

|  |   |  |                                 |                         |                       |                        |                                 |
|--|---|--|---------------------------------|-------------------------|-----------------------|------------------------|---------------------------------|
| <b>United States Bankruptcy Court</b>  |   | <b>PROOF OF CLAIM</b>  |                                 |                         |                       |                        |                                 |
| <b>Northern District Of Illinois</b>   |   | <b>**CONTINGENT**</b>  |                                 |                         |                       |                        |                                 |
| <b>In Kmart Corporation</b>  |   | <b>Case Number:</b>  | <b>02-02474</b>                 |                         |                       |                        |                                 |
| NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503  |   |  |                                 |                         |                       |                        |                                 |
| <b>Name of Creditor</b><br>(There person or entity to whom the debtor owes money or property)<br><u>Discover Financial Services, Inc.</u><br><b>Name and Address Where Notices Should be Sent</b><br><br>Discover Financial Services, Inc.<br>ATTN: Jan Haley<br>PO Box 3012<br>New Albany, OH 43054<br><br>Telephone No. (800) 347-7560   |   | <input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.<br><input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.<br><input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.  |                                 |                         |                       |                        |                                 |
| <b>ACCOUNT or OTHER NUMBER by which creditor identified debtor:</b><br>601101647100005, 601101647100021  |   | Check here if this claim: <input type="checkbox"/> replaces a previously filed claim, dated: _____<br><input type="checkbox"/> amends  |                                 |                         |                       |                        |                                 |
| <b>1 BASIS FOR CLAIM:</b><br><input type="checkbox"/> Goods sold<br><input type="checkbox"/> Services performed<br><input type="checkbox"/> Money loaned<br><input type="checkbox"/> Personal Injury/wrongful death<br><input type="checkbox"/> Taxes<br><input checked="" type="checkbox"/> Other (Describe Briefly) <i>Chargebacks/Fees</i>  |   | <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114 (a)<br><input type="checkbox"/> Wages, salaries, and compensations (Fill out below)<br>Your social security number _____<br>Unpaid compensations for services performed from: _____<br>_____ to: _____<br>(date) (date)   |                                 |                         |                       |                        |                                 |
| <b>2 DATE DEBT WAS INCURRED:</b><br>XX/XX thru XX/XX   |   | <b>3 IF COURT JUDGMENT, DATE OBTAINED:</b>   |                                 |                         |                       |                        |                                 |
| <b>4 CLASSIFICATION OF CLAIM.</b> Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another.<br>CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM.  |   |  |                                 |                         |                       |                        |                                 |
| <input type="checkbox"/> <b>SECURED CLAIM:</b> _____<br>Attach evidence of perfection of security interest<br>Brief Description on Collateral:<br><input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other (Describe briefly)  |   | <input type="checkbox"/> <b>UNSECURED PRIORITY CLAIM:</b> _____<br>Specify the priority of the claim<br><input type="checkbox"/> Wages, salaries, or commissions (up to \$2,000), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, which ever is earlier--11 U.S.C. § 507(a)(3)<br><input type="checkbox"/> Contributions to an employee benefit plan-- U.S.C. § 507(a)(4)<br><input type="checkbox"/> Up to \$1950 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use-- 11 U.S.C. § 507(a)(6)<br><input type="checkbox"/> Taxes or penalties of governmental units--11 U.S.C. § 507(a)(7)<br><input type="checkbox"/> Other--11 U.S.C. §§ 507(a)(2), (a)(5)--(Describe briefly) |                                 |                         |                       |                        |                                 |
| Amount of arrearage and other charges included in secured claim above, in any: _____<br><input type="checkbox"/> <b>UNSECURED NONPRIORITY CLAIM:</b> _____<br>A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.   |   |  |                                 |                         |                       |                        |                                 |
| <b>5 TOTAL AMOUNT OF CLAIM AT TIME CASE FILED:</b> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">\$ _____<br/>(Unsecured)</td> <td style="width: 25%; text-align: center;">\$ _____<br/>(Secured)</td> <td style="width: 25%; text-align: center;">\$ _____<br/>(Priority)</td> <td style="width: 25%; text-align: center; border: 1px solid black;">unliquidated amount<br/>(Total)*</td> </tr> </table> |   |  |                                 | \$ _____<br>(Unsecured) | \$ _____<br>(Secured) | \$ _____<br>(Priority) | unliquidated amount<br>(Total)* |
| \$ _____<br>(Unsecured)  | \$ _____<br>(Secured)   | \$ _____<br>(Priority)   | unliquidated amount<br>(Total)* |                         |                       |                        |                                 |
| *Plus an unliquidated and/or contingent amount (see attached)<br><input type="checkbox"/> Check this box if claim includes prepetition charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.  |   |  |                                 |                         |                       |                        |                                 |
| <b>6 CREDITS AND SETOFFS:</b> Not applicable   |   | THIS SPACE FOR COURT USE ONLY  |                                 |                         |                       |                        |                                 |
| <b>7 SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interest. If the documents are not available, explain. If the documents are voluminous, attach a summary.  |   |  |                                 |                         |                       |                        |                                 |
| <b>8 TIME STAMPED COPY:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of the proof of claim.  |   |  |                                 |                         |                       |                        |                                 |
| <b>Date</b><br><br>2/20/02   | Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)<br><br>Jan Haley - Team Leader <i>Jan M Haley</i> |  |                                 |                         |                       |                        |                                 |

FILED

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS

FEB 22 2002

KENNETH S. GARDNER, CLERK  
MAILROOM - KC

THIS SPACE FOR COURT USE ONLY

## MERCHANT SERVICES AGREEMENT

This **MERCHANT SERVICES AGREEMENT** (hereinafter the "Agreement") made as of November 15 1987, by and between Discover Card Services, Inc. ("Card Services"), a corporation organized and existing under the laws of the state of Delaware, with its offices at 333 Knightsbridge Parkway, Lincolnshire, Illinois 60069, and K mart Corporation (the "Company"), a corporation organized and existing under the laws of the state of Michigan, with its offices at 3100 W. Big Beaver Road, Troy, Michigan 48084.

