

ORDINANCE NO. 8081-91

AN ORDINANCE authorizing the issuance of \$3,150,000 aggregate principal amount Economic Development Revenue Bonds, Series 1981 (The Kroger Co. Project); the lending of the proceeds of said Bonds to The Busey First National Bank Trust No. 151; the execution and delivery of a Mortgage and Loan Agreement, Trust Indenture, Disposition Agreement and Bond Purchase Agreement; approving the sale of said Bonds; and prescribing other matters relating thereto.

WHEREAS, the City of Urbana (the "Issuer") is a home rule unit of local government under the 1970 Illinois Constitution and is authorized pursuant to the provisions of Ordinance No. 7475-3, passed and approved May 20, 1974, as supplemented and amended (the "Enabling Ordinance") to issue its revenue bonds to finance the acquisition, construction, reconstruction, repair, alteration, improvement, equipping and extension of economic development projects; and

WHEREAS, the Issuer proposes to issue \$3,150,000.00 aggregate principal amount Economic Development Revenue Bonds, Series 1981 (The Kroger Co. Project) (the "Series 1981 Bonds") pursuant to a Trust Indenture (the "Indenture"), by and between the Issuer and The Boatmen's National Bank of St. Louis, as Trustee (the "Trustee"); and

WHEREAS, pursuant to a Mortgage and Loan Agreement (the "Loan Agreement"), by and between the Issuer and The Busey First National Bank, Urbana, Illinois, as Trustee under a certain Trust dated the 14th day of February, 1969 and known as Trust No. 151 (the "Borrower"), the Issuer proposes to lend the proceeds from the sale of the Series 1981 Bonds to the Borrower in order to provide funds: (1) to acquire and construct a commercial retail facility to be used as a supermarket by The Kroger Co., an Ohio corporation ("Kroger") and space to be used for various retail shops to be located in Urbana, Illinois (the "Project") and (2) to pay necessary expenses incidental thereto; and

WHEREAS, pursuant to the Loan Agreement the Borrower will grant the Issuer a mortgage on the Project Real Estate described in the Loan Agreement; and

WHEREAS, pursuant to the Loan Agreement the Borrower will execute and deliver its Series 1981 Note in the principal amount of \$3,150,000 (the "Series 1981 Note"); and

WHEREAS, pursuant to the Indenture, as security for the Series 1981 Bonds, the Issuer will assign to the Trustee all of the Issuer's right, title and interest in, under and to the Loan Agreement (except the Issuer's rights to issue Additional Bonds, to consent to supplements and amendments to the Loan Agreement and to be reimbursed and held harmless, which rights are herein collectively referred to as the "Unassigned Rights") and the Series 1981 Note; and

WHEREAS, pursuant to a Disposition Agreement (the "Disposition Agreement") by and among the Issuer, the Borrower, the Trustee and Kroger, Kroger is given certain rights and privileges in the event it shall become obligated to make payments under the Guaranty Agreement (the "Guaranty") by and between Kroger and the Trustee; and

WHEREAS, pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement") by and between the Issuer and The Chicago Corporation, a Delaware corporation, and Matthews & Wright, Inc., a New York corporation, (the "Underwriters") the Issuer agrees to issue and sell to the Underwriters, and the Underwriters agree to purchase from the Issuer, the Series 1981 Bonds; and

WHEREAS, pursuant to (a) a Construction Advance Agreement (the "Construction Advance Agreement") by and between the Borrower and the Trustee, (b) an Assignment of the Borrower's Interest in Certain Lease as Collateral Security (the "Collateral Assignment") by and between the Borrower and the Trustee and (c) the Guaranty, the parties thereto have made mutual covenants and undertakings for the purpose of facilitating the acquisition and construction of the Project and providing for the security of the Series 1981 Bonds; and

WHEREAS, forms of the Loan Agreement, the Indenture, the Disposition Agreement, the Bond Purchase Agreement (the

foregoing documents being herein collectively referred to as the "Instruments") the Series 1981 Note, the Construction Advance Agreement and the Collateral Assignment have been prepared and presented to this meeting:

NOW, THEREFORE, be it ordained by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1. The construction of the Project and the payment of necessary expenses incidental thereto are hereby authorized and determined to be in the public interest and in furtherance of the public purposes contemplated by the Enabling Ordinance.

