

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF FLORIDA **PROOF OF CLAIM**

Name of Debtor  
K-MART CORPORATION

Case Number  
02 B 02474

**NOTE:** This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):  
PLAZA BAYAMON, S.E.

Names and addresses where notices should be sent:  
ARROYO MONROUZEAU & ASSOCIATES  
Attn.: Iris M. Monrouzeau, Esq.  
Asociación de Maestros Building, Ponce De León 452, Suite 405 & 412  
San Juan, PR 00918  
(787) 754-1080

- 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.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if the address differs from the address on the envelope sent to you by the court.

**THIS SPACE IS FOR COURT USE ONLY**

Account or other number by which creditor identifies debtor:

Check here if this claim  replaces a previously filed claim, dated: \_\_\_\_\_  amends

1. Basis for Claim  
Goods sold  
Services performed  
Money loaned  
Personal injury/wrongful death  
Taxes  
 Other: Legal action complaint filed against K-Mart Corporation as tort action and breach of contract (see attachments).

Retiree benefits as defined in 11 U.S.C. § 1114(a)  
Wages, salaries, and compensation (fill out below)

Your SS#: \_\_\_\_\_  
Unpaid compensation for services performed from \_\_\_\_\_ (date) to \_\_\_\_\_ (date)

2. Date debt was incurred: July 18, 1995

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: \$350,000.00 plus accrued interest, expenses, and fees (See "Attachment")

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.  
Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:  
Real Estate  Motor Vehicle  
 Other \_\_\_\_\_

Value of Collateral:

Amount of arrearage and other charges at time case filed included in secured claim, if any:

6. Unsecured Priority Claim.  
 Check this box if you have an unsecured priority claim  
Amount entitled to priority \$ \_\_\_\_\_  
Specify the priority of the claim:

- Wages, salaries, or commissions (up to \$4,650)\* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- Up to \$2,100\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(\_\_\_\_\_).

\* Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien.  
DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

**THIS SPACE IS FOR COURT USE ONLY**

KP 620

3/18/02

Date: 03/13/02

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):

Rafael Rivera  
Mr. Rafael Rivera  
Plaza Bayamón, S.E.  
Reina Cristina 41  
Villas de Torrimar  
Guaynabo, Puerto Rico 00969

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

*The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.*

### — DEFINITIONS —

#### **Debtor**

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

#### **Creditor**

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

#### **Proof of Claim**

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

#### **Secured Claim**

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

#### **Unsecured Claim**

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

#### **Unsecured Priority Claim**

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

### Items to be completed in Proof of Claim form (if not already filled in)

#### **Court, Name of Debtor, and Case Number:**

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

#### **Information about Creditor:**

Complete the section giving the name, address and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

#### **1. Basis for Claim:**

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

#### **2. Date Debt Incurred:**

Fill in the date when the debt first was owed by the debtor.

#### **3. Court Judgments:**

If you have a court judgment for this debt, state the date the court entered the judgment.

#### **4. Total Amount of Claim at Time Case Filed:**

Fill in the amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

#### **5. Secured Claim**

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

#### **6. Unsecured Priority Claim**

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

#### **7. Credits:**

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

#### **8. Supporting Documents:**

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

ESTADO LIBRE ASOCIADO DE PUERTO RICO  
TRIBUNAL DE PRIMERA INSTANCIA  
SALA SUPERIOR DE BAYAMON

PLAZA BAYAMON, S.E.

Demandante

v.

CIVIL # DAC98-0423

SOBRE: INCUMPLIMIENTO  
DE CONTRATO Y  
COBRO DE DINERO

BUILDER'S SQUARE, INC.  
Y/O KMART CORP. Y/O MASSO  
EXPORT CORP. Y/O EMPRESAS MASSO;  
REXACH CONSTRUCTION COMPANY, INC.;  
ASEGURADORAS X, Y, Z

Demandados

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DEMANDA ENMENDADA

AL HONORABLE TRIBUNAL

Comparece la parte demandante representada por los abogados que suscriben y muy respetuosamente expone, alega y solicita:

I. COMPETENCIA DEL TRIBUNAL DE PRIMERA INSTANCIA

La Sala Superior de Bayamón tiene competencia para entender en el pleito de epígrafe en virtud de lo dispuesto en el Artículo 5.003 de la Ley Número 1 del 28 de julio de 1994, y en virtud de la Regla 3.2 de las de Procedimiento Civil que establece que los pleitos relacionados con intereses sobre bienes inmuebles se radicarán en la sala correspondiente a aquella donde radique el objeto de la acción.

II. INFORMACION SOBRE LA PARTE DEMANDANTE

La parte demandante lo es Plaza Bayamón, S.E. (En adelante Plaza Bayamón) una sociedad especial organizada bajo las leyes del Estado Libre Asociado de Puerto Rico con oficinas principales en Reina Cristina 41, La Villa de Torrimar, Guaynabo, Puerto Rico 00969.

III. ALEGACIONES

I. El 18 de julio de 1995 la parte demandante y la corporación Builder's Square, Inc. (en adelante Builder's) suscribieron un acuerdo titulado "Agreement."

Dicho documento se suscribió con la intención de estipular ciertos asuntos y someter a arbitraje las diferencias y reclamaciones surgidas en relación a varios contratos previamente otorgados por las partes, relacionados con el desarrollo de una propiedad de Plaza Bayamón para la construcción y posterior arrendamiento de parte de la estructura a Builder's. (Se incluye el "Agreement" como Anejo I de esta demanda).

2. Los asuntos objeto de esta demanda no fueron sometidos a arbitraje sino que por el contrario, son asuntos ya estipulados y acordados por las partes. En vista de ello constituyen obligaciones válidas, liquidadas y exigibles.

3. La cláusula F de dicho "Agreement," dispone en lo pertinente:

Tenant shall make and pay for all maintenance, replacement and repair necessary to keep the demises premises in a good state of repair and in tenable condition, except for the following maintenance, replacement or repair which shall remain the Landlord's sole responsibility:

- (i) (...)
- (ii) (...)
- (iii) (...)

Tenant shall contract for the following:

- (i) (...)
- (ii) (...)
- (iii) (...)
- (iv) (...)
- (v) (...)

Tenant shall submit to Landlord on a quarterly basis, an accounting and itemization of all such costs expended by Tenant in the performance of the duties and obligations as set forth herein above. Landlord shall reimburse Tenant for Landlord's proportional share on the total of said costs to maintain the common areas within 30 days from receipt of said accounting from Tenant. Landlord reserves the right to inspect Tenant's records with respect thereto and to set forth specific objections thereof.

Landlord shall obtain and be responsible for maintaining comprehensive general liability insurance on the common areas, said insurance to be maintained in the amount of not less than \$1,000,000 per person and \$2,000,000 per accident, said insurance to name Tenant as additional insured and Landlord to furnish Tenant with a certificate of Insurance as evidence thereof. For the purposes of this Article 14 (i) Landlord's proportionate share of the costs to maintain the common areas will be the total of Tenant's costs multiplied by a fraction, the numerator of which shall be the ground floor square area of Landlord's building and the denominator of which shall be the ground floor square foot area of all buildings constructed upon the lands described in Exhibit BB or the ground floor area contained in all buildings depicted on Exhibit BB whichever is larger.

In the event (...)

As long as Landlord does not build building B its pro rata share of maintenance expenses shall be limited to the insurance." (Enfasis nuestro).

4. De acuerdo al inciso F del "Agreement" antes citado, Builder's se obligó al pago prorrateado de los gastos de mantenimiento y primas de seguro respecto a la áreas comunes.
5. Se acordó en esa misma cláusula que mientras Plaza Bayamón no construyera otro edificio denominado "B", la responsabilidad de Builder's por dichos gastos se limitaría al pago de su proporción en la prima del seguro.
6. A esta fecha esta estructura no ha sido construida.
7. Plaza Bayamón, S.E., ha pagado por concepto de las pólizas de responsabilidad pública de las áreas comunes la suma de \$49,838.83 (Se acompaña evidencia acreditativa de los pagos realizados hasta el 1ro de abril de 1998, como Anejo 2 de la Demanda).
8. No existe controversia entre las partes en cuanto a que la proporción que corresponde a Builder's en la participación en los elementos comunes es de 80.67 por ciento (80.67%). Por lo tanto, a Builder's le corresponde reembolsar a Plaza Bayamón la suma de \$40,204.98.
9. La parte demandante, a través de sus abogados, se ha comunicado en varias ocasiones con los representantes legales de Builder's para requerir el pago de la suma antes relacionada, sin que hasta esta fecha se haya recibido respuesta alguna. (Se acompañan cartas enviadas como Anejo 3 de la demanda).
10. En el inciso H del Agreement (Anejo A), existe una disposición en la cual BS se comprometió a retener un dinero que pagaría a Rexach Construction, Inc., contratista de la obra. El retenido por la cantidad de \$67,887.36 se realizaría por razón de un problema con unos muros de contención. En dicha cláusula se dispuso que:

"H. Bayamón acknowledges that Builder's, except for the retaining walls issue (as defined hereinafter) has fully performed its obligations under the Development Agreement and the Construction Contract with Rexach and that Bayamón has no claim against Builder's on account thereof.

Builder's shall request Rexach to perform the necessary work in order to conform the retaining wall as built to the design in the plans and specifications of such retaining wall. Builder's shall withhold the Retainage under the Construction Contract until this issue is settled with Rexach. Nothing herein stated shall be construed as to create an obligation of Builder's to perform any work on the retaining wall to file any judicial action against Rexach.

Builder's shall cooperate with Bayamón in having the retaining wall repaired or rebuilt in accordance with the plans or specifications for the retaining wall.

Builder's represents that, except for the Retainage which amounts to \$67,887.36, Rexach Construction Company, has been paid all amounts due under the contract for the construction of the Plaza Bayamón Shopping Center. Builder's agrees to indemnify, defend and hold Bayamón Shopping Center harmless from and against any claims, costs or expenses alleged by Rexach related to the construction of the Plaza Bayamón Shopping Center.

Except for the matter related herein of the retaining wall, on the date hereof Builder's Square hereby assigns to Bayamón all of its rights to any warranties required by the construction contract with Rexach Construction Corporation or by law with respect to the construction on the Plaza Bayamón Shopping Center.

11. A la fecha de esta demanda enmendada el problema de los muros no ha sido corregido aún.
12. Builders liquidó el contrato de construcción con Rexach y desembolsó el retenido de \$67,887.36 referente al muro de contención. El desembolso realizado por Builders Square fue sin el consentimiento de la parte demandante y sin que el problema de los muros fuera corregido; por tal razón Builders Square es responsable del pago de \$67,887.36 a Plaza Bayamón, S.E.
13. Builders tiene responsabilidad solidaria con Rexach Construction, Inc. por el costo de reparar los muros conforme a las especificaciones.
14. Rexach Construction Company, Inc. (en adelante Rexach) fue la entidad que construyó los muros de contención sin cumplir con los planos y especificaciones originales del proyecto que le fueron provistos. Por información y creencia se alega que el material utilizado por Rexach para rellenar áreas del muro era expansivo y no material granular según requerían

con lugar presente acción y en su consecuencia condene solidariamente a los co-  
demandados a satisfacer a la demandante las cantidades aquí reclamadas, más  
intereses legales, costas, gastos y honorarios de abogados.

RESPECTUOSAMENTE SOMETIDA.

En San Juan, Puerto Rico, hoy 2 de abril de 1999.

ARROYO MONROUZEAU & ASOCIADOS

Edificio Asociación de Maestros

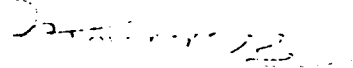
Suite 405

Ponce De León 452

Hato Rey, Puerto Rico 00918

TEL: 754-1080/766-2380

FAX: 764-0646



Iris M. Monrouzeau

Colegiada 10168



**AGREEMENT**

*In the City of San Juan, Puerto Rico, this 18th day of July, 1995.*

**APPEAR**

**AS PARTY OF THE FIRST PART: BUILDERS SQUARE, INC.**, a corporation organized under the laws of the State of Delaware, United States of America and duly authorized to do business in Puerto Rico and represented herein by Alberto C. Rodríguez, of legal age, married and a resident of San Juan, Puerto Rico; hereinafter referred to as Builders.

**AS PARTY OF THE SECOND PART: PLAZA BAYAMON, S.E.**, a special partnership organized and existing under the laws of the Commonwealth of Puerto Rico represented here by its general partner, **RAFAEL RIVERA SÁNCHEZ**, hereinafter referred to as Bayamón.

**AS PARTY OF THE THIRD PART: RAFAEL RIVERA SANCHEZ**, social security number 584-38-1611 and his wife **EDMEE EMANUELLI HERNANDEZ**, social security number 584-28-9352, both of legal age, property owners and residents of Guaynabo, Puerto Rico and the community property composed by both of them; and **JORGE RIVERA SANCHEZ** social security number 584-62-9566 and his wife **ELLY MARIA MORALES LAUTEMBACH** social security number 584-06-3482, both of legal age, property owners and residents of Bayamón, Puerto Rico and the community property composed by both of them; all of them hereinafter referred to as the Party of the Third Part.

*The Party of the Third Part appears solely for the purpose of Section J of this Agreement.*

**AS PARTY OF THE FOURTH PART: JACOBO ORTIZ MURIAS**, social security number 580-94-3709, and his wife **SYRA BLANES DE ORTIZ**, social security number 581-47-5610, both of legal age, property owners and residents of Dorado, Puerto Rico and the community property composed by both of them; and **ALBERTO CAYETANO RODRIGUEZ**, social security number 583-15-3225 and his wife **MARIA ELENA VAZQUEZ GRAZIANI**, social security number 584-84-6630, both of legal age, property owners and residents of San Juan, Puerto Rico and the community property composed by both of them; all of them hereinafter referred to as the Party of the Fourth Part.

*The Party of the Fourth Part appears solely for the purpose of Section J of this Agreement.*

**WHEREAS**, Bayamón is the owner in fee simple ("pleno dominio") of a certain real estate (the Property) which is described in the Spanish language as follows:

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"URBANA: Predio de terreno ubicado en el Barrio de Hato Tejas en el término municipal de Bayamón, con una cabida de 20.81 cuerdas, equivalentes a 81,812.18 metros cuadrados, y en lindes: por el NORTE, con la Carretera Estatal Número Dos; por el SUR parcialmente con Anastacio y Estefanía Rivera; por el ESTE, con A.J. Samaritano y E.R. Roncoli, y por el OESTE, con María Hernández, Pedro Rivera, María Serrano, Severiano Matos, María Calderón, María Candelaría, Rafaela Maldonado y Angel Colón."

The Property was created as per deed number 145 of Grouping, executed before notary public Tomás Correa Acevedo, dated December 2, 1987, which deed is recorded in the Registry of the Property of Bayamón, First Section, at page 91 of volume 1,461 of Bayamón Sur, property number 64,825.

Bayamón acquired a 66% undivided interest on the Property by deed number 2 executed before notary public Jacobo Ortiz Murias, dated April 8, 1992 (Exhibit A). The deed has been presented for recordation purposes in the Registry of Property of Bayamón, First Section, Entry number 339 of the Book of Daily Entries 812 dated April 8, 1993.

Bayamón acquired a 34% undivided interest on the Property by deed number 16 executed before notary public Alberto C. Rodríguez, dated April 5, 1993 (Exhibit B). The deed has been presented for recordation purposes in the Registry of Property of Bayamón, First Section, Entry number 75 of the Book of Daily Entries 820 dated August 20, 1993.

As per Deed number 12 of Segregation and Release of Mortgage executed by Plaza Bayamón S.E. and Builders Square, Inc., on this same date before Notary Public Antonio J. Santos Prats, Bayamón has effected several segregations from the parcel of land above described. The property object of the Lease Agreement is located in such remnant, which is described in the Spanish language as follows:

---URBANA: Predio de terreno ubicado en el Barrio Hato Tejas del término Municipal de Bayamón, con una cabida superficial de 11.7463 cuerdas, equivalentes a 46,167.5497 metros cuadrados. En lindes, por el NORTE, en varias alineaciones, con la parcela denominada, Uso Público Número Uno, en 186.47 metros lineales, por el SUR, en varias alineaciones con el Reparto Rivera y la parcela C en 267.36 metros lineales, por el ESTE, en varias alineaciones, con terrenos de A.J. Samaritano y E.R. Roncoli, en 269.03 metros lineales, y por el OESTE, en varias alineaciones, con la parcela denominada Uso Público Número Dos, en 245.79 metros lineales.