### WITNESSETH

WHEREAS, Card Services is a wholly-owned subsidiary of Greenwood Trust Company, Greenwood, Delaware, a bank organized and existing under the laws of the state of Delaware ("Greenwood"); and

WHEREAS, Greenwood has issued to consumers a general purpose credit card called the Discover Card and desires to offer to its cardmembers the ability to use the Discover Card for the purchase of general merchandise and other goods and services normally offered by Company ("Authorized Services"); and

WHEREAS, Company is in the business of providing Authorized Services and desires to offer consumers the convenience of using the Discover Card in payment therefor; and

WHEREAS, Card Services will operate and administer a merchant authorization and settlement program whereby, subject to certain conditions, Card Services will authorize certain Discover Card transactions for Company and Company or its designated agent will present Card Services with transaction records for payment.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Card Services and Company agree as follows:

### ARTICLE I - DEFINITIONS

1.1 **Definitions.** Except as otherwise specifically indicated, the following terms shall have the meaning specified herein:

"Account" means a Discover Card account.

"Authorization" means permission from Card Services to make a Card Sale.

"Authorization Center" means the facility designated by Card Services as the facility at which Card Sales are authorized.

"Business Day" means Mondays through Fridays except days when Card Services or Greenwood is closed for business.

**"Card"** means a Discover Card issued by Greenwood, which evidences an Account.

**"Card Plan"** means the program under which Accounts will be established and Cards issued to Cardmembers.

**"Card Sale"** means any sale of Authorized Services that Company makes to a Cardmember pursuant to this Agreement that is charged to an Account.

**"Cardmember"** means (i) the person in whose name an Account is maintained and (ii) an authorized user of that Account.

**"Chargeback"** means the refusal of Card Services to pay Company for a Card Sale or the return to Company and reimbursement to Card Services of a Card Sale for which Company was previously paid.

**"Credit"** means a non-cash refund issued by Company to a Cardmember of all or a portion of the amount of a Card Sale.

**"Credit Slip"** means evidence of a Credit in paper form.

**"Electronic Location"** means a Company location at which there is an Electronic Terminal.

**"Electronic Terminal"** means an electronic terminal or computer capable of communicating by means of an on-line electronic link (whether routed through Card Services' facilities or otherwise) with an Authorization Center to obtain Authorization.

**"Floor Limit"** means the United States dollar amount designated by Card Services, as it may be changed from time to time, at or above which Authorization must be obtained to make a Card Sale.

**"Negative File"** means a magnetic tape or other form of tape or electronic communication generated by Card Services which contains Account numbers with respect to which (i) Cards have been lost or stolen or (ii) Accounts are delinquent or not available for further extensions of credit.

**"Operating Regulations"** means the standard operating procedures of Card Services, as they may be changed from time to time, which are attached hereto and incorporated herein as Exhibit A.

**"Sales Data"** means Card Sales and Credits whether in paper form, in the form of magnetic tape, or in a form in which the data representing Card Sales and Credits are electronically transmitted.

**"Sales Slip"** means evidence of a Card Sale in paper form.

**"Settlement"** means the reimbursement to Company for the net amount of Card Sales and Credits remitted to Card Services.

**"Settlement Account"** means the deposit account(s) at the financial institution(s) designated by Company as the account(s) to be debited and/or credited, as applicable, for the Settlement of Card transactions and the payment of any fees and charges due hereunder.

**"Warning Bulletin"** means a paper bulletin published and distributed by Card Services which contains Account numbers with respect to which (i) Cards have been lost or stolen or (ii) Accounts are delinquent or not available for further extensions of credit.

1.2. **Construction.** Unless the context otherwise clearly indicates, words used in the singular include the plural and words used in the plural include the singular.

## ARTICLE II - ACCEPTANCE OF CARDS

### 2.1 **Honoring of Cards.**

(a) **Conditions for Honoring Cards.** Subject to the terms and conditions of this Agreement, Company agrees to accept the Card for payment of Authorized Services in those instances when a Cardmember wishes to charge the purchase of such Authorized Services to his/her Account. Company shall accept the Card at all of its locations for the purchase of Authorized Services, provided the Card transactions resulting from such acceptance of the Card are submitted to Card Services in United States dollars. Card Services will advise Company if it develops the capability of accepting Card transactions in currencies other than United States dollars. In such event, Card transactions may be made in such other currencies upon terms and conditions to be mutually determined at that time. If any facility or service is operated on Company premises under a lease or license from Company and such lessee or licensee (who is not a party to a merchant services agreement with Card Services) agrees with Company to accept Cards and does not otherwise have an agreement with Card Services, Card Sales incurred at such facility or service must be handled through Company and Company shall be obligated to pay its lessee or licensee with respect to such Card Sales. If a lessee or licensee has a separate cash register on Company's premises and Company elects to not handle Card Sales incurred by such lessee or licensee, and such lessee or licensee does not have an agreement with Card Services, Company shall instruct such lessee or licensee to not accept the Card.

(b) **Commencement of Card Acceptance.** Acceptance of Cards by Company shall commence on or about the date of this Agreement and shall continue until the termination of the Agreement.