Section 2. In order to provide funds to carry out the public purposes set forth in Section 1 hereof, there are hereby authorized to be issued the revenue bonds of the Issuer in the principal sum of \$3,150,000 which bonds shall be designated "Economic Development Revenue Bonds, Series 1981 (The Kroger Co. Project)" (the "Series 1981 Bonds").

The Series 1981 Bonds shall be issuable as (a) coupon bonds registrable as to principal only, in the denomination of \$5,000, dated March 1, 1981, and (b) fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof, and shall bear interest and mature as follows:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
March 1, 1986	\$ 125,000	10%
March 1, 1991	250,000	10.5%
March 1, 2007	2,775,000	11.5%

interest being payable semiannually on March 1 and September 1 of each year with the first interest payment to be made on September 1, 1981 and thereafter until the maturity thereof. The Series 1981 Bonds shall be subject to redemption prior to maturity at the times, under the circumstances, in the manner, at the prices and with the effect set forth in the Indenture.

The Series 1981 Bonds shall be executed in the name of the Issuer by the manual or facsimile signature of the Mayor, shall be attested by the manual or facsimile signature of the City Clerk, shall have the corporate seal of the Issuer impressed or reproduced thereon and shall be authenticated by the endorsement of the Trustee.

The Series 1981 Bonds and the interest thereon shall be limited obligations of the Issuer, payable solely and only from the revenues and receipts derived by the Issuer from the Project pursuant to the Loan Agreement and the Series 1981 Note and otherwise as provided in the Indenture and the Loan Agreement. The Series 1981 Bonds and the interest thereon shall never constitute an obligation or commitment by the Issuer to expend any of its funds other than (i) the proceeds of the sale of the Series 1981 Bonds, (ii) the revenues and receipts derived by the Issuer from the Project pursuant to the Loan Agreement and the Series 1981 Note, (iii) any insurance or condemnation award proceeds with respect to the project, (iv) any money arising out of the investment or reinvestment of said proceeds, income, revenues or money, and (v) any proceeds derived by the Issuer or the Trustee from the sale or other disposition of the Project in accordance with the provisions of the Loan Agreement and the Indenture.

Section 3. The Series 1981 Bonds shall be issued in compliance with and under the authority of the provisions of the Enabling Ordinance, this Ordinance and the Indenture and the foregoing shall be stated on the face of the Series 1981 Bonds. Additional bonds may be issued on a parity with the Series 1981 Bonds in accordance with the provisions and limitations set forth in the Indenture.

Section 4. The forms, terms and provisions of the proposed Instruments are hereby in all respects approved, and the Mayor and the City Clerk are hereby authorized, empowered and directed to execute and deliver the Instruments in the name and on behalf of the Issuer. The Instruments, as executed and delivered, shall be in substantially the forms now before this meeting and hereby approved, or with such changes therein as shall be approved by the officers of the Issuer executing the same, their execution thereof to constitute conclusive evidence

of their approval of any and all changes or revisions therein from the forms of the Instruments now before this meeting; and from and after the execution and delivery of the Instruments the officers, agents and employees of the Issuer are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out the intent and accomplish the purposes of this Ordinance and to comply with and make effective the provisions of the Instruments as executed.

Section 5. The sale of the Series 1981 Bonds to the Underwriters is hereby approved.

Section 6. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

Section 7. All ordinances, orders and resolutions and parts thereof in conflict herewith are to the extent of such conflict hereby repealed, and this Ordinance shall take effect and be in full force immediately upon its adoption.

PASSED by the City Council this 6th day of April, 1981.


Ruth S. Brookens
Ruth S. Brookens, City Clerk

APPROVED by the Mayor this 8th day of April, 1981.


Jeffrey T. Markland, Mayor

Ayes: Castle, Johnson, Maloney, Moore, Peterson, Scott, Springman and Whelan - 8

Nays: Edstrom, Stake, Wascher, Wort and Zangerl - 5

Absent: None