WHEREAS, Bayamón constituted a mortgage in the principal sum of \$7,500,000 securing a mortgage note issued to the bearer for the same principal amount, and due upon presentation; which mortgage was constituted as per deed number 3 executed by notary public Jacobo Ortiz Murias dated April 15, 1992 (Exhibit C) which has been presented for recordation purposes in the Registry of Property of Bayamón, First Section at Entry number 340 of the Book

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of Daily Entries 812 dated April 8, 1993.

WHEREAS, Bayamón entered into a ~~Development~~ Agreement with Builders dated ~~the~~ 31 1991 (Exhibit D).

WHEREAS, Builders and Bayamón entered into a Lease Agreement dated March 5, 1991 (Exhibit E) for a term of 25 years renewable for 6 additional 5 year terms under the terms and conditions established in the Lease Agreement and its Exhibits.

WHEREAS, Builders and Bayamón entered into an Agreement dated March 5, 1991 (Exhibit F) in which Builders agreed to disburse some monies to or on behalf of Bayamón as a result of the Agreement a contractor was selected.

WHEREAS, Builders and Bayamón in order to implement the Agreement of March 5, 1992 further agreed to enter into an Escrow Agreement of even date (Exhibit G).

WHEREAS, some disagreements and/or differences have arisen as a result of the various endeavors of Builders and Bayamón regarding the construction of the "demised premises", which differences are hereinafter specifically detailed in Section D.

WHEREAS, the parties have agreed to settle all of their differences through the process of an arbitration;

NOW THEREFORE, based on the foregoing the parties have agreed as follows:

**TERMS AND CONDITIONS**

A. Builders has informed Bayamón that the latter owes to the former the sum of \$6,608,525.82 under the various agreements entered into between the parties in connection with the development of the Property.

Of the aforesaid amount, Bayamón acknowledges it owes Builders the sum of \$6,065,673.20. As a result, the parties have a dispute over the payment of the sum of \$542,852.62 of which Builders has further agreed to credit the sum of \$32,000.00 against the claim detailed in C (vi) hereof therefor the sum is reduced to \$510,852.62.

B. The sum of \$6,065,673.20 shall be paid by Bayamón to Builders by means of a wire transfer and/or official check on the date hereof, pursuant to the following wire transfer instructions:

TEXAS COMMERCE BANK, S.A.  
ABA ROUTING #114000776  
BUILDERS SQUARE INC.  
ACCT. #06407071863

Handwritten notes on the left margin:   
BB  
F  
P.C.H.  
E.M.I.  
B.C.  
R.  
(1/15/91)  
M.C.M.

C. The sum of \$510,852.62 set forth in Section A above (the "Escrowed Funds") shall be deposited on the date hereof in an escrow account with Banco Popular de Puerto Rico or other financial institution acceptable to Builders. The Escrowed Funds shall be released upon the rendering of the final award by the panel of arbitrators to be selected pursuant to Section K hereof, to the party entitled thereto pursuant to the terms of said award. Any interest earned on the Escrow Funds during the term they remain in escrow will be paid on a pro-rata basis to the parties herein in accordance with the arbitration award.

D. The issues in controversy and dispute over the payment of the sum of \$510,852.62 are the following:

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- (i) The characterization of items as "on site" or "off-site work", as the case may be, and the proper allocation of the cost of these items between Bayamón and Builders.
- (ii) Whether certain amounts owed but not paid to the architect for the Property are the responsibility of Builders, and whether certain fees paid by Builders to the architect for the Property are being billed twice. *PL del 4570.16 - 7/26/2002*
- (iii) The issue of additional cost in the air conditioning equipment in order to increase its capacity. *Change order 267-2*
- (iv) The issue of PRASA's hook-up fees.
- (v) The issue of walton signage cost.
- (vi) The issue of whether certain items billed to Bayamón which are change orders are payable by Builders or Bayamón.

One of the items to be arbitrated under this subsection is a certain change order for the Garden Center in the amount of \$64,475.00. Builders has agreed to absorb the sum of \$32,000.00 from the aforesaid amount.

Therefore in the event the arbitration for this item is adjudicated in favor of Builders it shall have the right to recuperate from Bayamón up to the sum of \$32,475.00 exclusively and if it is adjudicated in favor of Bayamón then it shall be released from paying up to the full amount of the change order. In addition to the dispute over the payment of the sum of \$510,852.62 the parties have a dispute regarding the following additional matter.

(vii) Whether Builders was authorized by Bayamón and/or Rivera Sánchez to dep. landfill and top-soil in an area within the adjacent property owned by Bayan which area is marked on Exhibit H.

E. For the purpose of the payment of the annual minimum rent under the "Lease Agreement" (\$875,182.00 per year), the first day of the "Lease Term", shall be the day on which the conditions in sections B and C above have been satisfied. On that same day Builders shall release to Bayamón the Mortgage Note secured by the Mortgage, the Title Policy, the Original Escrow Agreement and the Presentation Slip for the Mortgage, and shall deliver to Bayamón a set of final plans on an "as built" basis, for all work performed under the Development Agreement within 15 days from the date hereof.

Anything in the Lease Agreement to the contrary notwithstanding, the parties hereby agree that for purposes of Section 4 of the Lease Agreement the first fiscal year for purposes of calculating "gross sales" shall commence on the date the conditions set forth in Sections B and C of this agreement are satisfied and shall terminate on January 31, 1996. During such first "fiscal year", the dollar amount referred to in Article 4 of the Lease Agreement for purposes of calculating "additional rent" shall be proportionately decreased to reflect that such year will be less than 52 weeks.

Builders shall also deliver to Bayamón within thirty (30) days from the date hereof a confirmation from Kmart that a certain Lease Guaranty Agreement dated May 12, 1992 continues in full force and effect and acknowledging the execution of this Agreement.

F. Article 14 of the Lease Agreement, Repairs and Maintenance, is deleted and replaced by the following section:

"Tenant shall make and pay for all maintenance, replacement and repair necessary to keep the demised premises in a good state of repair and in tenable condition, except for the following maintenance, replacement or repair which shall remain the Landlord's sole responsibility:

- (i) all maintenance, replacement and repair to the roof, outer walls and structural portion of the building which shall be necessary to maintain the building in a safe, dry and tenable condition and in good order and repair;

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- (ii) all maintenance, replacement and repair of underground utility installations underground electrical conduit and wire; including, but not limited to, rep maintenance and replacements which are occasioned by settlement of the dem. premises, or a portion thereof, or caused by soil conditions (but not a change use by Tenant); and
- (iii) all repairs and replacement including resurfacing necessary to maintain driveways, sidewalks, street and parking areas free of all settling, clear standing water and in a safe, sightly and serviceable condition, free of ch. holes, fissures and cracks.

Tenant shall contract for the following:

- (i) cleaning, sweeping, security, drainage and re-striping of the parking area sidewalks, service drives and driveways,
- (ii) maintenance repair an upkeep of the planted or landscaped areas,
- (iii) maintenance repair and replacement of parking lot lighting standards, bulbs and lights, and
- (iv) electrical charges in connection with the lighting of the parking lot and service drive areas during Builder's normal business hours to a minimum of one and one half (1 1/2) foot candles at ground level;
- (v) wages and salaries of persons directly and actually performing the above described services.

Tenant shall submit to Landlord on a quarterly basis, an accounting and itemization all such costs expended by Tenant in the performance of the duties and obligations as set forth herein above. Landlord shall reimburse Tenant for Landlord's proportional share of the total of said costs to maintain the common areas within 30 days from receipt of said accounting from Tenant. Landlord reserves the right to inspect Tenant's records with respect thereto and to set forth specific objections thereof.

Landlord shall obtain and be responsible for maintaining comprehensive general liability insurance on the common areas, said insurance to be maintained in the amount of not less than \$1,000,000.00 per person and \$2,000,000.00 per accident, said insurance to name Tenant as additional insured and Landlord to furnish Tenant with a Certificate of Insurance as evidence


  
 [Handwritten initials: E, R, H, E, M, L, R, K, A, H, M, H, E, M, Y]

thereof. For the purposes of this Article 14, Landlord's proportionate share of the costs to maintain the common areas will be the total of Tenant's costs multiplied by a fraction, the numerator of which shall be the ground floor square area of Landlord's building and the denominator of which shall be the ground floor square foot area of all buildings constructed upon the lands described in Exhibit "BB", or the ground floor area contained in all buildings depicted on Exhibit "BB", whichever is larger.

In the event the building or improvement constituting the demised premises or a portion thereof shall be rendered unusable due to Landlord's default or negligence with respect to required repairs, there shall be a just and equitable abatement of said annual minimum rent and all other charges payable under this lease until said premises shall be made usable. Emergency repairs, which shall be Landlord's responsibility under article 14 herein and which shall be necessary to protect the building or contents and/or to keep the common areas in a neat, clean, safe and orderly condition, may be made by Tenant without notice to Landlord and the cost of such repairs, not to exceed TWO THOUSAND DOLLARS (\$2,000.00) in any one instance, may be deducted by Tenant from rentals subsequently accruing hereunder.

As long as Landlord does not build building "B", its pro-rata share of maintenance expenses shall be limited to the insurance".

Builders from the Date of Occupancy, as defined in the Lease Agreement has undertaken the obligation and paid for all maintenance of the common areas, except for Bayamon's obligation under Article 14 hereinbefore and waive its right to collect Bayamon's pro-rata share of it.

G. The Date of Occupancy as defined in the Lease Agreement is established to be July 3, 1993.

H. Bayamón acknowledges that Builders, except for the retaining wall issue (as defined hereinafter), has fully performed its obligations under the Development Agreement and the Construction Contract with Rexach and that Bayamón has no claim against Builders on account thereof.

Builders shall request Rexach to perform the necessary work in order to conform the retaining wall as built to the design in the plans and specifications of such retaining wall. Builders shall withhold the Retainage under the Construction Contract until this issue is settled

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with Rexach. Nothing herein stated shall be construed as to create an obligation of Builders to perform any work on the retaining wall or to file any judicial action against Rexach.

Builders shall cooperate with Bayamón in having the retaining wall repaired or rebuilt in accordance with the plans and specifications for the retaining wall.

Builders represents that, except for the Retainage which amounts to \$67,887.36, Rexach Construction Corporation has been paid all amounts due under the contract for the construction of the Plaza Bayamón Shopping Center. Builders agrees to indemnify, defend and hold Bayamón harmless from and against any claims, costs or expenses alleged by Rexach related to the construction of the Plaza Bayamón Shopping Center.

✓ Except for the matter related herein of the retaining wall, on the date hereof Builders hereby assigns to Bayamón all of its rights to any warranties required by the construction contract with Rexach Construction Corporation or by law with respect to the construction on the Plaza Bayamón Shopping Center.

I. Bayamón and Builders hereby agree to execute on the date hereof (i) a Deed of Protocolization and of Subordination and (ii) a Deed of Segregation and Release from Mortgage. Deed (i) shall be executed before a Notary selected by Builders and deed (ii) shall be executed before a Notary Public selected by Bayamón. All legal fees and expenses related to the execution and the recordation of the document described in (i) shall be for the account of Builders and all legal fees and expenses related to the execution and recordation of the document described in (ii) above shall be for the account of Bayamón.

J. Except for all disputes and issues enumerated in Section D and H above, the parties herein release each other, as well as their respective officers, directors, employees, legal representatives of Builders Square and/or any other representatives from any and all responsibility, cause or causes of action whether state, federal or administrative arising out or in connection with the preparation, negotiation, execution and performance of their obligations under any and all documents or documents which have been executed by the parties herein or any of them in relation with the Property, the Development Agreement, the transfer of the 66% undivided interest from the Rivera Sánchez to Bayamón and the acquisition by Bayamón of the 34% undivided interest in the Property, the Lease Agreement, the mortgage and any and all other documents and transactions related thereto. This release shall not be interpreted as

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- A signature at the top.  
- The initials "JP".  
- The initials "R. Q. H".  
- The initials "E. M. S".  
- The initials "J. W.".   
- A signature below "J. W.".   
- The initials "J. P. S.".   
- A signature at the bottom.

preventing the parties from prospectively enforcing their respective rights arising from any of agreements entered between them relating to events that occur or arise after the date of the agreement.

It is the intention of the parties that any claims they may now have against each other or their respective officers, directors, employees, legal representatives, and/or any other representatives, shall be considered settled, abandoned, waived or released by virtue of this Agreement and that the only claims surviving this Agreement shall be those that the parties have agreed to submit to arbitration.

K. Builders and Bayamón agree to submit all issues and disputes enumerated in Section D, to final arbitration before three (3) arbitrators, one selected by each of the parties within thirty days following the date of this agreement. Each party will pay the fees of the arbitrator it has selected. Said two arbitrators will select a third arbitrator within thirty days of the designation. The fees of the third arbitrator will be paid equally by both parties. The three arbitrators, as an arbitration panel presided by the third arbitrator, will direct the arbitration proceedings and for purposes of procedure shall follow the rules of the Commercial Rules of the American Arbitration Association. The Arbitration shall take place in San Juan, Puerto Rico. The arbitration award shall be limited to a resolution of the items described in Section D, supra. The remedies to be granted shall be limited to the following.

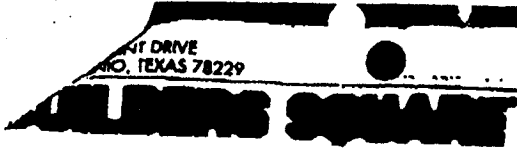
1. Regarding items (i), (ii), (iii), (iv), (v), (vi) of Section D, the remedy granted shall not exceed the amount of \$510,852.62 plus accrued interest on the principal so deposited in the Escrow Account nor the adjudication of these items by the arbitration shall entail the adjustment of rent on any account.

2. Regarding item (vii) in Section D, the remedy granted shall be limited to the payment by Builders of the cost of removal of the landfill and topsoil, or, at Builder's option, the removal of the landfill and topsoil by it at its own cost, in a manner and within the time frame specified by the arbitrators.

The arbitration award for Bayamón or Builders shall be final and unappealable and may be enforced by any Court of competent jurisdiction. Each party shall bear the expenses of its arbitrator and half of the expenses of the third arbitrator. Each party shall pay its legal representatives, expenses, expert witness, etc.

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REXACH CONSTRUCTION

95 AUG 20 1 12 12

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-2

August 17, 1995

Alberto Richa  
Rexach Construction Company  
P.O. Box 362528  
San Juan, PR 00936-2528

Dear Mr. Richa:

Attached is check #592846 in the amount of \$67,887.36. Per our agreement this should close out the project. Again, thanks for your continued support.

Sincerely,

Gary L. Crull  
Sr. Director of Construction  
and Maintenance

GLC/cjr

# Construction Contract

57

This Construction Contract is made and entered into this second day of December 19 92 by and between Kmart Corporation, a Michigan Corporation with principal offices at 3100 W. Big Beaver, Troy, Michigan 48084-3163 ("Owner"), and Rexach Construction Company, GPO Box 2528, San Juan, Puerto Rico 00936 ("Contractor").

1. Contractor agrees to furnish all material and perform all work in accordance with the Contract Document to complete the Builders Square - Bayamon, Puerto Rico project at Store # 1309 located at S.E.C. State Road #2 and Road 866, Bayamon, P.R.

2. The following together with this Construction Contract shall collectively and exclusively constitute the Contract Documents, all of which are incorporated herein and made a part hereof by this reference:

a) Drawings

A-1 thru A-13  
S-1 thru S-6  
M-1 thru M-2  
ES-1 thru ES-3 dated revised 5/15/92  
E-1 thru E-10 dated revised 5/15/92  
P-1 thru P-7  
FP-1 thru FP-3  
SI-1 thru SI-6 all dated revised 4/28/92  
SI-7, SI-8 dated April 15, 1992  
TS-1, TS-2, TS-3, TS-4 dated revised 5/8/92  
TS-5, TS-6, TS-7 dated 5/12/92  
A-11R, A-12R, E-12R dated May 15, 1992

b) Specifications Andres Otero and Assc. BSQ 90 - 90 dated April 29, 1992

c) Bidding Instructions: Bidding Instruction letter dated 4/15/92. Addendum #1 dated 5/1/92; Special Bidding Instructions dated April 15, 1992. Addendum #2 dated 5/1/92; Addendum #3 dated 5/5/92; Addendum #4 dated 5/8/92; Addendum #5 dated 5/15/92; Addendum #6 dated 5/21/92; Addendum #7 dated 6/2/92;  
d) General Conditions of the Contract for Construction (Code 917-52; 3/88). Addendum #8 dated 6/8/92

Bid qualifications or conditions (and any other terms or conditions) contained in any proposal letter or other document from Contractor not expressly listed or incorporated by reference in paragraph 6 hereof (Special Conditions) are hereby rejected and are not a part of the contract between the parties.