2.2 **Acceptance of Cards.** Company shall accept each Card presented by a Cardmember as payment for Authorized Services provided that all of the following conditions are met with respect to each Card Sale and that Company further complies with all of the procedures set forth elsewhere in this Agreement and in the Operating Regulations relating to the acceptance of Cards each time it makes a Card Sale:

(a) The Card is presented to Company on or before the expiration date shown on its face;

(b) The Card is used as payment for Authorized Services purchased by a Cardmember;

(c) Company will not accept a Card for the purpose of advancing money to a Cardmember or paying money to a Cardmember for any amount that is included in a Card Sale;

(d) Company has followed the procedures for the completion of Sales Slips as set forth in paragraph 2.4 below; and

(e) Company has obtained Authorization for the Card Sale if required pursuant to paragraph 2.5 below.

Notwithstanding the foregoing, the failure of Company to follow in isolated cases the procedures referred to in this paragraph 2.3 shall not constitute a breach of the Agreement under this paragraph.

**2.3 Operating Regulations.** The Operating Regulations may be changed by Card Services from time to time upon 60 days prior written notice to Company, provided, however, that changes which do not require major systems or operations modifications and changes required for security measures shall be made effective as soon as possible following Company's receipt of notice thereof but in all events shall become effective within 30 days of Company's receipt of notice thereof. In the event of any conflict or inconsistency between the terms of this Agreement and those of the Operating Regulations, the former shall govern.

**2.4 Completion of Sales Slips.**

(a) **General Requirements.** Card Services shall provide Sales Slips and Credit Slips to each of Company's locations at no charge to Company. For each Card Sale, Company shall prepare a Sales Slip using the form supplied by Card Services or such other form as is mutually agreed to between the parties. Each Sales Slip must be legible and fully completed with the following information:

(i) The date and, unless otherwise provided to Card Services, e.g. batch reports, etc., location (city/state) of the Card Sale;

(ii) A brief description of the Authorized Services;

(iii) The total amount of the Card Sale, including tax;

(iv) The Account number;

(v) The expiration date of the Card;

(vi) The Authorization number or code (where applicable); and

(vii) Company's merchant number, unless otherwise provided to Card Services, e.g. batch reports.

Each Sales Slip shall be imprinted to obtain a clear imprint of the Card; provided that in the case of Sales Data which are electronically produced by Company, that is, by electronically reading or scanning the Card, and are reasonably identifiable as being electronically produced, Company shall not be required to obtain an imprint of the Card. Company shall include all Authorized Services purchased in a single transaction on one Sales Slip except for customer deposits or partial payments; provided, however, that Card Sales made at different cash registers, or at the same cash register where the register validation numbers on the Sales Slips are not sequential, shall not be deemed a single transaction. Company will not collect tax or any part of the purchase price separately in cash in connection with any Card Sale.

(b) Cardmember's Signature. A Sales Slip must be signed by the Cardmember for each Card Sale at the time the Card Sale is made and in the presence of an authorized representative or employee of Company. The signature on the Sales Slip must be reasonably similar to the signature appearing on the signature panel of the Card. After completion of the Card Sale, Company shall provide a legible and completed copy of the Sales Slip to the Cardmember. If Company fails to obtain the signature of the Cardmember on a Sales Slip and the Cardmember has not authorized the Card Sale or denies the validity of the Card Sale, and Card Services has obtained written evidence thereof from Cardmember, the Card Sale shall be subject to Chargeback pursuant to paragraph 2.9 below. Card Services will provide to Company a copy of the written evidence obtained from Cardmember at Company's request.

(c) Mail/Telephone Order Card Sales. Company shall complete its standard order form for each mail/telephone order Card Sale. Company shall also gather the data identified in paragraph 2.4 (a) (i) through (vii) above and in accordance with paragraphs 2.5 and 2.6 below transmit such data to Card Services. Company may make mail/telephone order Card Sales, provided that each such Card Sale is authorized in accordance with paragraph 2.5 below. The Cardmember's signature is not required with respect to mail or telephone order Card Sales. Sales Data transmitted to Card Services should identify the sale as "Mail Order" or "Telephone Order". If the Cardmember asserts that he has not authorized a mail or telephone order Card Sale and denies the validity of the Card Sale, such Card Sale shall be subject to Chargeback pursuant to paragraph 2.9 below.

## 2.5 Authorization.

(a) General Requirements. In accordance with the terms of this paragraph 2.5, Company shall obtain Authorization for each proposed Card Sale at or above the Floor Limit and, as required in this paragraph 2.5, review each proposed Card Sale below the Floor Limit against the Negative File or most current Warning Bulletin, as applicable.

(b) Floor Limit. The Floor Limit for Card Sales at Electronic Locations shall be \$0, provided that when Card Services' electronic capability to provide Authorization is not operational the Floor Limit shall be \$100. The Floor Limit for Card Sales at non-Electronic Locations shall be \$75, provided that when Card Services' capability to provide Authorization is not operational the Floor Limit shall be \$150. Card Services may change any Floor Limit upon 30 days prior notice to Company.

### (c) Obtaining Authorization.

(i) Electronic Locations. To obtain Authorization for Card Sales made at Electronic Locations, Company shall utilize an Electronic Terminal in accordance with procedures applicable for the use of that terminal. At an Electronic Location, if a referral code is displayed on an Electronic Terminal, Company shall telephone Card Services to obtain further instructions.

(ii) Non-Electronic Authorization. To obtain Authorization at non-Electronic Locations or when Card Services' electronic capability to provide Authorization is not operational, Company shall contact Card Services using a toll-free telephone number provided by Card Services for such purpose. If the Authorization Center approves the Card Sale, Company will be given an Authorization code or number which must be written on the Sales Slip.

