service in order to implement such election.

SECTION XII. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, on this 7th day of April, 1982.

Patrick J. Murphy

Patrick J. Murphy, President
Bloomington Common Council

ATTEST:

Patricia Williams

Patricia Williams, City Clerk

PRESENTED by me to the Mayor on this 8th day of April, 1982.

Patricia Williams

Patricia Williams, City Clerk

SIGNED AND APPROVED by me on this 8th day of April, 1982.

Francis X. McCloskey

Francis X. McCloskey, Mayor

SYNOPSIS

This ordinance would authorize the issuance of economic development revenue bonds in the amount of $1,100,000 for equipment for the new Kroger grocery store. The city has no liability for these bonds if approved.