3. Contractor agrees to begin work on October 1, 1992 or immediately upon notification from Owner and to complete all work by June 1, 1993. Time is of the Essence.

4. Owner agrees to pay Contractor the sum of Four Million Seven Hundred Forty  
Two Thousand Six Hundred Dollars & no/100 Dollars. (\$ 4,742,600.00 )  
for said material and work. Itemization:

a) Base bid Includes revisions 1 - 8

|                      |                |
|----------------------|----------------|
| Architrectrual       | \$2,048,000.00 |
| Plumbing             | 39,000.00      |
| Mechanical           | 145,000.00     |
| Electrical           | 330,000.00     |
| Sprinklering         | 112,000.00     |
| Landscaping          | 46,000.00      |
| Sitework w/utilities | 1,976,000.00   |

b) Elected alternates

See Attachment "A: dated December 2, 1992 46,600.00

Total (including all applicable taxes) \$ 4,742,600.00

c) Alternates not elected at this time

Electrical Deduction of Decor Display (Add \$8,000.00)

By notice to Contractor within thirty days of the date of Owner's execution hereof at Owner's option, Owner may elect, and Contractor shall perform all work in connection with, the alternates not elected at this time at the price set forth above.

5. In the event that any additional work or changes to the work shown on the Drawings or described in the Specifications is requested in writing by Owner, the cost of same (except where governed by unit prices) shall be limited to actual cost of labor, materials, insurance and taxes plus 15% for combined overhead and profit for work performed by Contractor's own labor or 10% for Contractor's mark-up for work performed by subcontractors' labor.

6. Special Conditions:

Exhibit "A" dated 4/16/92

REXACH CONSTRUCTION COMPANY

Contractor

Kmart Corporation

By: [Signature]  
Name: ALBERTO RICHA  
Title: EXECUTIVE VICE PRESIDENT  
Date: 12-22-92

By: [Signature]  
Name: JERRY W. MCCOMBS  
Title: PROJECT REPRESENTATIVE  
Date: 12-18-92

CONSTRUCTION CONTRACT  
(CONTINUED)

BUILDERS SQUARE #1309  
BAYAMON, PUERTO RICO

"ATTACHMENT A"

DECEMBER 02, 1992

4b) Elected alternates

|   |             |
|---|-------------|
| Alt. #1 - Builders' Risk Insurance                              | \$ 4,700.00 |
| Alt. #2 - P&P Bond  | 36,000.00   |
| Alt. #3 - Additional Loading Dock                               | 29,000.00   |
| Alt. #4 - 10'x10' Overhead Door(Add.#3)                         | 4,400.00    |
| Alt. #5 - 1 1/4" railing (crowed) (Add.#3)                      | 2,700.00    |
| Alt. #6 - Stripping (Add. #3) (Deletion)                        | (3,000.00)  |
| Alt. #7 - Deduction of ceramic tiles<br>in restrooms            | (1,700.00)  |
| Alt. #8 - Architectural Deduction of<br>Decor Display (Add. #3) | (25,000.00) |
| Alt. #9 - Elimination of fan PE #4                              | (500.00)    |

*Ay*

*Ay*

\_\_\_\_\_  
CONTRACTOR

Initials

\_\_\_\_\_  
OWNER

LEASE GUARANTY AGREEMENT

THIS AGREEMENT dated as of May 12, 1992 between PLAZA BAYAMON, a special partner having its principal office at Calle Reina Christina #41, LaVilla de Torrimar, Guaynabo, Puerto Rico 00657 ("Landlord"), and K MART CORPORATION, a Michigan corporation ("Guarantor"), having its principal office at 3100 West Big Beaver Road, Troy Michigan, 48084.

W I T N E S S E T H :

Contemporaneously herewith, the Landlord, as lessor, is entering into a certain lease (the "Lease") for real property located in the City of Bayamon, Commonwealth of Puerto Rico, which property is more particularly described in Exhibit A thereto with BUILDERS SQUARE, INC., a Delaware Corporation (the "Tenant"), as lessee. Guarantor owns all of the outstanding capital stock of Tenant and is executing this agreement as an inducement to the Landlord to enter into the Lease.

NOW THEREFORE, in consideration of the premises, Guarantor agrees as follows:

1. Guarantor hereby absolutely and unconditionally guarantees to the Landlord the full and punctual performance and observance by the Tenant of all of the terms, conditions, covenants and obligations to be performed and observed by the Tenant under the Lease.

2. Guarantor hereby assents to all of the provisions of the Lease and waives demand, protest, notice of any indulgences or extensions granted to the Lessee, any requirement of diligence or promptness on the part of the Landlord in the enforcement of the Lease and any notice thereof, and any other notice whereby to charge Guarantor, provided however, Guarantor shall be furnished with a copy of any notice of or relating to default under or termination of the Lease to which Tenant is entitled or which is served upon Tenant at the time the same is sent to or served upon Tenant.

3. The liability of Guarantor hereunder shall in no way be affected by: (a) The release or discharge of Tenant in any creditors', receivership or bankruptcy proceeding; (b) any alteration of or amendment to the Lease which alteration or amendment has been consented to in writing by the Guarantor; (c) any permitted sale, assignment, sublease, pledge or mortgage of the rights of Tenant under the Lease; or (d) any application or release

of any security or other guaranty given for the performance and observance of the covenants and conditions in the Lease on Tenant's part to be performed and observed.

4. This Agreement shall apply for <sup>initial</sup> the term of the Lease, being 25 years from the date of commencement of the Lease.

5. This Agreement shall inure to the benefit of the Landlord and its successors and assigns and any assignee of the Landlord's interest in the Lease, and shall be binding upon the Guarantor and its successors and assigns.

6. This Agreement may not be changed or terminated orally, but only by a written instrument signed by the party against whom enforcement of any change or termination is sought.

7. Any notice required hereunder to be sent to Guarantor shall be sufficiently given by mailing by certified or registered mail, postage prepaid, addressed as follows:

K mart Corporation  
3100 West Big Beaver Road  
Troy, Michigan 48084  
Attention: Vice-President - Real Estate

IN WITNESS WHEREOF, the Guarantor has duly executed this Agreement by its duly authorized officers and caused its corporate seal to be hereunto affixed as of the day and year first above written.

K MART CORPORATION

[Corporate Seal]

By: M. C. A.  
Vice President

ATTEST:

J. H. [Signature]  
Assistant Secretary

A:HATOTEJA

ACKNOWLEDGEMENTS

STATE OF MICHIGAN) SS:  
COUNTY OF OAKLAND) SS:

I do hereby certify that on this 12th day of May, 1992, before me, Linda L. Moltzner, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. D. Skiles and R. H. Burdick known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Rochester & Birmingham respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires: \_\_\_\_\_

*Linda L. Moltzner*  
\_\_\_\_\_  
Notary Public

Linda L. Moltzner  
Notary Public, Macomb County, Michigan  
My Commission Expires February 25, 1996  
Acting in Oakland County

# PARCEL A

| FROM | BEARING        | DISTANCE | TO | NORTHING   | EASTING     |
|------|----------------|----------|----|------------|-------------|
|      |                |          | 2  | 59873.4059 | 180056.9012 |
| 2    | S 84 09 53.0 E | 51.5036  | 3  | 59868.1696 | 180108.1379 |
| 3    | S 26 17 43.9 E | 62.9346  | 4  | 59811.7474 | 180136.0180 |
| 4    | S 81 50 21.6 W | 213.1358 | 5  | 59781.4929 | 179925.0404 |
| 5    | S 04 06 32.7 W | 3.6465   | 17 | 59777.8538 | 179924.7790 |
| 17   | N 88 10 14.2 W | 49.2868  | 18 | 59779.4272 | 179875.5173 |
| 18   | N 08 27 30.5 E | 54.9662  | 25 | 59833.7955 | 179883.6024 |
| 25   | N 00 42 25.6 W | 135.3866 | 84 | 59969.1717 | 179881.9316 |
| 84   | N 20 49 00.3 E | 49.8231  | 83 | 60015.7425 | 179899.6377 |
| 83   | N 82 44 30.1 E | 68.2645  | 82 | 60024.3672 | 179967.3551 |
| 82   | N 89 45 00.0 E | 47.1200  | 81 | 60024.5728 | 180014.4747 |
| 81   | S 00 15 00.0 E | 141.7476 | 80 | 59882.8266 | 180015.0932 |
| 80   | N 89 45 00.0 E | 43.4532  | 79 | 59683.0162 | 180058.5460 |
| 79   | S 09 42 43.3 W | 9.7500   | 2  | 59873.4059 | 180056.9012 |

**AREA = 38,851.20 S.M. = 9.60 ACRES**



AGREEMENT

This Agreement, entered into in San Juan, Puerto Rico, and in San Antonio, Texas, United States of America, on this 5th day of March, 1992 and on the day of March, 1992 by and between:

APPEAR

AS PARTY OF THE FIRST PART: BUILDERS SQUARE CORP. (Builders), a corporation duly organized under the laws of the state of Delaware, United States of America, with principal offices at 100 Crossroads Boulevard, Suite 100, San Antonio, Texas 78201, and duly authorized to do business in and for the Commonwealth of Puerto Rico, and represented by

AS PARTY OF THE SECOND PART: PLAZA BAYAMON, S.E. , a Special Partnership organized and existing under the Laws of the Commonwealth of Puerto Rico and represented herein by RAFAEL RIVERA SANCHEZ, social security number 584-38-1611, of legal age, married and a resident of Guaynabo, Puerto Rico, hereinafter referred to as "Plaza".

STATE

FIRST: Plaza owns a 66% of an undivided interest in the real estate property hereinafter referred to as the "Property", and the other 34% is in the process of being optioned by Plaza from its owners Mr. María I. Rivera Sánchez and Artemio Rivera Sánchez.

The Property object of this Agreement has the following description in the Spanish language:

URBANA: Predio de terreno ubicado en el Barrio de Hato Tejas, en el término municipal de Bayamón, con una cabida de 20.81 cuerdas, equivalentes a 81,812.18 metros cuadrados, y en lindes: por el NORTE, con la Carretera Estatal Número Dos; por el SUR, parcialmente con Anastacio y Estefanía Rivera; por el ESTE, con A.J. Samaritano y E. R. Roncoli, y por el OESTE, con María Hernández, Pedro Rivera, Maria Serrano, Severiano Matos, María Calderón, María Candelaría, Rafaela Maldonado y Angel Colón.

The Property was created by grouping (assemblage) as per deed number 145, executed before notary public Tomás Correa Acevedo, dated December 2, 1987, which deed is recorded in the Registry of the Property of Bayamón, First Section, at page 91 of volume 1,461 of Bayamón Sur, property number 64,825.

The Property is subject to the following:

**LIENS AND ENCUMBRANCES**

By its origin: Attachment for the principal sum of \$382,000.00, securing judgment in favor of José N. Moreno as shown form an Order form the Superior Court of Puerto Rico Bayamón Section Civil Case Number 86-5585 (502) which was duly annotated in Property Number 4028 (one of the properties from which property number 64,875 was created) page 327 over of volume 933 of Bayamón Sur Annotation "A" dated July 28th, 1977.

By itself: Free and clear of all liens and encumbrances.

**SECOND:** This Agreement supersedes and leaves without effect the Agreement executed on October 31 st, 1991 by and between Plaza and Builders. A copy of the Lease Agreement dated October 31 st., 1991 as amended, is made to form a part of this Agreement as Exhibit A.

**THIRD:** Plaza proposes to build in the Property several structures with an area of approximately 130,000 square feet of which Builder's store shall occupy ninety thousand square feet and the balance, that is, forty thousand square feet is to be occupied by one or more structures for the use of other Plaza's tenants. This area may be divided among several out-parcels and/or in an adjacent structure to the one of Builders. Up to approximately seven thousand square feet of the forty thousand square feet above mentioned may be used by Plaza as outlots or any other area as may be agreed upon by the parties herein.

Plaza has already obtained form the Planning Board of Puerto Rico a Resolution which amends the zoning of the Property to Commercial-4 (C-4) and which allows Builders to use its store in the Property for its intended use.

**FOURTH:** In order to expedite the development of the Property, Builders and Plaza have agreed as follows:

A. Builders and Plaza shall closely and diligently work together in order to obtain all the necessary permits form the Planning Board of Puerto Rico, Administración de Reglamentos y Permisos ("ARPE") and any other governmental agency with jurisdiction to this effect, so as to obtain all the pertinent and necessary permits and authorizations from said governmental agencies including but not limited to, the construction and use permits.

B. Builders and Plaza shall closely and diligently work together and shall instruct A. Otero Arquitectos (the Architects) the architectural firm engaged by Plaza to prepare all drawings necessary for the site development and construction plans of the structures to be built on the Property (which at present are being revised); it is to be understood that said plans have to be approved by the parties herein

(except for the final construction plans of Builder's store as hereinafter provided for).

Builders shall have exclusive control of the construction plans of its intended store in the Property as long as the location of it conforms with the site plan attached to this document as Exhibit "B".

Builders' store plans shall be drawn by the Architects following the instructions furnished by Builders and as long as the same harmonize with the integral concept of the Property as its shall be finally developed.

Plaza hereby grants Builders the necessary authorization so as to allow the latter to appear concurrently with the former before any governmental agency and to deal with the architects and engineers preparing the necessary construction and development plans of the Property.

Builders shall have the exclusive control to select the contractor which will effect the work as defined in the Lease Agreement (Builder's structure and site improvements).

Builders shall obtain bids for the construction of Builders' structure and the site improvements from several duly qualified contractors. Builders shall deliver copy of each bid to Plaza.

Builders shall select the contractor based upon the following factors: lowest bid, responsive contractor, responsible contractor and economic capability. It is to be understood that the contractor shall have to be a recognized bonded builder.

The construction cost of the Builders Square building and the proportionate share of site improvements attributable to the development of said Builders Square building is estimated to be approximately the sum of **FOUR MILLION FOUR HUNDRED THOUSAND DOLLARS (\$4,400,000.00)**.

It is agreed by the parties herein that the rent established by Plaza was based on a proposed breakdown cost sheet dated November 30th, 1990, a copy of which is attached to and made to form a part of this Agreement as Exhibit "C".

Any cost overrun of the sum of **FOUR MILLION FOUR HUNDRED THOUSAND DOLLARS (\$4,400,000.00)** established for the construction of Builders store and site improvements not attributable to Plaza or the development of the balance of its shopping center including any costs related to the adjacent property located to the west of #866 Road shall be for the account of Builders which has the sole control and responsibility for the construction of its store and the site improvements of the Property.

D. Builders has agreed with Plaza as an accommodation to the latter to disburse the following sums of money on its behalf according to an Escrow Agreement simultaneously executed with this Agreement.

1. Up to the sum of \$382,000.00 to cover any deficiency judgment as per the lien encumbering the Property to secure judgment in favor of Mr. José N. Moreno.
2. Up to the sum of \$250,000.00 in order to buy out the interest of Mr. Jorge Rivera Sánchez.
3. Up to the sum of \$100,000.00 to Plaza. At the rate of \$10,000.00 per month five working days after Plaza and Rivera have executed the option to acquire the undivided interest of Mrs. María Rivera Sánchez and Mr. Artemio Rivera Sánchez (see the following subsections) and each thirty day period thereafter until the Builders Square store opens for business.
4. Up to the sum of \$1,000,000.00 in order to acquire the interest of Mrs. María I. Rivera Sánchez and Mr. Artemio Rivera Sánchez in the Property. (34%).
5. Up to the sum of Four Million Four Hundred Dollars (\$4,400,000.00) for the construction cost of Builders' structure and all of the site improvements.
6. Up to the sum of \$885,000.00 for all the amounts necessary to cover architectural and engineering fees, special permitting fees, legal fees, interest expense, and any and all costs directly related to the development and construction of the facilities and the project to be effected in the Property.

Plaza shall request from Builders, pursuant to the aforementioned agreements and/or judgments, the sums aforesaid in (1), (2), (3) and (4) and Builders shall either transfer the funds to the Escrow Account in which case the latter shall disburse according to the instructions provided to it or Builders may pay directly to the recipient such funds.