(d) Negative File; Warning Bulletin. On a periodic basis, Card Services will provide the Warning Bulletin to Company at selected locations. By mutual agreement, Card Services may provide the Negative File to Company at selected locations. At those selected locations which have received the Negative File or Warning Bulletin from Card Services, each proposed Card Sale below the applicable Floor Limit shall be reviewed by Company against the Negative File or the most current Warning Bulletin, as applicable. If the Account is on the Negative File or the Warning Bulletin, as applicable, the Card Sale at such selected location shall not be completed and Company shall contact Card Services for further instructions.

(e) Right of Chargeback. If Authorization for any Card Sale is required but not obtained by Company, or requested by Company but declined by Card Services, or if a Card Sale under the applicable Floor Limit is charged to an Account listed in the Negative File or the Warning Bulletin, as applicable, Card Services may process a Chargeback for such Card Sale pursuant to paragraph 2.9 below. Card Services shall, within a reasonable time, credit the customer's account for the amount charged back to Company whenever it processes a Chargeback for a Card Sale. The right of Chargeback is not intended to be used punitively.

(f) Card Retrieval. Company shall follow all reasonable instructions given by Card Services' Authorization Center in connection with a Card Sale, such as obtaining identification or Card retrieval. If the Authorization Center instructs Company to take the Card and the Cardmember refuses, Company shall make no further effort to take the Card. Company agrees to notify its sales personnel of the provisions of this paragraph.

(g) Cancellation of Authorization. At its expense, Card Services shall make available 24 hours per day, seven days a week, a toll-free number which Company may call in the event a previously authorized Card Sale is cancelled by the Cardmember. Card Services shall promptly adjust the Cardmember's available credit line to reflect the cancellation.

## 2.6 Settlement of Card Transactions.

(a) Remittance of Sales Data by Company. At least weekly, Company shall remit Sales Data to Card Services. All such remittances shall be in a mutually agreeable form and format. Remittances of Sales Data shall contain all of the information specified in this Agreement and the Operating Regulations. Upon receipt thereof, Card Services will balance and edit the data submitted and make appropriate adjustments for errors or invalid or incomplete transactions. Each such adjustment will be charged back to Company as a separate charge identifying the individual store which submitted the erroneous, invalid or incomplete transaction. In the event all or a portion of the required data is not received by Card Services or such data is unreadable or not balanced, Card Services shall not be required to process the Sales Data containing the missing, unbalanced or unreadable data, but shall promptly inform Company or its designated agent of the missing, unbalanced or unreadable data. Company shall be responsible for retrieving and resubmitting the Sales Data in completed form. Company shall be responsible for the loss, damage or destruction of Sales Data until such Sales Data is received by Card Services. At Company's request, Card Services will provide Company with a supply of mailing envelopes for retrieving Sales Data.

(b) Obligation to Reimburse Company for Sales Data. Subject to Card Services' right of Chargeback, Card Services shall cause Greenwood to reimburse Company for all Card Sales properly remitted by Company and received by Card Services. Card Services will cause Greenwood to pay Company an amount equal to

the total amount of Card Sales submitted to and received by Card Services, less the amount of Credits, if any, submitted that Business Day by Company, plus or minus the applicable amount, if any, for other adjustments to the amounts so submitted. Card Services shall not be required to reimburse Company for any Card Sale not submitted within 60 days of the date of the Card Sale.

(c) Method and Timing of Settlement. For each electronic or tape remittance of Sales Data received in Card Services' form and format by 12:00 noon Eastern Standard Time on a Business Day at the location specified by Card Services, Card Services will use its best efforts to initiate the appropriate credit or debit to the Settlement Account, as applicable, through the automated clearinghouse network ("ACH Network") by the following Business Day. With respect to each such remittance of Sales Data received by Card Services after 12:00 noon Eastern Standard Time on a Business Day, Card Services will use its best efforts to initiate the appropriate credit or debit to the Settlement Account, as applicable, through the ACH Network by the second Business Day after receipt. Remittance of Sales Data in paper form (hard copy) will result in a delay in Settlement of at least one additional Business Day for such Sales Data. Company hereby authorizes Card Services and its designated agents and representatives to credit or debit the Settlement Account, as applicable, in accordance with this Agreement and the rules and procedures of the applicable clearinghouse association and settlement institution. This authority shall remain in effect until five Business Days after Card Services receives written notice from Company of its cancellation of such authorization. Card Services shall not be liable to Company for any delays in receipt of funds or errors in credit entries caused by third parties including, but not limited to, a clearinghouse, Company's financial institution, or any agent of Company.

2.7 Cardmember Credits and Payments. Unless specifically required by law, it shall be Company policy to not give cash refunds to any Cardmember in connection with a Card Sale. If Company learns that a cash refund has been given in connection with a Card Sale, it shall instruct the manager of the store where such refund has been made to not make any additional cash refunds for Card Sales thereafter. For each Credit issued by Company, Company will prepare and deliver to the Cardmember a Credit Slip which Company will complete in accordance with the Operating Regulations. Company shall submit Sales Data evidencing each Credit to Card Services within seven days after it is issued in order that the appropriate Credit may be entered on the Cardmember's Account. Company will not accept payment for a Card Sale from a Cardmember (other than through the use of the Card) unless Authorization for such Card Sale is denied by Card Services or such Card Sale is charged back to Company by Card Services.

