**CONFIDENTIAL NON-DISCLOSURE AND NON-USE AGREEMENT**

**General Merchandise Corporate Brands**

 **THE KROGER CO.**, an Ohio corporation (“**Company**”), having a business address at 3800 SE 22nd Avenue, Portland, Oregon 97202, and , having a business address at , a(n) , (“**Receiver**”) enter into the Agreement set out below effective on the last date signed by both parties (“**Effective Date**”).

 Company is the owner or licensee of certain proprietary and confidential information, know-how, and data concerning a potential new product in the field of **Trend, Color, Proprietary Artwork for 2017** (hereinafter, collectively called “**New Product Information**”) and is willing to disclose New Product Information to Receiver on the following terms:

 Receiver agrees to hold in confidence and agrees not to use or disclose to others without the prior written consent of Company, any and all New Product Information disclosed to it directly or indirectly, orally or in writing (hereinafter referred to as “**Disclosure**”). Receiver shall limit its use of New Product Information solely for the benefit of Company and to evaluate manufacturing and marketing feasibility of products relating to New Product Information and potential business relationship between Company and Receiver based upon New Product Information, unless prior written consent or license from Company is given for any other use of the New Product Information.

 It is understood that the foregoing obligations of confidence and non-use do not apply to:

1. New Product Information which Receiver can demonstrate by written records was in its possession at the time of Disclosure and was not unlawfully acquired; or
2. New Product Information which Receiver can show was in the public domain at the time of Disclosure.

New Product Information shall not be considered to be in Receiver’s possession or in the public domain merely because of a more generalized disclosure that does not specify the details of New Product Information disclosed to Receiver. Likewise, any combination of features disclosed to Receiver by Company shall not be deemed to be within the forgoing exception only if a description of the combination itself and its operation are in the public domain or in the possession of Receiver.

Receiver agrees to advise each officer, director, employee, or agent of Receiver, if any, who has or is hereinafter given access to New Product Information of the confidential nature thereof and the existence and importance of the confidentiality and non-use provisions of this Agreement and to utilize the New Product Information solely for the purposes authorized hereunder.

Receiver agrees that any and all technological and development work that results from Disclosure or which is based in whole or in part on New Product Information is, unless otherwise provided for in writing signed by the parties hereto, the sole property of Company, and is subject to all the aforementioned obligation of confidentiality and non-use.

Receiver acknowledges that this Agreement does not convey a license to Receiver for use of New Product Information under any patents or patent application of Company.

All final production must be submitted in duplicate from Receiver to Company and its Corporate Brands department.

Receiver agrees that it will not, without prior written approval from Company, make, have made, use or sell products developed, or in any way derived from New Product Information received from Company for a period of five (5) years following the date Company initially ships products on a commercial sales basis which relate to the New Product Information (the “**Restricted Period**”). Receiver may, in the event there is excess inventory only, sell products developed or derived from the New Product Information only to parties who are not competitors of Company, as determined by Company, and only following receipt of written approval from Company which approval Company can give in its sole discretion.

It is understood that all restrictions contained in this Agreement are necessary in order to protect the proprietary and confidential nature of New Product Information, all of which is owned by Company or its licensor.

The Agreement is non-transferable by Receiver and shall be governed by the laws of the State of Oregon, and any action or proceeding to establish or enforce rights under this Agreement may be brought in the courts of the State of Oregon.

The Undersigned Representative of Receiver warrants his/her authority to bind Receiver to the terms of this Agreement and also agrees to be bound personally by the terms of this Agreement.

AGREED AND ACCEPTED:

RECEIVER COMPANY

 **THE KROGER CO.**

By: By: Rick Hlad

Title: Title: Manager Product Development

Date: Date: April 18, 2016