Payments to the contractor in charge of the construction of Builder's store and the site improvements as well as all other related cost shall be effected by Builders either by paying them directly to the recipient of such payments or by depositing the same in the Escrow Account as Builders at its sole option may choose to do so.

Nevertheless, it is to be understood that the Architects shall verify all the monthly certifications served by the contractor to Builders as well as any other related cost and that Builders should not disburse until it has approval of the Architects which approval shall not be unreasonably withheld or delay.

Builders shall use its best efforts to build the facilities (its store and site improvements) and obtain its construction and use permit as speedily as the circumstances may allow.

All the sums so advanced by Builders to Plaza shall accrue interest at the rate equal to Citibank's New York prime rate as it may fluctuate from day to day, but in no event said interest rate shall be less than eight (8%) percent per annum.

Interest shall commence to accrue from the date of the first disbursement effected by Builders and shall continue to accrue until the latter obtains the Use Permit for its building, being understood that Builders shall act diligently to obtain such Use Permit. The interest so accrued shall be capitalized by Builders from such date and until Plaza discharges and pays in full all the amounts owed. All the amounts owed by Plaza to Builders (principal and capitalized interest) shall not accrue further interest.

In order to secure all the sums of money so advanced by Builders to Plaza the latter shall constitute on the date of the first disbursement of moneys by Builders a mortgage lien first on its undivided interest in the Property and when it acquires the undivided interest of Mrs. Marta and Mr. Artemio Rivera on the full title of the Property, in the principal sum of \$8,000,000.00.

The mortgage note secured by the mortgage afore stated shall be due upon presentation, but no demand shall be made except as stated hereinafter. Said note shall be delivered by Plaza to Builders in pledge as per the Pledge Agreement to be executed simultaneously with the mortgage.

In the event Plaza does not obtain a permanent financing, it shall not be obligated to settle and discharge the moneys owed by it to Builders for a term up to twenty five (25) years which is the original term of the Lease Agreement. In such event, as it has been provided hereinbefore, Plaza shall not be bound to pay interest for the moneys owed by it to Builders but Builders shall not have to pay any rent whatsoever to Plaza except for property taxes and maintenance as hereinbefore provided. That is, the waiver by Builders of payment of interest by Plaza shall be construed as only Builders payment of rent to Plaza.

Once the term of the Lease Agreement expires without Plaza obtaining its permanent financing and paying in full all moneys owed to Builders, Builders or the holder of the mortgage note above stated shall have the right to foreclose the mortgage.

E. Nothing contained herein shall in any way, restrict or prohibit Builders' right to assign the Lease or sublease according to the terms established in Section twenty one (21) of the Lease Agreement. In any of these events (assignment or subletting), the new Tenant or sublessee shall also assume all of Builders rights and obligations under this Agreement.

- F. It is agreed by the parties herein that the Lease and its amendments, including this Agreement, shall be recorded in the pertinent Registry of Property with the rank of a first lien, superior to any other lien or liens that may encumber the Property in the future. Builders shall have the right to request Plaza to execute a short form lease which would only state the term of the lease, Builders' right to construct its store and only the rent allocated for the land (ground lease). In the event the third party granting the permanent financing request to subordinate its mortgage lien with first rank over and above that of the Lease in the Registry of Property, Builders shall agree to such subordination provided the Mortgage Holder shall execute a Non-Disturbance Agreement with Builders in such terms and conditions acceptable to Builders.
- G. Plaza shall have the right to request and obtain from Builders that its first mortgage-lien be shared on a pari pasu basis with another lending institution's mortgage that may secure financing for the other structures to be build by Plaza on the Property, provided such additional mortgage financing does not, when added to the Builders' lien, exceed eighty percent (80%) of the fair market value of the Property.
- H. The rest of the terms and conditions of the Lease not amended by this Agreement shall remain in full force and effect.
- RD. I. This agreement shall be null and void if not executed by both parties within the following twenty one (21) days from the date hereof.

BUILDERS SQUARE CORP.

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

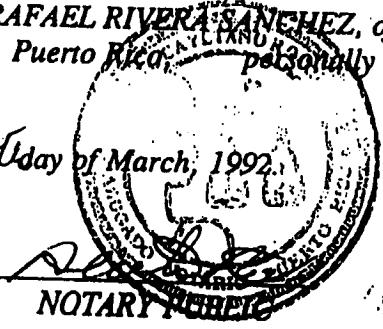
PLAZA BAYAMON, S.E.

By: Rafael Rivera Sanchez  
 RAFAEL RIVERA SANCHEZ

AFFIDAVIT NUMBER: 1,960

Sworn and suscribed before me by RAFAEL RIVERA SANCHEZ, of legal age, married and a resident of Guaynabo, Puerto Rico, personally known to me.

In San Juan, Puerto Rico, on this 5<sup>th</sup> day of March, 1992.



Parties

THIS LEASE made and entered into as of this 17th day of March 1999 between PLAZA BAYAMON, a special partner having its principal office Calle Reina Christina #41, LaVilla de Torrimar, Guaynabo, Puerto Rico 006 (herein referred to as "Landlord"), and BUILDERS SQUARE, INC., a Delaware corporation having its principal office at 100 Crossroads Blvd, Suite 101 San Antonio, Texas 78201 (herein referred to as "Tenant"),

WITNESSETH: That in consideration of the rents, covenants and conditions herein set forth, Landlord and Tenant do hereby covenant, promise and agree as follows:

Demised Premises

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the lease term herein provided, (i) Tenant's completed building (designated Builders Square), (ii) site improvements to be constructed as hereinafter specified by Landlord, at its expense, (iii) land comprising not less than nine and six tenths (9.6) acres, said land described in Exhibit "A", attached hereto and made a part hereof, and situated in the City of Bayamon, Commonwealth of Puerto Rico and (iv) a non-exclusive easement and right to use all public and common facilities erected or serving a shopping center to be constructed by Landlord upon the property described in Exhibit "A-1", also attached hereto and made a part hereof, and intended for common use; including, but not limited to, all entrances, exits, driveways, parking areas, walks, service drives and all utilities servicing said property. Tenant's said building to be in the location and of the dimensions as depicted on Exhibit "B", attached hereto and made a part hereof.

Said land, Tenant's completed building and the site improvements, together with all licenses, rights, privileges and easements, appurtenant thereto, shall be herein collectively referred to as the "demised premises" and shall be a part of the shopping center to be constructed by Landlord on the property described in Exhibit "A-1".

TWENTY FIVE (25)

Term

2. The term of this lease shall commence upon the "date of occupancy by Tenant", as that term is defined in Article 11 hereof, and shall terminate upon such date as shall be ~~twenty (20)~~ years from the last day of the month in which said date of occupancy by Tenant shall occur; provided, however, the term of this lease may be extended as provided in Article 13, hereof. The phrase "lease term", as used in this lease, shall be the term of this lease and any extension thereof pursuant to said Article 13.

Annual Minimum Rental

3. Tenant shall, during the lease term, pay to Landlord, at such place as Landlord shall designate in writing, from time to time, and without demand therefore, the annual minimum rental of Eight hundred Seventy Five thousand, One hundred Eighty Two \$875,182 (Dollars) unless abated or diminished, as hereinafter provided. Said rental shall be paid in equal monthly installments on the first day of each month, in advance, commencing upon the first day of the lease term; provided, however, in the event the first day of the lease term shall not be the first day of a calendar month, then the rental for such month shall be prorated upon a daily basis.

Additional Rental

4. In addition to the aforesaid annual minimum rental, with respect to any fiscal year during the lease term in which Tenant's "gross sales", as

*Handwritten initials/signature*

hereinafter defined, shall exceed the sum of Twenty Five mill (25,000,000), Tenant shall pay to Landlord, as additional rental, an amount equal to one per cent (1%) of gross sales exceeding Twenty Five mill (25,000,000).

In the event "gross sales" during Tenant's fourth "fiscal year" as hereinafter defined do not exceed TWENTY FIVE MILLION DOLLARS (\$25,000,000.00); then Tenant's "gross sales" during the fourth "fiscal year" shall establish the "gross sales" breakpoint for the balance of the lease term upon which the Tenant shall be obligated to pay Landlord any additional rental. This additional rental shall be equal to ~~one percent~~ one percent (1%) of each succeeding "fiscal year's" "gross sales" as herein defined which exceed the "gross sales" breakpoint established during the fourth "fiscal year".

Said additional rental shall be paid within thirty (30) days following the end of each fiscal year during the lease term. For the purposes of this lease, Tenant's "fiscal year" shall be each successive period of fifty two (52) consecutive calendar weeks commencing on the February 1st immediately following the beginning of the lease term, as hereinafter provided. Sales for any period preceding the first fiscal year shall be included in gross sales reported for the first fiscal year. Tenant shall, on or before the thirtieth (30th) day following the end of each fiscal year, or lesser period, deliver to Landlord a statement signed by an officer of Tenant certifying the true amount of the gross sales for such fiscal year, or lesser period. The term "lesser period", as used herein, shall be any period beginning on the first (1st) day of any fiscal year and ending, by reason of the termination of this lease, prior to the end of such fiscal year. In the event that a period of more or less than fifty two (52) weeks shall be so required to be included in any such statement, then the dollar amounts referred to in the preceding paragraph of this Article 4 shall be proportionately increased or decreased, as the case may be.

Landlord, or its agent, may inspect Tenant's record of gross sales annually, provided such inspection shall be made at Tenant's principal office and within six (6) months after the statement of such sales shall be delivered to Landlord. Such inspection shall be limited to the period covered by such statement. Except to the extent that disclosure shall be required for any bona fide sale or mortgage of the demised premises or for legal proceedings in any court, at law or in equity, Landlord shall hold, in confidence, such sales figures or other information obtained from Tenant's records.

The term "gross sales", as used herein, shall be the total sales of merchandise or services made by Tenant, whether wholesale or retail, cash or credit (including merchandise ordered on the demised premises and delivered from another place) and shall include sales made from trucks, trailers, vans or other temporary facilities used by Tenant on any part of the land described in Exhibit "A", except that the following shall be excluded:



- RD.
- (i) Sales of merchandise subsequently returned for refund or credit, merchandise transferred to a warehouse or another store of Tenant or merchandise which shall be issued in redemption of trade stamps, if any, which shall have been issued free of charge to Tenant's customers at the time of sale of other merchandise services;
  - (ii) Any and all taxes levied upon, assessed against or measured by the receipt or purchase of merchandise by any occupant of said demised premises and any and all occupational sales taxes and other taxes levied upon, assessed against, based upon or measured by (a) such occupant's gross receipts, or any part thereof, or (b) the sales price of merchandise and services, or either, and which shall be payable by such occupant, whether or not collected by such occupant from its customers as reimbursement or as agent of the taxing authority, and whether or not the same shall be commonly known as a sales tax, use tax, retailers' occupational tax, gross receipts tax or excise tax: Provided, however, said taxes to be excluded from gross sales shall not include any net income tax, franchise or any other tax not levied upon or computed upon gross sales or gross receipts, or any portion thereof; provided further, said taxes to be excluded from gross sales shall be excludable regardless of whether imposed under any existing or future orders, regulations, laws, statutes or ordinances. Notwithstanding anything stated herein to the contrary, taxes assessed by the Commonwealth of Puerto Rico upon the importation of merchandise to be sold in Puerto Rico (whether or not deemed to be excise taxes) shall be considered part of the cost of the merchandise and shall not be deducted or excluded from gross receipts;
  - (iii) Receipts from cigarettes, lockers, stamp machines, public telephones, pay toilets, mechanical entertainment devices, money orders, pay scales other vending machines and all licenses sold to the public;
  - (iv) Service and interest charges for time payment accounts and charge accounts;
  - (v) Returns to suppliers or manufacturers;
  - (vi) Penalties charged by Tenant for returned checks;
  - (vii) Sale of fixtures after use thereof in the conduct of Tenant's business in the demised premises;
  - (viii) Reimbursement for postage, express, or delivery expenses (such as United Parcel Service) in delivering merchandise to customers; and
  - (ix) Sales to bona fide employees of Tenant or of a concessionaire of Tenant entitled to purchase at a discount under Tenant's House Rules and employed in the operation of Tenant's business either on the demised premises, Tenant's principal offices or its regional offices or employed in the demised premises by a concessionaire of Tenant.

Real Estate  
Taxes

5. Tenant shall pay and discharge all ad valorem real estate taxes and assessments which shall be levied against the taxable premises (as such term is hereinafter defined) during the lease term, excluding therefrom payment of assessments which are incurred or levied as a result of Landlord's activity in developing the demised premises for Tenant's occupancy.

To the extent permitted by law, Tenant may pay any such assessment in annual installments. In the event any such assessment shall be payable in lump sum or on an installment basis, Tenant shall have the sole right to elect the basis of payment. If Tenant shall elect to pay such assessment on the installment basis, then Tenant shall pay only those installments which shall become due and payable during the lease term. Any such installments due and payable in the years in which this lease commences and terminates shall be prorated proportionately.

Tenant shall not be chargeable with nor be obligated to pay any tax of any kind whatsoever which may be imposed on the Landlord, the rents payable hereunder or the demised premises, except the ad valorem real estate taxes and assessments mentioned in the first paragraph of this Article 5.

The amount, if any, by which the ad valorem real estate taxes and assessments payable hereunder exceed One hundred and Two thousand DOLLARS (\$102,000) during the first ten (10) years of this lease shall be hereinafter referred to as an "excess tax payment".

During the next five (5) years of this lease (beginning with the eleventh year and ending with the fifteenth year) the amount, if any, by which the ad valorem real estate taxes and assessments payable hereunder exceed the eleventh (11th) year real estate tax assessment amount shall be referred to as an "excess tax payment" for this period.

During the last five (5) years of this lease term (beginning with the sixteenth year and ending with the twentieth year) the amount, if any, by which the ad valorem real estate taxes and assessments payable hereunder exceed the sixteenth (16) year real estate tax assessment amount shall be referred to as an "excess tax payment" for this period during lack of the option periods as set forth in Article 13, the "excess tax payment" shall be equal to the amount by which the ad valorem real estate taxes and assessments payable hereunder exceed the actual real estate tax assessment amount levied for the initial year of each option period. All excess tax payments shall be deductible by Tenant from additional rentals, as defined in Article 4, hereof, due and payable for such lease year on a non-cumulative basis.

Landlord shall, at its expense, use its best efforts to have the taxable premises (as hereinafter defined) separately assessed from any contiguous lands, contiguous buildings and from any additional lands and improvements incorporated into the demised premises in the future or, in the alternative, if a separate assessment is unobtainable, shall obtain a certificate of

assessment upon the taxable premises. Tenant shall pay such taxes and assessments as shall be attributable to the taxable premises directly to the taxing authority (if a separate assessment is obtained as hereinbefore provided). If the taxable premises are not separately assessed but a certificate of assessment is available, Tenant shall pay to Landlord the amount of ad valorem real estate taxes and assessments attributable to the taxable premises in accordance with the certificate of assessment. If the taxable premises are not separately assessed and a certificate of assessment is not obtainable, Tenant shall pay to Landlord a proportionate amount of all ad valorem real estate taxes and assessments attributable to the land described in Exhibit "A-1" and the improvements thereon in the manner hereinafter provided. Where Tenant is required to pay a proportionate share of taxes to Landlord, the same shall be paid to Landlord within thirty (30) days following receipt of Landlord's written notification that such taxes and assessments are due.

Landlord's written notification shall be forwarded to Tenant not later than thirty (30) days prior to the date such taxes and assessments shall be due and shall be accompanied by a copy of the tax bill or certificate and such additional information as Tenant may reasonably require to show how Tenant's proportionate share of such taxes and assessments was calculated. Tenant's proportionate share of such taxes and assessments shall be in the ratio that the square foot floor area of Tenant's building bears to the square foot floor area of all of the buildings located on the land described in Exhibit "A-1".

In the event Tenant constructs, as provided in Article 15, hereof, additional building or structures upon the demised premises, said additional building or structures shall be excluded from the taxable premises. Said additional buildings or other structures shall be separately assessed and all ad valorem taxes and assessments levied thereon shall be paid and discharged by Tenant and shall not be deductible from additional rentals, as hereinbefore provided.