2.8 Billing Inquiries and Cardmember Disputes. Card Services will notify Company on a current basis when it is informed by Greenwood that a Cardmember has made a billing inquiry or filed a billing error notice relating to a Card Sale made by Company which Card Services reasonably believes has been caused by Company after Card Services has conducted an initial investigation. Company agrees to investigate and make a good faith effort to resolve each billing inquiry or dispute referred to it by Card Services or received directly from a Cardmember. Within 15 Business Days from the date Card Services sends a billing inquiry or dispute to Company, Company shall notify Card Services in writing of the resolution thereof or the action Company will take to resolve the billing inquiry or dispute. Company shall provide Card Services with all such information as Card Services may reasonably request in connection therewith.



## **2.9 Chargeback Rights and Procedures.**

(a) **Chargeback Rights.** If Company has not complied with the terms of this Agreement or with the Operating Regulations with respect to a Card Sale made by Company, or if Card Services deems that a billing inquiry or dispute is not resolved, Card Services may process a Chargeback to Company for the amount of the Card Sale or the disputed portion thereof, as applicable. Notwithstanding the foregoing sentence, if Card Services processes a Chargeback and the disputed amount is subsequently paid by the Cardmember, or if the dispute is determined by Card Services not to be the fault of Company pursuant to this Agreement, Card Services will reimburse Company for the amount of the disputed Card Sale or disputed portion thereof.

(b) **Method of Recourse.** Card Services is not required to pay Company for a Card Sale which is being charged back. If Card Services has already paid Company for such Card Sale, Card Services, at its sole discretion, may deduct the amount to be charged back from the Settlement Account or offset such amount from a future payment to Company. Any Chargebacks which are not paid by the aforesaid means shall be due and payable by Company promptly on demand.

(c) **Compliance with Laws.** Notwithstanding anything to the contrary contained herein, in the event a Cardmember, in accordance with the provisions of applicable state law or the federal Truth in Lending Act and Regulation Z, as they may be amended from time to time, files with Greenwood a billing error inquiry which Card Services reasonably believes has been caused by Company after Card Services has conducted an initial investigation, or alleges a quality dispute with respect to goods or services purchased from Company, Card Services has the right of Chargeback against Company with respect to the Card Sale which is the subject of such inquiry or dispute if Company has not resolved such error or dispute to Card Services' satisfaction.

(d) **Excessive Chargebacks.** If Chargebacks exceed 2% of the total number of Card Sales submitted by Company with respect to an individual Company location in any calendar quarter, Card Services reserves the right to assess, and Company agrees to pay, a fee of \$5.00 for each Chargeback in excess of the 2% limit.

**2.10 Injurious Course of Business Conduct.** If acceptance of the Card at a particular Company location is subject to high fraudulent activity, excessive Chargebacks or other course of business conduct that is injurious to the business relationship between Card Services and Company, Company shall use its best efforts to resolve such injurious business conduct.

**2.11 Representations and Warranties.** Company represents and warrants to Card Services that each Card Sale will arise out of a bona fide sale of Authorized Services by Company and will not involve the use of a Card for any other purpose.

Card Services warrants that it shall be responsible for compliance with, and that all forms, instructions and other materials furnished Customer shall comply with all federal, state and local consumer credit protection laws, rules and regulations.

**2.12 Reports.** Card Services shall supply Company with a monthly statement containing the following information: Card Sales, Credits, Merchant Fees, any other fees and Daily Remittances. Card Services shall also supply Company with a daily report containing the following information: daily deposits, chargebacks/adjustments, returns and corrections. Card Services shall also supply a daily file detailing retrievals on a daily basis as necessary.

## ARTICLE III - FEES

### 3.1 Fees.

(a) For each Card Sale made by Company, Card Services shall charge and Company agrees to pay a fee in an amount equal to 1.25% of the Card Sale (the "Merchant Fee"), as calculated in accordance with paragraph 3.1(b) below.

(b) On or about the last day of each month, Card Services shall:

(i) Determine the net amount of Card Sales made by Company during that month;

(ii) Calculate the total amount of credits, chargebacks and adjustments to accounts with respect to Card Sales made by Company during the month; and

(iii) Calculate the amount of the Merchant Fee based on the net amount after making such calculations.

(c) Card Services may offset the amount of the Merchant Fee from the Settlement amount due Company on the last day of the month or within 20 days thereafter (the "Payment Date"), or Card Services may debit the Settlement Account in the amount of the Merchant Fee. If Card Services elects the former and the Settlement amount due Company on the Payment Date is insufficient to cover the Merchant Fee, Card Services, at its option, may offset the Merchant Fee or remaining portion thereof from subsequent amounts due Company or debit the Settlement Account. Any amounts owed which cannot be paid by the aforesaid means shall be due and payable by Company on demand.

## ARTICLE IV - MISCELLANEOUS

### 4.1 Indemnification.

(a) Indemnification by Company. Company shall be liable to and shall indemnify and hold harmless Card Services, its parent, subsidiaries and affiliates, and their respective officers, employees, agents and directors, from any losses, damages, claims or complaints (including reasonable outside attorney's fees and disbursements) incurred by Card Services, its parent, subsidiaries or affiliates, or their respective officers, employees, agents and directors arising out of any claim, complaint or setoff made by a Cardmember which relates to any Card Sale and which directly arises from Authorized Services.

Notwithstanding the foregoing, Company shall not be liable for indemnification to Card Services under this paragraph 4.1(a) to the extent that Card Services is liable for indemnification to Company under paragraph 4.1(b).