Tenant shall have the right to participate in all negotiations of tax assessments against the taxable premises. Tenant shall have the right to contest the validity or the amount of any tax or assessment levied against the taxable premises and, with Landlord's consent, the land described in Exhibit "A-1" by such appellate or other proceedings as may be appropriate in the jurisdiction in which such properties lie and may defer payment of such obligations, pay same under protest or take such other steps as Tenant may deem appropriate; provided, however, Tenant shall take no action which will cause or allow the institution of any foreclosure proceedings or similar action against the taxable premises or the land described in Exhibit "A-1". Landlord shall cooperate, at Tenant's expense, in the institution and prosecution of any such proceedings initiated by Tenant and will execute any documents required therefor.

Should Landlord institute proceedings to contest the validity or the amount of any tax or assessment levied against the taxable premises and/or the land described in Exhibit "A-1", Tenant, at Landlord's expense, will cooperate in such proceedings.

Should any of the proceedings referred to in the preceding paragraphs of this Article 5 result in reducing the total annual real estate tax and assessment liability against the taxable premises and/or the land described in Exhibit "A-1", Tenant, after deducting any expenses incurred by Landlord, shall be entitled to receive such refunds attributable to taxable premises paid by the taxing authorities. After payment of all Landlord's and Tenant's expenses incurred in any proceeding pertaining to the land described in Exhibit "A-1" in which a refund is paid, Landlord shall pay to Tenant, Tenant's proportionate share of such refund. Any balance of such refund remaining after such payment to Tenant shall belong to Landlord. No refund shall be secured in any given proceeding, the party instituting the proceeding shall bear the entire cost.

The term "taxable premises", as used in this lease, shall be the certain land described in Exhibit "A", together with Tenant's building required by Tenant to be constructed thereon by Landlord under the terms of this lease less that portion of the demised premises as described in Exhibit "A-1".

New Building  
by Landlord

6. Tenant's said building and site improvements shall be completed and delivered to Tenant promptly and with due diligence. If the performance by Landlord of any of its obligations hereunder is delayed by reason of the act or neglect of Tenant, act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, act of the public enemy or any other act over which Landlord has no control, the period for the commencement or completion thereof shall be extended for a period equal to such delay. Landlord warrants that a general contract for construction of said building and improvements referred to in Articles 1 and 12, hereof, shall be let, rough site grading shall be completed and foundations and footings commenced not later than February 1, 1991. If Landlord shall fail (except as hereinbefore provided) to comply fully with this warranty, Landlord shall so notify Tenant, in writing, and, in such event, Tenant shall have, in addition to other remedies which may be available to it by law or otherwise, the option to terminate this lease within sixty (60) days thereafter by written notice to Landlord; provided, further, in the event (except as hereinbefore provided), said building and site improvements shall not have been completed in accordance with working drawings and specifications prepared by Landlord and approved, in writing, by Tenant and possession thereof tendered to Tenant prior to October 1, 1992, then Tenant shall, at any time thereafter, have the further option of terminating this lease by written notice to Landlord. Notwithstanding anything to the contrary herein contained, in the event that the lease term shall not have commenced prior to such date as shall be three (3) years from the date of this lease, then this lease shall be automatically terminated without further act of either party hereto.

Drawings  
and Specifications

7. Tenant's said building and site improvements shall be constructed by Landlord, at its sole cost and expense, in accordance with the working drawings and specifications prepared by Landlord, at its sole cost and expense, which shall, with respect to standards of construction and division of responsibility for supplying materials and equipment, substantially satisfy the provisions of Tenant's typical store drawings and specifications,

prior receipt of which Landlord hereby acknowledges and which are identified as Set No. S0379 containing such additions, changes and modifications as more particularly set forth in that certain letter dated March 5, 1988 written by Stephen K. Li, R. A. Manager, Design Division, Construction Department, Kmart Corporation to Mr. Rafael Rivera, GENERAL DEVELOPMENT GROUP, Calle Reina Christina #41, La Villa De Torrimar Guaynabo, Puerto Rico 00657 a copy of which is attached hereto as Exhibit "D".

Said typical plans and specifications are subject to the following exceptions and such other deviations as may be approved, in writing, by the Tenant:

- (i) Such modifications of arrangement of space, location of entrance exits and columns and other structural members as shall be indicated by Tenant and delivered to Landlord within thirty (30) days after receipt of Landlord's written request therefor, which request shall be accompanied by preliminary building outline drawings together with any available elevations and sections; and
- (ii) Changes of type and standards of construction and of arrangement of the extent as shall be required by applicable laws, codes and ordinances.

Said working drawings and specifications shall be submitted to the Tenant for approval prior to commencement of construction and such approval shall not be unreasonably withheld. Within sixty (60) days after receipt of said working drawings and specifications, Tenant shall, in writing, inform Landlord of required revisions or corrections thereto which are necessary to conform said working drawings and specifications to the Tenant's typical store drawings and specifications, hereinbefore referred to. Landlord shall make such revisions or corrections as required by Tenant and shall resubmit them for Tenant's final approval. In the event Tenant shall not inform Landlord of such desired revisions or corrections within said sixty (60) days, said working drawings and specifications shall be deemed approved and accepted for the purposes hereof.

Said typical drawings and specifications and said working drawings and specifications, as approved by Tenant, shall constitute a part of this lease.

Subsequent to approval of the typical drawings and specifications, in the event that criteria changes to the lease shall be requested by Tenant, which result in a savings to the Landlord in construction costs, then, Landlord shall pay Tenant an amount equal to the savings. In the event such criteria changes result in extra construction costs to the Landlord, then Tenant shall pay Landlord the extra construction costs resulting from such changes.

Guarantee of Materials

8. Landlord shall unconditionally guarantee all work performed by or for Landlord in the construction of Tenant's building and site improvements against defective workmanship and materials for the period of one (1) year from the commencement of the lease term. Landlord shall assign to Tenant any and all guarantees of workmanship and materials which it may receive.

Advance Possession for Fixturing

9. For a period of fifty two (52) days prior to completion of Tenant's building by Landlord, as set forth in Article 11, hereof, Tenant shall have the privilege of entering said building, rent free, for the purposes of installing storage bins, storing merchandise and other Tenant's construction activities. Tenant's activities shall not create unreasonable interference with the work of Landlord. Such entry shall not be construed as an acceptance of the demised premises by the Tenant under provisions of this lease or as a waiver of any of the provisions hereof.

Landlord shall advise Tenant's Regional Construction Manager in writing ninety (90) days prior to his projected completion date to allow Tenant to place orders for fixtures, arrange for personnel and order merchandise.

Parking and Other Common Areas and Shopping Center Improvements

10. Prior to commencement, and as a condition of the commencement of the lease term, Landlord shall complete, at its sole cost and expense, construction of all on-site and off-site improvements and common area improvements required for the use and operation of the demised premises and the shopping center premises (to be constructed by Landlord) as a retail shopping center complex, substantially as depicted on Exhibit "B" and in accordance with the plans and specifications therefor approved by Tenant, including, but not limited to, (i) all off-site and on-site land clearing, land balancing and grading, (ii) all necessary road improvements, including acceleration and deceleration lanes and signalization (if required), (iii) all necessary utility extensions to the demised premises and the shopping center buildings; including, but not limited to, all storm sewers, watermains, storm drains, retention basins, (iv) all entrances, exits, driveways, roadways, service drives, parking areas, curbing, sidewalks, landscaping and (v) all on-site traffic and parking lot striping and control signs, lighting and any fencing or screening walls required by law, ordinance or regulation.

Landlord covenants that the aggregate area provided for the parking of automobiles upon the land described in Exhibit "A" and intended for common use shall, during the lease term, be sufficient to accommodate not less than Five Hundred and Sixty Five (565) automobiles on the basis of arrangement depicted on said working drawings and specifications.

Landlord covenants that the aggregate area provided for the parking of automobiles upon the land described in Exhibit "A-1" and intended for common use shall, during the lease term, shall be sufficient to accommodate not less than five (5) automobiles per one thousand (1,000) square feet of leasable building space constructed upon such land.

At least forty five (45) days prior to the commencement of the lease term, Landlord shall provide paved driveways running from the adjoining public streets around the front, sides and rear of Tenant's building and the front and rear of the balance of the shopping center constructed upon the land described in Exhibit "A-1", in order to secure convenient ingress and egress from said public streets to the front and rear entrances of Tenant's building and the other shopping center buildings for the purpose of receiving and delivering fixtures, merchandise and other property. Such driveways shall be of sufficient width to permit the passage, unloading and, if necessary, the turning around of trailer trucks and other commercial vehicles. Landlord covenants to maintain said service drive for the length of the lease term herein demised.

In the event that unauthorized persons, including tenants or invitees of tenants occupying buildings now or at any future time located beyond the limits of the land described in Exhibits "A" and "A-1", utilize the common areas for parking or other purposes to an extent which shall be objectionable to Tenant, Landlord shall at its sole expense, upon written request by Tenant, take whatever reasonable action as shall be so requested to prevent said unauthorized utilization.

Should Tenant, with the consent of the landlord at any time, utilize portions of the land described in Exhibit "A-1" for outdoor shows, entertainment or such other uses which, in Tenant's sole judgment, tend to attract the public, Tenant shall give Landlord notification of such intended use, a reasonable time in advance thereof, and, on request of Landlord, supply Landlord with reasonable proof of adequate insurance or indemnification against damage to property, injuries to persons and loss of life sustained in connection therewith. In addition, Tenant shall be responsible for any physical damage to the improvements upon said land resulting from said use. Rent, if any, from such use shall be included as part of "gross sales" under Article 4, hereof.

Store  
Opening

11. The term "date of occupancy by Tenant", as used in this lease, shall be the first to occur of the following two dates: (a) the date upon which Tenant shall open its store for business or (b) the date which shall be fifty two (52) days (plus a period of time equal to any delays due to conditions beyond Tenant's control) after the date upon which (i) Tenant's building and site improvements shall be completed in accordance with said working drawings and specifications and the possession thereof shall be tendered to Tenant and (ii) all of the representations and warranties set forth in Articles 10, 12 and 16, hereof, shall have been fulfilled; except, however, notwithstanding anything to the contrary in this lease contained, in the event said date of occupancy shall occur during the period between November 1 and the last day of February, the lease term shall not commence until March 1, unless Tenant shall elect to open for business prior to such date. Tenant shall have the option to open for business prior to the completion of the matters set forth in subdivisions (i) and (ii) of this Article 11, and, in the event of the exercise of such option, Landlord shall complete said building and site improvements as expeditiously as possible; provided, however, if Landlord shall have failed to complete said building and improvements according to the said working drawings and specifications within ninety (90) days after Tenant opens for business, Tenant shall

thereafter, at any time, be privileged, but not obligated, to complete or remedy, in all or in part, any such deficiency and the cost thereof shall be deducted from the rentals due under this lease with a waiver of Tenant's other remedies hereunder.

Landlord's  
Representations and  
Warranties

12. Landlord represents, warrants and covenants that:

- RD.
- (i) Prior to the commencement of the lease term, Landlord shall have completed Tenant's building and site improvements and the common area work and shopping center improvements in accordance with the terms hereof;
  - (ii) Landlord shall not have erected or will not erect any buildings, structures or improvements on the lands described on Exhibits "A" and "A-1" except as are shown on Exhibit "B";
  - (iii) Prior to the commencement of the lease term, the demised premises will have been properly zoned for Tenant's use and all necessary governmental consents, permits and approvals for such use shall have been obtained;
  - (iv) Prior to the commencement of the lease term, Landlord shall have delivered to Tenant a Certificate of Occupancy for the demised premises;
  - (v) There shall be adequate sidewalks, driveways, service drives, roadways and entrances for automotive and pedestrian ingress and egress to and from the common areas and adjacent public streets and highways, as depicted on Exhibit B; and
  - (vi) Any buildings to be located on the area depicted on Exhibit "B" and designated "Outlot Area" shall not exceed an aggregate total GLA of Seven thousand square feet of floor area and be no greater than one (1) story or eighteen (18) feet in height, whichever is less.

The lease term shall not commence and said annual minimum rental and other charges payable under this lease shall not commence to accrue until the foregoing representations and warranties shall have been fulfilled; provided, however, in the event that Tenant shall elect to open for business before Landlord shall have fulfilled the foregoing representations and warranties, the term of this lease shall commence, but Tenant shall not be obligated to pay the annual minimum rental or the additional rentals as hereinbefore provided. In lieu thereof, Tenant shall pay monthly, in arrears, one percent (1%) of said gross sales and Tenant shall continue said payment until Landlord's said representations and warranties shall be fulfilled, at which time Tenant shall commence payment of the rentals set forth in Articles 3 and 4, hereof.

In the event Landlord's said representations and warranties shall not be fulfilled within ninety (90) days after commencement of the lease term or Landlord shall violate any of the said representations and warranties during the lease term, Tenant shall, thereafter, have the option of either (i) completing said representations and warranties and deducting the cost of said



performance together with interest thereon from the date expended until the date paid by Landlord at the rate of twelve percent (12%) per annum (or the highest rate permitted by law, whichever is higher) from the rent due under this lease or (ii) Tenant shall have the option to terminate this lease by written notice to Landlord, such notice stating an effective date of termination not less than sixty (60) days from the date of such notice.

Options to  
Extend Lease

13. (a) Tenant shall have six (6) successive options to extend the term of this lease for an additional period of five (5) years (hereinafter called "Option Period") on each such option. Such extended term shall begin respectively upon the expiration of the term of this lease or of this lease as extended and the same terms and conditions as herein set forth shall apply to each such extended term, except the annual minimum rentals shall be as follows:

- a. First Five year option term - \$ 919,800
- b. Second Five year option term - \$ 964,800
- c. Third Five year option term - \$ 1,009,800
- d. Fourth Five year option term - \$ 1,054,800
- e. Fifth Five year option term - \$ 1,099,800
- f. Sixth Five year option term - \$ 1,144,800

If Tenant shall elect to exercise the aforesaid option or options, it shall do so by giving written notice to Landlord not less than six (6) months prior to the expiration of the term of this lease or of this lease as extended.

(b) Regardless of the exercise or nonexercise by Tenant of any or all of the foregoing options, Tenant shall have, unless the last day of the lease term shall be January 31 of any year, the option to extend (or further extend, as the case may be) the term of this lease for such period of time as shall cause the last day of the term of this lease to be the January 31 next succeeding the date upon which the term of this lease would expire but for the exercise of this option. This option shall be exercised by written notice to Landlord not less than six (6) months prior to the expiration of the term of this lease or of this lease as extended.

Repairs and  
Maintenance

14. Tenant shall make and pay for all maintenance, replacement and repair necessary to keep the demised premises in a good state of repair and in tenantable condition, except for the following maintenance, replacement or repair which shall remain the Landlord's sole responsibility:

- (i) all maintenance, replacement and repair to the roof, outer walls and structural portion of the building which shall be necessary to maintain the building in a safe, dry and tenantable condition and in good order and repair;

- (ii) all maintenance, replacement and repair of underground utility installations and underground electrical conduit and wiring including, but not limited to, repairs, maintenance replacements which are occasioned by settlement of the demised premises, or a portion thereof, or caused by soil conditions (not a change in use by Tenant); and
- (iii) all repairs and replacement including resurfacing necessary to maintain all driveways, sidewalks, street and parking areas free all settling, clear of standing water and in a safe, sightly and serviceable condition, free of chuck holes, fissures and cracks.

Landlord shall contract for sweeping, striping and security for the parking areas, driveways, sidewalks and streets of the premises and maintain same in a clean, safe, sightly and serviceable condition. The Landlord shall further maintain all landscaped areas. Tenant agrees to reimburse Landlord for a proportionate share of Landlord's costs to maintain the common areas existing from time to time on the land described in Exhibit "A-1" (exclusive of building areas). Landlord's costs to maintain the common areas shall include all amounts paid by Landlord, during the lease term, for: (i) cleaning, sweeping, security, drainage and restriping of the parking areas, sidewalks, service drives and driveways, (ii) maintenance, repair and upkeep of the planted or landscaped areas, (iii) maintenance repair and replacement of parking lot lighting standards, bulbs and lights, (iv) electrical charges in connection with the lighting of the parking lot and service drive areas during Tenant's normal business hours to a minimum of one and one half (1-1/2) foot candles at ground level, (v) comprehensive general liability insurance on the common areas (said insurance to be maintained in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) per person and TWO MILLION DOLLARS (\$2,000,000) per accident, said insurance to name Tenant as an additional insured and Landlord to furnish Tenant with a Certificate of Insurance as evidence thereof and (vi) wages and salaries of persons directly and actually performing the above described services. Landlord shall submit to Tenant, on a quarterly basis, an accounting and itemization of all such costs expended by Landlord in the performance of the duties and obligations as set forth hereinabove. Tenant shall reimburse Landlord for Tenant's proportionate share of the total of said costs to maintain the common areas within thirty (30) days from receipt of said accounting from Landlord. Tenant reserves the right to inspect Landlord's records with respect thereto and to set forth specific objections thereof.

Notwithstanding anything contained herein to the contrary, Tenant reserves the right, for any reason whatsoever, at any time upon sixty (60) days prior written notice to Landlord to assume the duties of Landlord to maintain the common areas located within Exhibit "A". If Tenant shall elect to maintain the common areas located within Exhibit "A", then, and in such event, Tenant shall not during such period be required to make any contributions to the common area costs as hereinabove defined, however, Landlord shall maintain the remaining portions of the common area described in Exhibit "A-1", and Landlord's responsibilities as set forth in subparagraphs (i), (ii) and (iii) of this Article, shall not be diminished.

For the purposes of this Article 14, Tenant's proportionate share of costs to maintain the common areas will be the total of Landlord's cost multiplied by a fraction, the numerator of which shall be the ground floor square area of Tenant's building and the denominator of which shall be the ground floor square foot area of all buildings constructed upon the land described in Exhibits "A" and "A-1", or the ground floor area contained all buildings depicted on Exhibit "B", whichever is larger; provided however, except for the first year of the term of this lease, Tenant's proportionate share of such Landlord's costs shall not be greater than one hundred seven percent (107%) of Tenant's proportionate share of such Landlord's cost paid by Tenant during the previous lease year.

In the event the building or improvements constituting the demised premises or a portion thereof shall be rendered unusable due to Landlord's default or negligence with respect to required repairs, there shall be a just and equitable abatement of said annual minimum rental and all other charges payable under this lease until said premises shall be made usable. Emergent repairs, which shall be Landlord's responsibility under article 14 herein and which shall be necessary to protect the building or contents and/or to keep the common areas in a neat, clean, safe and orderly condition, may be made by Tenant without notice to Landlord and the cost of such repairs, not to exceed TWO THOUSAND DOLLARS (\$2,000.00) in any one instance, may be deducted from rentals subsequently accruing hereunder.

Alterations  
Addi-  
tional  
Construction

15. Tenant may, at its own expense, from time to time, make such alterations, additions or changes, structural or otherwise, in and to its building as it may deem necessary or suitable; provided, however, Tenant shall obtain Landlord's prior written consent to drawings and specifications for structural alterations, additions or changes; provided, further, Landlord shall not withhold its consent thereto if the structural integrity of the building will not be impaired by such work. The term "structural changes" as used herein, shall not include moving of non-load bearing partitions, relocation of building entry doors, minor plumbing and electrical work modification and rearrangement of fixtures or other minor changes. Landlord, at Tenant's cost, shall cooperate with Tenant in securing building and other permits or authorizations required from time to time for any work permitted hereunder or for installations permitted hereunder by Tenant.

Utilities

16. Landlord covenants and agrees that the demised premises shall be properly serviced with gas, electric, telephone, water, sewer and other utilities sufficient to meet Tenant's requirements as of the commencement of the lease term. Tenant shall pay all charges for utility services furnished to the demised premises during the lease term.

Landlord may provide a disposal or septic tank system in lieu of public sanitary sewer; subject, however, to Tenant's prior written approval of plans and specifications and Landlord's continuing obligation to clean and maintain said system, at all times, in good and serviceable condition, at its sole expense.

Governmental  
Regulations

17. Tenant shall observe and comply with all requirements, rules, orders and regulations of the federal, state and municipal governments and other duly constituted public authority affecting said demised premises including the making of non-structural alterations, insofar as they are related to Tenant's occupancy. In the event such rules, orders and regulations shall either (i) require structural changes, including but not limited to, the erection of fire escapes or exit or (ii) require non-structural changes which would have been required irrespective of the nature of the current tenancy then and in either of such event, the same shall be complied with by Landlord at its sole expense.

Exculpation

18. Anything to the contrary in this lease notwithstanding, the covenants contained in this lease to be performed by Landlord shall not be binding personally, but instead, said covenants are made for the purpose of being binding only the fee simple or leasehold estate which Landlord owns in the demised premises; provided, however, the obligations imposed by Article 31 of this lease shall be personally binding upon Landlord.

Damage to  
Demised  
Premises

19. From and after the "date of occupancy by Tenant", as that term is hereinbefore defined in Article 11, hereof, should Tenant's guarantor (Kmart Corporation) net worth at any time be less than ONE HUNDRED MILLION DOLLARS (\$100,000,000), upon written request of the Landlord, or Landlord's mortgagee, Tenant shall procure fire and earthquake insurance with extended coverage endorsement upon the building erected by Landlord (pursuant to Article 6, hereof) in an amount equal to the replacement value of the building above the foundation walls. At any time while Tenant's guarantor's (Kmart Corporation) net worth shall exceed ONE HUNDRED MILLION DOLLARS (\$100,000,000), Tenant may elect to self-insure its obligation to restore.

Policies of fire and earthquake insurance procured pursuant to this Article 19 shall assure and be payable to Landlord, Tenant and Landlord's mortgagee, if any, and shall provide for release of insurance proceeds to Landlord and Tenant for restoration of loss as their respective interests appear.

Landlord and Landlord's mortgagee, if any, shall, in the event fire insurance is procured pursuant to this Article 19, be furnished certificates from the insuring company showing the existence of such insurance. In case of loss, Tenant is hereby authorized to adjust the loss and execute proof in the name of all parties in interest.

In the event that, at any time during the lease term, the permanent improvements then constituting Tenant's building and site improvements shall be damaged or destroyed (partially or totally) by fire or any other casualty insurable under a standard fire and extended coverage endorsement, Tenant shall, at its expense, promptly and with due diligence, either (i) repair, rebuild and restore the same, as nearly as practicable, to the condition existing just prior to such damage or destruction or (ii) repair, rebuild and restore the same for the same use and purposes, but in accordance with such plans and specifications as are then generally in use by Tenant for the construction of a Builders Square building and related structures; provided, however, the repaired, rebuilt or replaced building will have a value not less than its value just prior to said loss.

Anything herein to the contrary notwithstanding, it is understood and agreed that if (i) as a result of any such damage or destruction during the last two (2) years of the lease term, Tenant's fixtures, equipment or other property shall be damaged or destroyed in an amount exceeding ONE HUNDRED THOUSAND DOLLARS (\$100,000) or (ii) such damage or destruction shall have taken place within five (5) years of the then scheduled expiration date of the current term of the lease and if the extent of such damage or destruction is such that the cost of restoration would exceed fifty percent (50%) of the amount it would have cost to replace the Tenant's leased building on the demised land, in its entirety, at the time such damage or destruction took place, then and, in either of such events, Tenant may terminate this lease as of the date of such damage or destruction by giving written notice to Landlord within thirty (30) days thereafter and Tenant shall have an additional sixty (60) days, rent free, within which to remove its property from the demised premises.

OR  
In the event this lease is terminated, as hereinbefore provided, and if Tenant is carrying fire and earthquake insurance equal to the replacement value of the building above the foundation walls, all the insurance proceeds shall belong to Landlord and/or Landlord's mortgagee, if any, as their interest may appear. In the event the property is self-insured at the time of the loss, Tenant shall reimburse Landlord and/or Landlord's mortgagee, as their interest may appear, for an amount equivalent to the insurance proceeds that would have been paid had insurance been in force, but not to exceed the replacement value of the building above the foundation walls or in the event of earthquake to include the foundation walls. In the event that this lease shall be terminated, as hereinabove provided, all unearned rent and other charges paid in advance shall be refunded to Tenant.

In the event that, at any time during the lease term, any building or buildings owned by Landlord within the site depicted on Exhibit "B", other than Tenant's building, shall be damaged or destroyed (partially or totally) by fire, the elements or any other casualty, Landlord shall use its best efforts to promptly and with due diligence repair, rebuild and restore the same, as nearly as practicable, to the condition existing just prior to such damage or destruction or, in the alternative, Landlord shall use its best efforts to clear, clean and raze the fire damaged buildings.

Each party hereto has hereby remised, released and discharged the other party hereto and any officer, agent, employee or representative of such party of and from any liability whatsoever hereafter arising from loss, damage or injury caused by fire or other casualty from which insurance (permitting waiver of liability and containing waiver of subrogation) is carried by the party at the time of such loss, damage or injury to the extent of any recovery by the injured party under such insurance.

20. In the event that all of Tenant's building constructed by Landlord shall be expropriated or the points of ingress and egress to the public roadways, substantially as depicted on Exhibit "B", shall be materially impaired by a public or quasi-public authority so as to render, in Tenant's sole opinion, the demised premises unsuitable for its intended purpose, Tenant shall have the option to terminate this lease as of the date Tenant shall be deprived or denied thereof.

Eminent  
Domain

In the event that less than the whole but more than ten percent (10%) Tenant's building constructed by Landlord shall be expropriated by public quasi-public authority, Tenant shall have the option to terminate this lease as of the date Tenant shall be dispossessed from the part so expropriated giving written notice to Landlord of such election so to terminate within ninety (90) days from the date of such dispossession.

In the event of an expropriation of any portion of Tenant's building constructed by Landlord and if this lease shall not be terminated hereinabove provided, Tenant shall continue as to that portion of the building which shall not have been expropriated or taken. In such event Landlord shall, at its sole cost and expense, promptly and with due diligence restore said building, as nearly as practicable, to a complete unit of like quality and character as existed just prior to such expropriation. The annual minimum rental and other charges payable by Tenant hereunder shall abate during the period of demolition and restoration. Following restoration by the Landlord, the annual minimum rental and the dollar amounts set forth in the first paragraph of Article 4, hereof, shall be reduced in the proportion the ground floor square foot area of the part of Tenant's building so expropriated shall bear to the total ground floor square foot area of said building prior to such expropriation.

Without limiting the foregoing, in the event that any of the lands described in Exhibit "A-1" shall be expropriated by public or quasi-public authority, Landlord shall make every effort to substitute equivalent or similarly improved lands contiguous to and properly integrated with the remainder of the site depicted on Exhibit "B". If Landlord shall be unable to substitute such lands and if one or more expropriations shall in total deprive Tenant of the use of more than ten percent (10%) of the lands described in Exhibit "A-1", then, in such event, Tenant shall have the option to terminate this lease at any time within twelve (12) months after such deprivation becomes effective by giving written notice to Landlord.

In the event this lease shall be terminated pursuant to this Article 20, any annual minimum rental and other charges paid in advance shall be refunded to Tenant and Tenant shall have an additional sixty (60) days, rent free, within which to remove its property from the demised premises. In the event that at the time of any expropriation of Tenant's building, Tenant shall not have fully amortized expenditures which it may have made on account of any improvements, alterations or changes to its buildings, Landlord shall assign to Tenant that portion of any award payable as a result of such expropriation as shall equal the unamortized portion of Tenant's said expenditures. Said unamortized portion of Tenant's said expenditures shall be determined by multiplying such expenditures by a fraction, the numerator of which shall be the number of remaining years of the lease term at the time of such expropriation and the denominator of which shall be the number of remaining years of the lease term at the time such expenditures shall have been made, plus the number of years for which the lease term may have been subsequently extended.

Signs

22. The demised premises shall be referred to by only such designation as Tenant may indicate. Landlord expressly recognizes that the service mark and trademark "Builders Square" is the valid and exclusive property of Tenant and Landlord agrees that it shall not either during the term of this lease thereafter, directly or indirectly, contest the validity of said mark "Builders Square" or any of Tenant's registrations pertaining thereto, in the United States or elsewhere, nor adopt or use said mark or any term, word, mark or designation which is in any aspect similar to the mark of Tenant. Landlord further agrees that it will not at any time do or cause to be done any act or thing, directly or indirectly, which contests or in any way impairs or tends to impair any part of Tenant's right, title and interest in the aforesaid mark and Landlord shall not in any manner represent that it has ownership interest in the aforesaid mark or registrations therefor. Landlord specifically acknowledges that any use thereof pursuant to this lease shall not create in Landlord any right, title or interest in the aforesaid mark.

PR

Tenant shall have the option to erect, at its sole cost and expense upon any portion of the demised premises, signs of such height and other dimensions as Tenant shall determine, including a pylon type sign as depicted on the hereinbefore referred to working drawings and specifications, bearing such legend or inscription as Tenant shall determine. Landlord warrants that, subject to the approval of the appropriate governmental agencies, Tenant shall have the right to erect the exterior signage as shown in Exhibit "C". Tenant with the consent of landlord shall have the option to utilize the lighting standards in the parking lot for advertising purposes by attaching, or causing to be attached, signs advertising any and all products and services as Tenant shall elect and Tenant's name.

Landlord shall not permit any other signs, billboards or posters to be displayed on any portion of the demised premises, nor shall Landlord erect a pylon sign on any portion of the property described in Exhibit "A-1" without the consent of Tenant. Tenant shall have the right to be a participant on any pylon sign erected on any portion of Exhibit "A-1". In the event that Tenant elects to participate in a joint pylon sign for the entire shopping center, then such signage shall be placed at a location mutually acceptable to Landlord and Tenant. Tenant reserves the right to approve the overall composition, elevation and specifications of any community pylon sign. Tenant will pay its share of the pylon structure costs based upon the square footage of Tenants sign as a percentage of total square footage of signage on the pylon. Each user will bear the entire expense of the cost and installation of its individual sign panel on the pylon. Tenants sign panel on the pylon shall be wired directly to Tenants building.

Ingress and Egress

23. Landlord warrants, that, as a consideration for Tenant entering into this lease, it will initially provide, for the period of this lease and any extension thereof, ingress and egress facilities to the adjoining public streets and highways in the number and substantially in the locations depicted on Exhibit "B", subject to unavoidable temporary closings or temporary relocations necessitated by public authority or other circumstances beyond Landlord's control.

Landlord's Remedies

24. If Tenant shall be in default under any other provision of lease and shall remain so for a period of thirty (30) days after written notice to Tenant of such default, then Landlord may, by giving written notice to Tenant, at any time thereafter during the continuance of such default either (i) terminate this lease or (ii) re-enter the demised premises summary proceedings or otherwise, expel Tenant and remove all property therefrom, relet said premises at the best possible rent readily obtainable (making reasonable efforts therefor) and receive the rent therefor; provided, however, Tenant shall remain liable for the equivalent of the amount of all rent reserved herein less the avails of reletting, if any, after deducting therefrom the reasonable cost of obtaining possession of the premises and the reasonable cost of any repairs and alterations necessary to prepare it for reletting. Any and all monthly deficiencies so payable to Tenant shall be paid monthly on the date herein provided for the payment of rent. If any default by Tenant (except nonpayment of rent) cannot reasonably be remedied within Ninety (90) days after written notice of such default, then Tenant shall have such additional time thereafter as shall be reasonable necessary to remedy such default before this lease can be terminated or other remedy enforced by Landlord. Except for the legal remedy of damages (provided Landlord shall in all instances be required to mitigate damages) and the equitable remedy of an injunction, the remedies of Landlord herein shall be exclusive of any other remedies.

*RR*

Bankruptcy

25. If a petition of bankruptcy or reorganization shall be filed by or against Tenant, Tenant shall become bankrupt, Tenant shall make a general assignment for the benefit of creditors, or in any proceeding based upon the insolvency of Tenant a receiver or trustee of all of the property of Tenant shall be appointed and shall not be discharged within ninety (90) days after such appointment, then Landlord may terminate this lease by giving written notice to Tenant of its intention so to do; provided, however, neither bankruptcy, insolvency, reorganization, an assignment for the benefit of creditors nor the appointment of a receiver or trustee shall affect the lease or permit its termination so long as the covenants on the part of Tenant to be performed shall be performed by Tenant, or someone claiming under it.

Covenant of Title

26. Landlord covenants, represents and warrants that it has full right and power to execute and perform this lease and to grant the estate demised herein and that Tenant, on payment of the rent and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the demised premises and all rights, easements, appurtenances and privileges belonging in or otherwise appertaining thereto during the lease term without molestation or hindrance of any person whomsoever, and if, at any time during the term hereby demised the title of Landlord shall fail or it be discovered that its title shall not enable Landlord to grant the term hereby demised, Tenant shall have the option, at Landlord's expense, to correct such defect or to annul and void this lease with full reservation of its right to damages, if any.