(b) Indemnification by Card Services. Notwithstanding any provision contained in the Operating Regulations, Card Services shall be liable to and shall indemnify, defend and hold harmless Company, its parent, subsidiaries and affiliates, and their respective officers, employees, agents and directors from any

losses, damages, claims or complaints (including reasonable outside attorney's fees and disbursements) incurred by Company or its officers, employees, agents and directors, arising out of:

(i) Any failure or alleged failure of Card Services to comply with any warranty in this Agreement;

(ii) Any claim or complaint by a Cardmember with respect to anything wrongfully done or not done by Card Services or Greenwood in connection with such Cardmember's Account;

(iii) The granting or denial of Authorization and/or Cards by Greenwood or Card Services, including the failure or refusal by Company to honor a Card or make a Card Sale by reason of Card Services failure and/or refusal to authorize a Card Sale;

→ (iv) Company's retention or attempted retention of a customer's card at the request of Card Services;

(v) Any of the forms, supplies, notices or instructions which Company receives from Card Services; or

(vi) Any advertising and/or other promotional materials sponsored, generated or furnished by Greenwood or Card Services.

Notwithstanding the foregoing, the indemnification by Card Services shall not apply to any claim or complaint relating to Company's failure to resolve a billing inquiry or dispute with a Cardmember or due to acts or omissions of Company's employees or not following proper instructions, completing forms or using materials supplied by Card Services.

(c) Notice of Claim. In the event that Greenwood, Card Services or Company shall receive any claim or demand or be subject to any suit or proceeding of which a claim may be made against the other under this paragraph 4.1, the indemnified party shall give prompt written notice thereof to the indemnifying party and the indemnifying party will be entitled to participate in the settlement or defense thereof and, if the indemnifying party elects, to take over and control the settlement or defense thereof with counsel satisfactory to the indemnified party. In any case, the indemnifying party and the indemnified party shall cooperate (at no cost to the indemnified party) in the settlement or defense of any such claim, demand, suit or proceeding.

(d) Survival. The terms of this paragraph 4.1 shall survive the termination of the Agreement.

#### 4.2 Advertising and Servicemarks.

(a) Limited License. Card Services hereby authorizes Company for purposes of this Agreement to use the servicemark "Discover" and such other servicemarks as may be associated with the Card Plan in advertising and promotion of the Card Plan in accordance with specifications provided by Card Services from time to time. Notwithstanding the foregoing, the failure of Company to follow in isolated cases the specifications referred to in this paragraph 4.2(a) shall not constitute a breach of this Agreement under this paragraph.

(b) Use of Trademarks. Except as otherwise provided herein, neither party shall use the registered trademarks, servicemarks, logos, or any other proprietary designations of the other party without that party's prior written consent and shall submit to the other party for prior written approval any advertising materials in which such proprietary designations are to be used. Such approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing Card Services shall not be required to obtain approval of Company with respect to advertising and promotional materials which merely list name(s) of establishments that accept the Card.

(c) Promotion of the Card Plan. Company shall display at each of its locations advertising and promotional materials relating to the Card Plan in such manner and with such frequency as accorded any other third party credit or charge card accepted by Company. Company shall use its best efforts to use or display such materials in accordance with the Operating Regulations or in accordance with any specifications provided by Card Services. Card Services shall, at its expense, supply advertising and display materials and such other operating forms and materials necessary to promote the Card and make Card Sales. Such materials, including completed and incompletd Sales Slips and Credit Slips are the property of Card Services and shall be returned upon request of Card Services or at the termination of this Agreement.

4.3 Books and Records. Company shall retain an original copy of each Sales Slip and Credit Slip for 180 days following the date of the Card Sale and a microfilm or other copy thereof for a total of seven years. Company will send to Card Services the original or a legible copy of any Sales Slip, Credit Slip or any other record relating to this Agreement retained by Company within 15 Business Days of a request from Card Services. A request for a Sales Slip, Credit Slip or other records of a sale made over 180 days before the date of the request shall be made to Company's headquarters. In the event that Company does not retain copies of Card Sales for the aforesaid seven years, its liability to Card Services under this paragraph, to the extent Card Services incurs damages from its inability to obtain such copies, shall be limited to the amount of such Card Sales.

#### 4.4 Term and Termination.

(a) Term. This Agreement shall be effective on the date first written above when executed by authorized officers of each of the parties and shall remain in effect for a period of three years and shall continue thereafter until terminated by either party upon six months prior written notice, unless otherwise terminated as provided herein. The termination of this Agreement shall not affect the rights and obligations of the parties with respect to transactions and occurrences which take place prior to the effective date of termination, except as otherwise provided herein.

(b) Early Termination. This Agreement may be terminated by Card Services or Company:

(i) upon notice to the other in the event the other party shall elect to wind up or dissolve its operation or is wound up and dissolved; becomes insolvent, incurs a material adverse change in its financial condition, or repeatedly fails to pay its debts as they become due; makes an assignment for the benefit of creditors; files a voluntary petition in bankruptcy or for reorganization or is adjudicated as bankrupt or insolvent; or has a liquidator or trustee appointed over its affairs and such appointment shall not have been terminated and discharged within 30 days thereof; or

(ii) upon 30 days notice to the other in the event the other materially breaches its obligations hereunder, provided that such termination shall be deemed ineffective if the breaching party cures its breach within such 30 day notice period.

(c) Duties Upon Termination. Upon termination of this Agreement, Company will promptly submit to Card Services all Sales Data made through the date of termination.

4.5 Status of the Parties. In performing their responsibilities pursuant to this Agreement, Card Services and Company are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venturer or an association for profit between Card Services and Company. Further, notwithstanding anything contained in this Agreement to the contrary, any third party processor(s) used or designated by Company to perform any Authorization, data capture, remittance or Settlement functions hereunder shall be deemed to be the agent of Company for all such purposes and not the agent of Card Services and Company shall be fully liable for the fees and actions of any such third party processor(s) with respect to the performance of such functions.