Landlord further covenants, represents and warrants that it is seized an indefeasible estate in fee simple or has a good and marketable leasehold title to the lands described in Exhibits "A" and "A-1", free and clear of liens, encumbrances, restrictions and violations (or claims or notices thereof), except as follows:

- (i) Public utility easements not impairing Tenant's use of the demised premises.

Landlord shall, without expense to Tenant and prior to the commencement of construction of Tenant's building, furnish to Tenant (i) a copy of an American Land Title Policy certifying to Tenant that Landlord's title is as herein represented and certifying that Tenant's demised premises depicted on Exhibit "B" are within the bounds of the property described in Exhibit "A", (ii) a survey by a licensed surveyor of the lands described in Exhibits "A" and "A-1" and (iii) agreements wherein each holder of any lien against the demised premises shall consent to this lease and warrant that Tenant's possession and right of use under this lease in and to the demised premises shall not be disturbed by such holder unless and until Tenant shall breach any of the provisions hereof and this lease or Tenant's right to possession hereunder shall have been terminated in accordance with the provisions of this lease.

In the event Landlord's estate is derived from a leasehold interest in ground lease, Landlord shall, prior to the commencement of construction of the improvements required hereunder, deliver to Tenant an agreement, executed by the fee owner of the demised premises, wherein the fee owner recognizes this lease and Tenant's rights hereunder and agrees that, notwithstanding any default by the Landlord and subsequent termination of said ground lease, Tenant's possession and right of use under this lease in and to the demised premises shall not be disturbed by such fee owner unless and until Tenant shall breach any of the provisions hereof and this lease or Tenant's right to possession hereunder shall have been terminated in accordance with the provisions of this lease.

Mortgage

Subordination

27. Upon written request by Landlord, Tenant shall execute and deliver an agreement subordinating this lease to any first mortgage upon the demised premises; provided, however, such subordination shall be upon the express condition that the validity of this lease shall be recognized by the mortgagee and that, notwithstanding any default by the mortgagor with respect to said mortgage or any foreclosure thereof, Tenant's possession and right of use under this lease in and to the demised premises shall not be disturbed by such mortgagee unless and until Tenant shall breach any of the provisions hereof and this lease or Tenant's right to possession hereunder shall have been terminated in accordance with the provisions of this lease.

Tenant  
Indemnifies  
Landlord

28. During the lease term Tenant shall indemnify and save Landlord and Landlord's ground lessor, if any, harmless against all penalties, claims or demands of whatsoever nature arising from Tenant's use of the Tenant's building, except those which shall result, in whole or in part, directly or indirectly, from the default or negligence of Landlord or Landlord's ground lessor, if any.

Tenant's  
Right to  
Cure  
Landlord's  
Defaults

29. In the event Landlord shall neglect to pay when due any obligation on any mortgage or encumbrance affecting title to the demised premises and to which this lease shall be subordinate or shall fail to perform any such obligation specified in this lease, then Tenant may, after the continuance of any such default for seven (7) days after written notice thereof by Tenant to Landlord, pay said principal, interest or other charges or cure such default all on behalf of and at the expense of Landlord and do all necessary work to make all necessary payments in connection therewith and Landlord shall, on demand, pay Tenant, forthwith, the amount so paid by Tenant together with interest thereon at the rate of twelve percent (12%) per annum (or the highest rate permitted by law, whichever is the higher) from the date of payment until re-payment and Tenant may, to the extent necessary, withhold any and all rental payments and other payments thereafter due to Landlord and apply the same to the payment of such indebtedness.

Provided the holder of a properly recorded first mortgage shall have notified Tenant, in writing, that it is the holder of such lien on the demised premises and shall so request, Tenant shall provide such holder with a duplicate copy of any notice sent to Landlord covering a default hereunder and such holder shall be granted sixty (60) days after receipt thereof to correct or remedy such default.

Condition of  
Premises at  
Termination

30. At the expiration or earlier termination of the lease term Tenant shall surrender the demised premises, together with alterations, additions and improvements then a part thereof, in good order and condition, except for the following: (i) ordinary wear and tear, (ii) repairs required to be made by Landlord and (iii) loss or damage by fire, the elements and other casualty. All furniture and trade fixtures installed in said building at the expense of Tenant, or other occupant, shall remain the property of Tenant, of such other occupant; provided, however, Tenant shall, at any time and from time to time, during the lease term, have the option to relinquish its property rights with respect to such trade fixtures (including, but not limited to air conditioning machinery and lighting fixtures), which option shall be exercised by written notice of such relinquishment to Landlord and, from and after the exercise of said option, the property specified in said notice shall be the property of Landlord.

Hazardous  
Waste

31. Landlord represents that it has made a thorough investigation of the physical condition of the Demised Premises, that it is fully familiar with the present and prior uses of the Demised Premises and that there are not now nor have there been any toxic or hazardous wastes or substances used, generated, stored, treated or disposed on the Demised Premises. Landlord hereby indemnifies Tenant from and against any loss, liability, claim or expense, including, without limitation, cleanup, engineering and attorneys fees and expenses that Tenant may incur by reason of the above representation being false or by reason of any investigation or claim of any governmental agency in connection therewith. Landlord's representations and indemnity to Tenant under this paragraph shall survive the cancellation or termination of this lease.

At any time from the date of this Lease until Commencement Date, Tena (or Tenant's contractor) may inspect the Demised Premises for the presence of such wastes or substances. If toxic or hazardous wastes or substances are discovered in the Demised Premises, Tenant may cancel this Lease by giving notice to Landlord and returning possession of the premises to the Landlord prior to the Commencement Date, if Tenant has taken possession.

Holding Over

32. In the absence of any written agreement to the contrary, if Tenant should remain in occupancy of the demised premises after the expiration of the lease term, it shall so remain as a tenant from month-to-month and all provisions of this lease applicable to such tenancy shall remain in full force and effect.

Notices

34. Notices required under this lease shall be in writing and deemed to be properly served on receipt thereof if sent by certified or registered mail to Landlord at the last address where rent was paid or to Tenant at its principal office in San Antonio, Texas or to any subsequent address which Landlord and/or Tenant shall designate for such purpose. The date of notice shall be the date on which such notice is deposited in a post office of the United States Postal Service.

Captions and Definitions

35. Marginal captions of this lease are solely for convenience of reference and shall not in any way limit or amplify the terms and provisions thereof. The necessary grammatical changes which shall be required to make the provision of this lease apply (i) in the plural sense, if there shall be more than one Landlord and (ii) to any landlord which shall be either a corporation, an association, a partnership or an individual, male or female, shall, in all instances, be assumed as though in each case fully expressed. Unless otherwise provided, upon the termination of this lease under any of the Articles hereof, the parties hereto shall be relieved of any further liability hereunder except as to acts, omissions or defaults occurring prior to such termination.

Partial Invalidity

36. If any term, covenant or condition of this lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

Entire Agreement

37. This lease, the Exhibits, and Amendments or Addendums, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions, provisions and understandings between Landlord and Tenant concerning the demised premises and there are no covenants, promises, agreements, conditions, provisions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

Laws of  
State

38. This lease shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico.

Successors  
and Assigns

39. The conditions, covenants and agreements contained in this lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. All covenants and agreements of this lease shall run with the land.

Memorandum  
of Lease

40. The parties hereto have, simultaneously with the execution and delivery of this lease, executed and delivered a protocolization of Lease which Tenant may, at its sole expense, cause to be recorded.

Lease  
Guaranty

41. Tenant shall, simultaneously with its execution of this lease procure the guaranty of its performance by the K-Mart Corporation in accordance with the "Lease Guaranty" Agreement attached hereto as Exhibit "E".

*RR*

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

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

By: PLAZA BAYAMON  
Rafael Rivera,  
Managing Partner

Attest: Rafael Rivera

Jackie Sweeten  
Jackie Sweeten

BUILDERS SQUARE, INC.

By: [Signature] President

Attest: [Signature]  
Asst. Secretary

0007B

BSQ: SC/SG

ACKNOWLEDGMENTS

STATE OF TEXAS )  
COUNTY OF BEXAR ) SS:

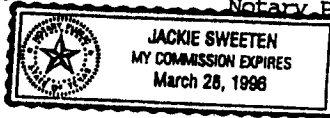
I do hereby certify that on this 23<sup>rd</sup> day of April, 1998, before me Jackie Sweeten, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared Colon R. Muelke and Dr. Kent Fritner known to me to be the President and Assistant Secretary Builders Square, Inc., who, being by me duly sworn, did depose and say that they reside Bexar County, Texas; that they are the President and Assistant Secretary respectively Builders Square, Inc., the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this day and year in this certificate first above written.

My commission expires: \_\_\_\_\_

Affidavit number 1, 959 (copy)

Jackie Sweeten  
Notary Public

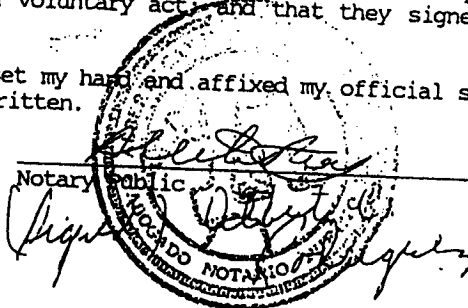


STATE OF Puerto Rico, )  
Commonwealth, ) SS:  
Puerto Rico

I do hereby certify that on this 5<sup>th</sup> day of June, 1992 before me, Alberto C. Rodriguez, a Notary Public in and for the Commonwealth of Puerto Rico aforesaid, and duly commissioned, personally appeared Roberto L. Torres and Pluma Crespo M. known to me to be the Legal Representative of Delegados Puerto Rico, that they reside in Delegados Puerto Rico, respectively; that they are the Legal Representative respectively of Delegados Puerto Rico, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this day and year in this certificate first above written.

My commission expires: in for life



0007N

# PARCEL A

| PT. | BEARING        | DISTANCE | TO | NORTHING   | EASTING     |
|-----|----------------|----------|----|------------|-------------|
|     |                |          | 2  | 59873.4059 | 180056.9012 |
| 2   | S 84 09 53.0 E | 51.5036  | 3  | 59868.1696 | 180108.1379 |
| 3   | S 26 17 43.9 E | 62.9346  | 4  | 59811.7474 | 180136.0180 |
| 4   | S 81 50 21.6 W | 213.1358 | 5  | 59781.4929 | 179925.0404 |
| 5   | S 04 06 32.7 W | 3.6485   | 17 | 59777.8538 | 179924.7790 |
| 17  | N 88 10 14.2 W | 49.2868  | 18 | 59779.4272 | 179875.5173 |
| 18  | N 08 27 30.5 E | 54.9662  | 25 | 59833.7955 | 179883.6024 |
| 25  | N 00 42 25.6 W | 135.3866 | 84 | 59969.1717 | 179881.9316 |
| 84  | N 20 49 00.3 E | 49.8231  | 83 | 60015.7425 | 179899.6377 |
| 83  | N 82 44 30.1 E | 68.2645  | 82 | 60024.3672 | 179967.3551 |
| 82  | N 89 45 00.0 E | 47.1200  | 81 | 60024.5728 | 180014.4747 |
| 81  | S 00 15 00.0 E | 141.7476 | 80 | 59882.8266 | 180015.0932 |
| 80  | N 89 45 00.0 E | 43.4532  | 79 | 59883.0162 | 180058.5460 |
| 79  | S 09 42 43.3 W | 9.7500   | 2  | 59873.4059 | 180056.9012 |

**AREA = 38,851.20 S.M. = 9.60 ACRES**

EXHIBIT "A"

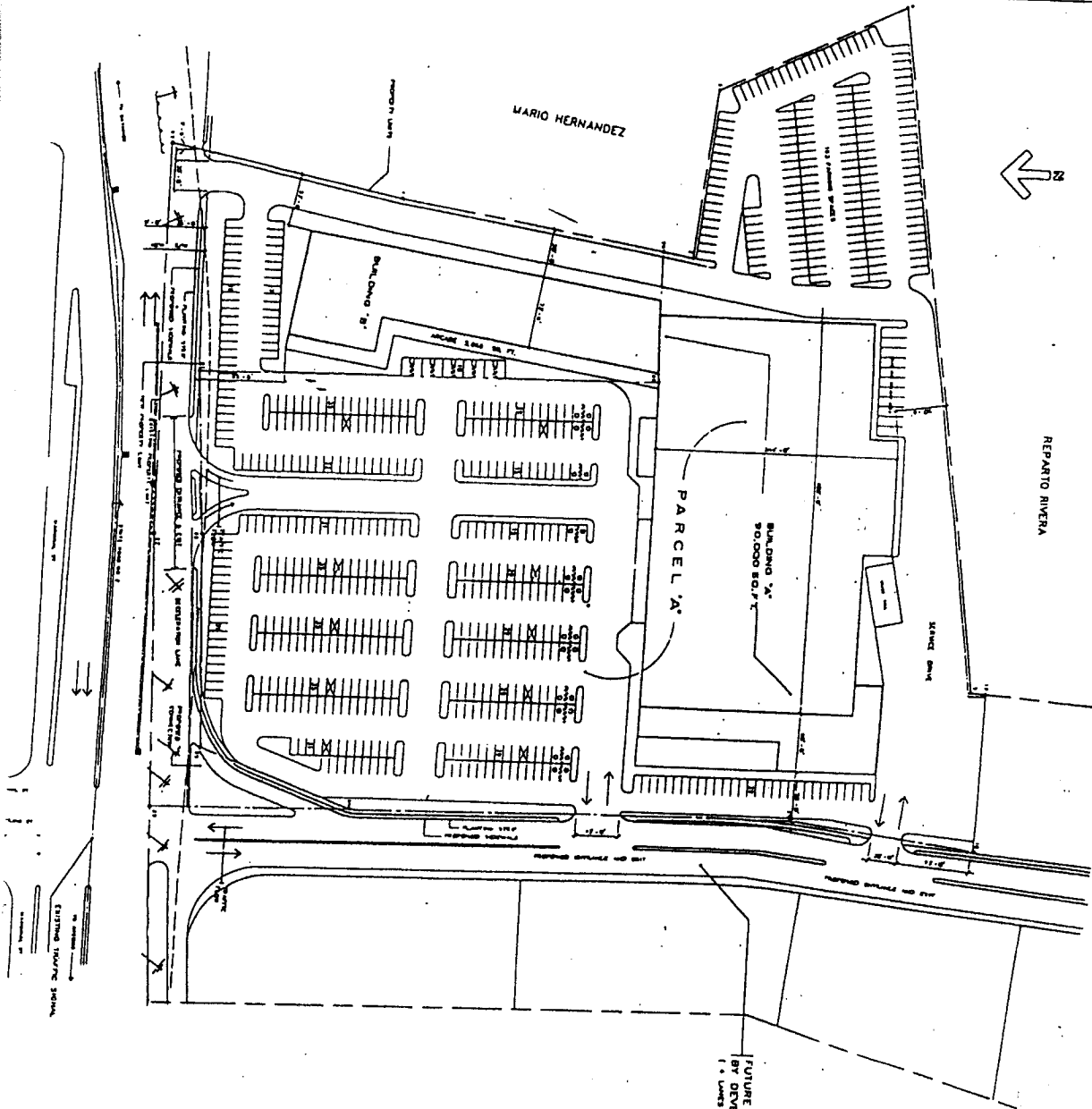
# MAIN PARCEL A-1

| FROM | BEARING        | DISTANCE | TO | NORTHING   | EASTING     |
|------|----------------|----------|----|------------|-------------|
|      |                |          | 2  | 59873.4059 | 180056.9012 |
| 2    | S 84 09 53.0 E | 51.5036  | 3  | 59868.1696 | 180108.1379 |
| 3    | S 26 17 43.9 E | 62.9346  | 4  | 59811.7474 | 180136.0180 |
| 4    | S 81 50 21.6 W | 213.1358 | 5  | 59781.4929 | 179925.0404 |
| 5    | S 04 06 32.7 W | 3.6485   | 17 | 59777.8538 | 179924.7790 |
| 17   | N 88 10 34.2 W | 49.2868  | 18 | 59779.4272 | 179875.5173 |
| 18   | N 08 27 30.5 E | 54.9662  | 25 | 59833.7955 | 179883.6024 |
| 25   | N 00 42 25.6 W | 135.3866 | 84 | 59969.1717 | 179881.9316 |
| 84   | N 00 42 25.6 W | 60.9700  | 26 | 60030.1371 | 179881.1791 |
| 26   | N 87 21 15.8 E | 86.2254  | 27 | 60034.1171 | 179967.3126 |
| 27   | N 89 45 00.0 E | 120.1800 | 99 | 60034.6415 | 180087.4915 |
| 99   | S 12 01 00.0 W | 73.4100  | 1  | 59962.8401 | 180072.2078 |
| 1    | S 09 42 43.3 W | 90.7346  | 2  | 59873.4059 | 180056.9012 |

AREA = 49,561.04 S.M. = 12.28 ACRES

EXHIBIT "A-1"





A. J. SAAVEDRANO  
E. E. R. RONDOLI

**MAIN PARCEL A-1**

| NO. | DESCRIPTION | AREA    | PERCENT |
|-----|-------------|---------|---------|
| 1   | ROADWAY     | 10,000  | 10.00   |
| 2   | PARKING     | 10,000  | 10.00   |
| 3   | LANDSCAPE   | 10,000  | 10.00   |
| 4   | UTILITIES   | 10,000  | 10.00   |
| 5   | OTHER       | 10,000  | 10.00   |
| 6   | TOTAL       | 100,000 | 100.00  |

**DESIGN DATA**

| SITE AREA | SO. FT. | SO. MI. | TO DEVELOP |
|-----------|---------|---------|------------|
|           | 321,804 | 4.34613 | 78         |

**BUILDING AREA**

| NO. FT.      | NO. MI.        |                |
|--------------|----------------|----------------|
| 78,200       | 0.89853        |                |
| 37,800       | 0.49718        |                |
| 112,800      | 1.49218        |                |
| 18,800       | 0.25448        |                |
| <b>TOTAL</b> | <b>129,600</b> | <b>1.74483</b> |

**PARKING SPACES**

| REQUIRED     | PROVIDED   |
|--------------|------------|
| 448          | 510        |
| 48           | 48         |
| 87           | 87         |
| 9            | 11         |
| <b>TOTAL</b> | <b>513</b> |

**PARCEL A**

| NO. | DESCRIPTION | AREA    | PERCENT |
|-----|-------------|---------|---------|
| 1   | ROADWAY     | 10,000  | 10.00   |
| 2   | PARKING     | 10,000  | 10.00   |
| 3   | LANDSCAPE   | 10,000  | 10.00   |
| 4   | UTILITIES   | 10,000  | 10.00   |
| 5   | OTHER       | 10,000  | 10.00   |
| 6   | TOTAL       | 100,000 | 100.00  |

EXHIBIT I

13

On this same date PLAZA BAYAMON, S. E., a special partnership organized under the laws of the Commonwealth of Puerto Rico, and BUILDERS SQUARE, INC., a Delaware corporation, entered into a Lease Agreement to which this exhibit is annexed and made to form a part of.

The paragraphs hereinafter detailed are modified as follows:

2.D.  
a. Paragraph 1 - "Demised Premises" . This paragraph is amended so as to read that the Demised Premises to be occupied by Tenant shall be demised to be: Landlord does demise unto Tenant and Tenant does receive from Landlord for the lease term herein provided, (i) Tenant's building to be constructed in accordance with the provisions of Section 7, as amended herein, and (ii) the non exclusive use of not less than 450 parking spaces and all other driveways, common and service areas related to the operation of the shopping center, subject to all other conditions, restrictions and limitations established in this Lease Agreement (hereinafter the "Demised Premises").

The rest of the paragraph as detailed in the Lease Agreement shall remain.

b. Paragraph 4 - "Additional Rental"

Section (ii) - "Taxes" - Municipal Patent Taxes shall not be excluded from the total sales of merchandise or services made by Tenant in the Demised Premises (gross sales).

c. Paragraph 6 - "New Building By Landlord" is hereby amended as follows: Tenant's said building and site improvements shall be completed by Tenant promptly and with due diligence.

If the performance by the Contractor chosen by Landlord and Tenant, of any of its obligations hereunder is delayed by reason of the act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, act of the public enemy

or any other act over which Tenant and/or the Contractor have no control, the period for the commencement or completion thereof, shall be extended for a period equal to such delay.

- d. Paragraph 7 - "Drawings and Specifications" - The first paragraph (page six of the Lease Agreement) is deleted and substituted by the following:

Tenant's said building and site improvements shall be constructed by Tenant, at Landlord's sole cost and expense, in accordance with the working drawings and specifications prepared by Landlord, at its sole cost and expense and based upon the information, details and requirements furnished by Tenant, which shall, with respect to standards of construction and division of responsibility for supplying materials and equipment, substantially satisfy the provisions of Tenant's typical store drawings and specifications, prior receipt of which Landlord hereby acknowledges and which are identified as Set No. S0379 containing such additions, changes and modifications as are more particularly set forth in that certain letter dated March 5, 1991, written by Stephen K. Li, R. A. Manager, Design Division, Construction Department, Kmart Corporation to Mr. Rafael Rivera, General Development Group, Calle Reina Cristina 41, Villas de Torrimar, Guaynabo, Puerto Rico 00657, copy of which is attached hereto as Exhibit "D".

The rest of paragraph seven remains unchanged. At the end of it the following shall be added:

The cost of the construction cost of Tenant's building and the infrastructures is estimated to be approximately \$4,400,000.00. The final amount shall be established by the parties herein in the Construction Contract to be signed with the Contractor. It is agreed by the parties that any overrun over and above the final construction amount as well as the cost of the materials and labor

SR

1.072

pump and the installation and the construction as specified in the letter sent by the Engineering Department of K-Mart Corporation necessary to provide sufficient water pressure to the sprinklers system of the store shall be absorbed by Tenant and the cost of skylights shall be for the account of Tenant.

e. Paragraph 8 - "Guarantee of Materials" - As Tenant shall be in charge of the construction of the demised premises and other site improvements, paragraph eight shall read as follows:

Tenant shall obtain from its various contractors and subcontractors and/or suppliers the necessary guarantees for all the work performed by them on behalf of Landlord and Tenant in the construction of Tenant's building and site improvements against defective workmanship and materials for the period of one year or the period provided by law, whichever is greater, from the commencement of the lease term. Said guarantees of workmanship and materials shall be assigned by Landlord to Tenant. Landlord shall not be responsible for any construction defect.

f. Paragraph 10 - "Parking Requirements" - The agreed number of parking spaces shall be four hundred and fifty (450), and not five hundred and sixty five (565).

g. Paragraph 12 - "Landlord's Representations and Warranties" - Sections (i) and (iv) are hereby deleted. Pertaining sections (ii) and (vi), it is hereby understood and agreed that Landlord, upon prior written consent from Tenant, which consent shall not be unreasonably withheld, may amend the said section or sections, provided that the number of parking spaces hereinbefore established in paragraph ten of this lease and/or the visibility of the main building used by Builders Square and/or the flow of pedestrian or vehicular traffic is not substantially affected.

D.R.

h. Paragrah 15 - "Alterations - Additional Construction" - This paragraph pertains to any work, alteration or additional construction to be effected by Tenant within the Tenant's building.

If Tenant uses additional land for the aforesaid construction, then Landlord shall be entitled to an additional rent under the same terms and conditions established in the Lease Agreement, but after the principal and accrued interests of the total cost of such additional construction has been either paid in full by Landlord to Tenant or has been deducted by Tenant to Landlord from said additional new rent exclusively.

i. Paragraph 16 - "Utilities" - Gas is deleted from said paragraph.

j. Paragraph 17 - "Insurance" - Tenant shall try and will cooperate with Landlord in order to comply with any insurance provisions and/or coverages that may be necessary for Landlord in order to meet the requirements of the institution providing the permanent financing.

The foregoing, notwithstanding any inconsistency between the terms and conditions established herein and the terms of the Lease it shall be understood that the latter shall prevail.

In San Juan, Puerto Rico, on this 5 day of march , 1992.

BUILDERS SQUARE CORP.

BY: Glen R. Mielke  
Glen R. Mielke

PLAZA BAYAMON S.E.  
By: Rafael Rivera Sanchez  
RAFAEL RIVERA SANCHEZ

1309

LEASE GUARANTY AGREEMENT

THIS AGREEMENT dated as of May 12, 1992 between PLAZA BAYAMON, a special partner having its principal office at Calle Reina Christina #41, LaVilla de Torrimar, Guaynabo, Puerto Rico 00657 ("Landlord"), and K MART CORPORATION, a Michigan corporation ("Guarantor"), having its principal office at 3100 West Big Beaver Road, Troy Michigan, 48084.

W I T N E S S E T H :

Contemporaneously herewith, the Landlord, as lessor, is entering into a certain lease (the "Lease") for real property located in the City of Bayamon, Commonwealth of Puerto Rico, which property is more particularly described in Exhibit A thereto with BUILDERS SQUARE, INC., a Delaware Corporation (the "Tenant"), as lessee. Guarantor owns all of the outstanding capital stock of Tenant and is executing this agreement as an inducement to the Landlord to enter into the Lease.

NOW THEREFORE, in consideration of the premises, Guarantor agrees as follows:

1. Guarantor hereby absolutely and unconditionally guarantees to the Landlord the full and punctual performance and observance by the Tenant of all of the terms, conditions, covenants and obligations to be performed and observed by the Tenant under the Lease.
2. Guarantor hereby assents to all of the provisions of the Lease and waives demand, protest, notice of any indulgences or extensions granted to the Lessee, any requirement of diligence or promptness on the part of the Landlord in the enforcement of the Lease and any notice thereof, and any other notice whereby to charge Guarantor, provided however, Guarantor shall be furnished with a copy of any notice of or relating to default under or termination of the Lease to which Tenant is entitled or which is served upon Tenant at the time the same is sent to or served upon Tenant.
3. The liability of Guarantor hereunder shall in no way be affected by: (a) The release or discharge of Tenant in any creditors', receivership or bankruptcy proceeding; (b) any alteration of or amendment to the Lease which alteration or amendment has been consented to in writing by the Guarantor; (c) any permitted sale, assignment, sublease, pledge or mortgage of the rights of Tenant under the Lease; or (d) any application or release

of any security or other guaranty given for the performance and observance of the covenants and conditions in the Lease on Tenant's part to be performed and observed.

4. This Agreement shall apply for <sup>initial</sup> the term of the Lease, being 25 years from the date of commencement of the Lease.

5. This Agreement shall inure to the benefit of the Landlord and its successors and assigns and any assignee of the Landlord's interest in the Lease, and shall be binding upon the Guarantor and its successors and assigns.

6. This Agreement may not be changed or terminated orally, but only by a written instrument signed by the party against whom enforcement of any change or termination is sought.

7. Any notice required hereunder to be sent to Guarantor shall be sufficiently given by mailing by certified or registered mail, postage prepaid, addressed as follows:

K mart Corporation  
3100 West Big Beaver Road  
Troy, Michigan 48084  
Attention: Vice-President - Real Estate

IN WITNESS WHEREOF, the Guarantor has duly executed this Agreement by its duly authorized officers and caused its corporate seal to be hereunto affixed as of the day and year first above written.

K MART CORPORATION

[Corporate Seal]

By: M. L. A.  
Vice President

ATTEST:

D. H. Burdick II  
Assistant Secretary

A:HATOTEJA

ACKNOWLEDGEMENTS

STATE OF MICHIGAN) SS:  
COUNTY OF OAKLAND) SS:

I do hereby certify that on this 12th day of May, 1992, before me, Linda L. Moltzner, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. D. Skiles and D. H. Burdick known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Rochester & Birmingham respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires: \_\_\_\_\_

Linda L. Moltzner  
Notary Public

Linda L. Moltzner  
Notary Public, Macomb County, Michigan  
My Commission Expires February 26, 1996  
Acting in Oakland County



# PARCEL "A"

| NO. | BEARING        | DISTANCE | TO | NORTHING   | EASTING     |
|-----|----------------|----------|----|------------|-------------|
|     |                |          | 2  | 59873.4059 | 180056.9012 |
| 2   | S 84 09 53.0 E | 51.5036  | 3  | 59868.1696 | 180108.1379 |
| 3   | S 26 17 43.9 E | 62.9346  | 4  | 59811.7474 | 180136.0180 |
| 4   | S 81 50 21.6 W | 213.1358 | 5  | 59781.4929 | 179925.0404 |
| 5   | S 04 06 32.7 W | 3.6465   | 17 | 59777.8538 | 179924.7790 |
| 17  | N 88 10 14.2 W | 49.2868  | 18 | 59779.4272 | 179875.5173 |
| 18  | N 08 27 30.5 E | 54.9662  | 25 | 59833.7955 | 179883.6024 |
| 25  | N 00 42 25.6 W | 135.3866 | 84 | 59969.1717 | 179881.9316 |
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| 83  | N 82 44 30.1 E | 68.2645  | 82 | 60024.3672 | 179967.3551 |
| 82  | N 89 45 00.0 E | 47.1200  | 81 | 60024.5728 | 180014.4747 |
| 81  | S 00 15 00.0 E | 141.7476 | 80 | 59882.8266 | 180015.0932 |
| 80  | N 89 45 00.0 E | 43.4532  | 79 | 59883.0162 | 180058.5460 |
| 79  | S 09 42 43.3 W | 9.7500   | 2  | 59873.4059 | 180056.9012 |

**AREA = 38,851.20 S.M. = 9.60 ACRES**

EXHIBIT I

On this same date PLAZA BAYAMON, S. E., a special partnership organized under the laws of the Commonwealth of Puerto Rico, and BUILDERS SQUARE, INC., a Delaware corporation, entered into a Lease Agreement to which this exhibit is annexed and made to form a part of.

The paragraphs hereinafter detailed are modified as follows:

a. Paragraph ~~3~~ - "Demised Premises" . This paragraph is amended so as to read that the Demised Premises to be occupied by Tenant shall be demised to be: Landlord does demise unto Tenant and Tenant does receive from Landlord for the lease term herein provided, (i) Tenant's building to be constructed in accordance with the provisions of Section 7, as amended herein, and (ii) the non exclusive use of not less than 450 parking spaces and all other driveways, common and service areas related to the operation of the shopping center, subject to all other conditions, restrictions and limitations established in this Lease Agreement (hereinafter the "Demised Premises").

The rest of the paragraph as detailed in the Lease Agreement shall remain.

b. Paragraph 4 - "Additional Rental" Section (ii) - "Taxes" - Municipal Patent Taxes shall not be excluded from the total sales of merchandise or services made by Tenant in the Demised Premises (gross sales).

c. Paragraph 6 - "New Building By Landlord" is hereby amended as follows: Tenant's said building and site improvements shall be completed by Tenant promptly and with due diligence.

If the performance by the Contractor chosen by Landlord and Tenant, of any of its obligations hereunder is delayed by reason of the act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, act of the public enemy

pump and the installation and the construction as specified in the letter sent by the Engineering Department of K-Mart Corporation necessary to provide sufficient water pressure to the sprinklers system of the store shall be absorbed by Tenant and the cost of skylights shall be for the account of Tenant.

- e. Paragraph 8 - "Guarantee of Materials" - As Tenant shall be in charge of the construction of the demised premises and other site improvements, paragraph eight shall read as follows:

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- f. Paragraph 10 - "Parking Requirements" - The agreed number of parking spaces shall be four hundred and fifty (450), and not five hundred and sixty five (565).

- g. Paragraph 12 - "Landlord's Representations and Warranties" - Sections (i) and (iv) are hereby deleted. Pertaining sections (ii) and (vi), it is hereby understood and agreed that Landlord, upon prior written consent from Tenant, which consent shall not be unreasonably withheld, may amend the said section or sections, provided that the number of parking spaces hereinbefore established in paragraph ten of this lease and/or the visibility of the main building used by Builders Square and/or the flow of pedestrian or vehicular traffic is not substantially affected.

h. Paragrah 15 - "Alterations - Additional Construction" - This paragraph pertains to any work, alteration or additional construction to be effected by Tenant within the Tenant's building.

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i. Paragraph 16 - "Utilities" - Gas is deleted from said paragraph.

j. Paragraph 17 - "Insurance" - Tenant shall try and will cooperate with Landlord in order to comply with any insurance provisions and/or coverages that may be necessary for Landlord in order to meet the requirements of the institution providing the permanent financing.

*Handwritten note:* - Article 14 m.

The foregoing, notwithstanding any inconsistency between the terms and conditions established herein and the terms of the Lease it shall be understood that the latter shall prevail.

In San Juan, Puerto Rico, on this 5 day of march , 1992.

BUILDERS SQUARE CORP.

By: [Signature]  
Gen R. Mielke

PLAZA BAYAMON S.E.  
By: [Signature]  
RAFAEL RIVERA SANCHEZ