4.6 Force Majeure. Neither party to this Agreement shall be liable to the other by reason of any failure in performance of this Agreement in accordance with its terms if such failure arises out of causes beyond the control and without the fault or negligence of such party. Such causes may include but are not limited to acts of God or of the public enemy, acts of civil or military authority, fires, unavailability of energy resources, delay in transportation, riots or war. In the event of any force majeure occurrence, the disabled party shall use its best efforts to meet its obligations as set forth in this Agreement. The disabled party shall promptly and in writing advise the other party if it is unable to perform due to a force majeure event, the expected duration of such inability to perform, and of any developments (or changes therein) that appear likely to affect the ability of that party to perform any of its obligations hereunder in whole or in part.

4.7 Confidentiality. In performing its obligations pursuant to this Agreement, each party may have access to and receive certain confidential or proprietary information about the other party, including, but not limited to: such party's marketing philosophy and objectives, competitive advantages and disadvantages, cardmember and customer names and addresses, financial results, technological development, store locations, sales volume(s), merchandise mix or other information of the business or affairs of each party, its parent company, or its affiliated and subsidiary companies, which that party reasonably considers confidential and/or proprietary (hereinafter collectively referred to as "Confidential Information"). Both parties agree that they will reveal such Confidential Information only to those of their directors, officers, or employees (or, with regard to Company, directors, officers or employees of any of its operating divisions/subsidiaries which accept or may consider accepting the Card, and, with regard to Card Services, directors, officers, or employees of Card Services, Greenwood or their affiliates which are involved in the development of the Discover Card program) who are engaged in the implementation of policies, programs or procedures with regard to the acceptance of the Card by Company. Each party agrees not to use such Confidential Information nor to disclose Confidential Information to any third party, except as may be necessary for that party to perform its obligations pursuant to this

Agreement and except as may be agreed upon by the parties. If either should disclose Confidential Information to a third party, such party shall cause said third party to agree to the confidentiality provisions set forth in this paragraph 4.7.

Confidential Information shall not include information in the public domain, information already known by the party receiving the information prior to commencing the discussions that led to this Agreement, and information lawfully obtained from a third party. The provisions of this paragraph 4.7 shall survive the termination of this Agreement.

**4.8 Assignability; Successors and Assigns.** This Agreement and any of the rights, interests and obligations of either of the parties hereunder may be assigned to a parent, subsidiary, or affiliate of either party. Notwithstanding the foregoing, if Card Services assigns or otherwise transfers this entire Agreement to an affiliate that is engaged in the business of selling retail merchandise, or to an affiliate which has insufficient assets to effect settlement with Company as provided by the Agreement, Company may terminate this Agreement upon 30 days notice to Card Services or its successor or assignee. Either Party may assign this Agreement to a third party upon the sale of all or substantially all of its assets or stock to such third party, and Card Services or Company may otherwise assign the Agreement to a third party, provided that the Agreement may not be so assigned without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld or delayed. The rights and obligations of the parties hereto shall inure to the benefit of and shall be binding upon the successors and permitted assigns of each of them.

**4.9 Amendment.** Except as otherwise provided herein, neither this Agreement nor any of its provisions shall be amended or modified except in writing executed by a duly authorized officer of each party.

**4.10 Severability.** If any provision, or portion thereof, of this Agreement is held invalid, illegal, void or unenforceable by reason of any rule or law, administrative order, judicial decision or public policy, all other provisions of this Agreement shall nevertheless remain in full force and in effect.

**4.11 Entire Agreement.** This Agreement, including any exhibits and documents incorporated by reference, constitutes the entire Agreement between the parties in connection with the acceptance of the Card by Company and supersedes all prior agreements, negotiations and communications on such subject matter.

**4.12 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Delaware.

**4.13 Applicable Law or Regulation.** It is expressly understood that changes in the performance of either party's obligations under this Agreement necessitated by a change in interpretation of any applicable federal or state statute or regulation will not constitute a breach of this Agreement.

**4.14 Waivers.** Neither party shall be deemed to have waived any of its rights, powers or remedies under this Agreement unless such waiver is approved in writing by the waiving party.

**4.15 Notices.** Whenever notice or demand under this Agreement is given to or made upon either party by the other party, such notice or demand shall be given in writing, either (i) by depositing it in the United States mail addressed to such party at its address as set forth below, with postage thereon prepaid, and any notice or demand so mailed shall be deemed to have been given at the time when it was mailed, or (ii) by courier, telecopier, or similar method, and such notice or demand shall be deemed to have been given when the telex, cablegram, writing, or other form of notice or demand is either personally delivered to the party or delivered to the address set forth below. Notwithstanding the foregoing, notice of intent to terminate this Agreement and notice of default shall be sent by certified or registered mail, return receipt requested.

If to Card Services:      Discover Card Services, Inc.  
333 Knightsbridge Parkway  
Lincolnshire, Illinois 60069  
Attn: Vice President - Controller

If to Company:            K mart Corporation  
3100 W. Big Beaver Road  
Troy, Michigan 48084  
Attn: Vice President - Treasurer

**EITHER PARTY MAY CHANGE THE ADDRESS TO WHICH NOTICE SHALL BE SENT BY GIVING WRITTEN NOTICE OF SUCH CHANGE TO THE OTHER PARTY IN THE MANNER PROVIDED HEREIN.**

**4.16 Captions.** The captions used in this Agreement have been inserted for convenience and for reference only and shall not be deemed to limit or define the text of this Agreement.

**4.17 Counterparts.** This Agreement may be executed in separate counterparts, each of which shall constitute an original but all of which shall constitute one and the same Agreement.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the day and year first written above.

**K mart Corporation**

By: *J. M. Cleve*  
Title: ASSISTANT TREASURER

**Discover Card Services, Inc.**

By: *Richard J. Smith*  
Title: Senior Vice President

ADDENDUM NUMBER THREE

This Addendum Number Three ("Addendum") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 1995 by and between DISCOVER CARD SERVICES, INC. ("Card Services") and K MART CORPORATION ("Company").

WHEREAS, Card Services and Company have entered into a Merchant Services Agreement dated as of November 15, 1987, as previously amended ("Agreement"); and

WHEREAS, Card Services and Company have agreed to amend the Agreement in certain respects.

NOW THEREFORE, Card Services and Company agree that effective as of September 1, 1995 the Agreement is amended as more fully set forth herein.

A. Amendments

1. The introductory paragraphs immediately following the word "WITNESSETH" on page one are deleted and replaced with the following:

WHEREAS, Card Services acts as a service provider for issuers of Cards and performs, among other things, merchant sales, operations and settlement activities for such Card issuers; and

WHEREAS, Card Services desires that Cardmembers be able to use the Card for the purchase of general merchandise and other goods and services normally offered by Company ("Authorized Services"); and

WHEREAS, Company is in the business of providing Authorized Services and desires to offer consumers the convenience of using Cards in payment therefor; and

WHEREAS, Card Services will operate and administer a merchant authorization and settlement program whereby, subject to certain conditions, Card Services will authorize certain Card transactions for Company and Company or its designated agent will present Card Services with transaction records for payment.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Card Services and Company agree as follows:

2. The definitions of "Account" and "Card" within paragraph 1.1 shall be deleted and respectively replaced with the following new definitions:



"Account" means a credit account provided by a Card issuer contemporaneously with the issuance of a Card on which transactions related to use of such Card are authorized.

"Card" means any credit, charge or other card bearing a Discover Card or NOVUS logo, service mark or trademark which evidences an Account and which is identified in the Operating Regulations or otherwise approved in writing by Card Services.

3. At each location within the Agreement where the phrase "Discover Card" appears, except within the name Discover Card Services, Inc., the phrase "Discover Card" shall be deleted and replaced with the word "Card".

4. Paragraph 4.2 (a) is amended by deleting the word "servicemark" and replacing it with the word "servicemarks", and by adding the words "'NOVUS' and" immediately after the word "servicemarks" in the second line.

B. General

1. All terms used herein shall have the meanings given them in the Agreement, unless otherwise defined in this Addendum.

2. Except as amended hereby, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Card Services and Company have caused their respective authorized officers to execute this Addendum as of the date written above.

K MART CORPORATION

DISCOVER CARD SERVICES, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ADDENDUM NUMBER ONE

This Addendum, dated as of December 31, 1988, is to the Merchant Services Agreement between Discover Card Services, Inc. ("DCSI") and K mart Corporation ("Company"), dated November 15, 1987 (hereinafter referred to as the "Agreement"). In consideration of the mutual promises and covenants set forth in the Agreement and in this Addendum, the parties to the Agreement hereby agree to modify and amend the Agreement as follows:

1. Paragraph 5.1 is added to the Agreement to read as follows:

"5.1 American Fare. As of the date of this Addendum Number One to the Agreement, all of the terms and conditions of the Agreement shall also apply to American Fare, an affiliate of Company, provided that, with respect to American Fare, the merchant fee set forth in paragraph 3.1(a) of the Agreement shall remain in effect only until December 31, 1989, after which the merchant fee shall be set by Card Services upon written notice to Company as provided by the Agreement."

2. Any and all notices under the Agreement to American Fare shall be directed to the following address:

American Fare  
3100 West Big Beaver Road  
Troy, Michigan 48084  
Attention: R. G. Schmidt, Controller

3. This Addendum shall become a part of the Agreement. Except as specifically provided herein, the Agreement shall remain in full force and effect.

4. The undersigned are duly authorized by their respective companies to execute this Addendum.

K mart Corporation

By: [Signature]  
Title: [Title]

Discover Card Services, Inc.

By: [Signature]  
Title: [Title]

American Fare

By: [Signature]  
Title: [Title]

ADDENDUM NUMBER TWO

This Addendum, dated as of November 1, 1988, is to the Merchant Services Agreement between Discover Card Services, Inc. ("DCSI") and K mart Corporation ("Company") dated November 15, 1987 (hereinafter referred to as "Agreement"). In consideration of the mutual promises and covenants set forth in the Agreement and in this Addendum, the parties to the Agreement hereby agree to modify and amend the Agreement as follows:

1. Paragraph 5.2 is added to the Agreement to read as follows:

"5.2 Ultra Gifts and Awards. All of the terms and conditions of the Agreement shall also apply to Ultra Gifts and Awards, a division of Company."

2. Any and all credit media notices under the Agreement with respect to the Ultra Gifts and Awards division shall be directed to the following address:

Myriad Services Corporation  
35000 Industrial Road  
Livonia, Michigan 48150

Any other notices under the Agreement with respect to the Ultra Gifts and Awards division shall be directed to the following address:

K mart Corporation  
3100 West Big Beaver Road  
Troy, Michigan 48084  
Attention: R. F. Szmigiel, Director Accounting  
General Merchandise Division

3. This Addendum shall become a part of the Agreement effective as of the date first written above. The Agreement shall remain in full force and effect unchanged except as specifically provided herein.

4. The undersigned are officers of their respective companies who are duly authorized to execute this Addendum.

DISCOVER CARD SERVICES, INC.

K MART CORPORATION

By: Michael Smith  
Title: Senior Vice President  
Date: 3/19/88

By: J. M. C. Clark  
Title: ASSISTANT TREASURER  
Date: 11/28/88